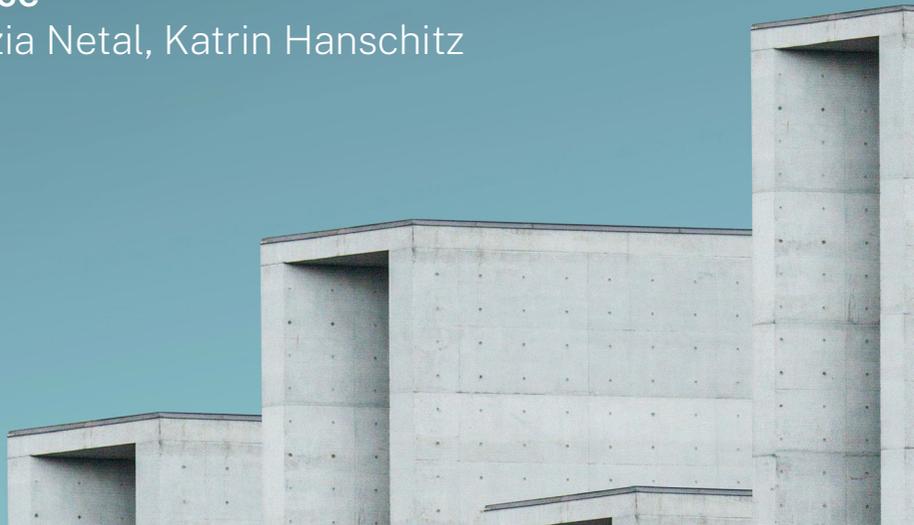

CHAMBERS GLOBAL PRACTICE GUIDES

Enforcement of Judgments 2024

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Austria: Law & Practice

Bettina Knoetzl, Patrizia Netal, Katrin Hanschitz
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AUSTRIA

Law and Practice

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1. Identifying Assets in the Jurisdiction

1.1 Options to Identify Another Party's Asset Position

Introduction to Enforcement Under Austrian Law

Austrian courts are known for their efficiency, and this also applies to the enforcement of (foreign and domestic) judgments.

The relevant provisions of domestic law pertaining to enforcement proceedings are contained in the Austrian Code of Civil Procedure (CCP – *Zivilprozessordnung*) and the Austrian Enforcement Act (EA – *Exekutionsordnung*). Moreover, as Austria is a member state of the EU, the relevant regulations apply, such as Regulation (EU) No 1215/2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters.

In addition, Austria is party to a number of multilateral and bilateral treaties that deal with the recognition and enforcement of judgments, including:

- the Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (2007);
- the Hague Convention on Choice of Court Agreements (2005);
- the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (2019); and
- the bilateral treaty with the United Kingdom providing for the reciprocal recognition and enforcement of judgments in civil and commercial matters (1961), which has once more become relevant in view of Brexit.

To respond to the COVID-19 crisis, the Austrian government implemented a number of measures to cushion the negative impact. The measures, inter alia, provide for the possibility of oral hearings to be conducted remotely; the Austrian lawmaker subsequently adopted the option of remote hearings permanently.

Identifying the Assets of Another Party Publicly available information

In Austria, there are several public registers that may prove useful in identifying the assets of another party. The most relevant of these are as follows.

- The Land Register (*Grundbuch*) can be consulted regarding immovable assets. It is kept by the courts of the federal states and includes information on ownership, mortgages and the more recent underlying documents, such as purchase and mortgage agreements. While all persons may enquire regarding ownership of a property, only certain registered persons (such as notaries, lawyers or other public bodies) or persons who have a proven legal interest may search for a specific legal or natural person, and can obtain a list of property owned by that person or access underlying documents.
- The Company Register (*Firmenbuch*) – when identifying the asset position of a company, the first step is to check the Austrian Company Register, which is kept by the courts of the federal states and by the Commercial Court of Vienna. Depending on the type of company, the Company Register may include information on the managing directors and shareholders (including addresses), the company's equity and (abbreviated) annual accounts. The Company Register is open for public inspection without

the need to show any specific legal interest or justification.

- The Tradespersons Register (*Gewerberegister*) – in order to obtain information on the commercial activities of specific legal or natural persons, the Austrian Tradespersons Register, which is kept by local administrative authorities, may prove helpful. Under Austrian law, most trades may only be carried out by certified tradespersons. The Tradespersons Register is easily accessible online and lists the trades registered by a specific juridical or natural person.
- The Insolvency Register (*Ediktsdatei*) is an online database kept by the competent courts, which publish all relevant decisions related to insolvency proceedings. It is publicly and easily accessible online. The database shows whether a party is subject to insolvency proceedings, as well as the status of those proceedings. The Insolvency Register also lists court-ordered auctions of assets.
- The Trade Mark and Patent Register (*Marken- und Patentregister*) offers a freely accessible online database that identifies ownership of registered IP, including national and European patents, trade marks and designs.

Further means to identify assets

Creditors who can show that they have a claim against the debtor and legitimate doubts as to the debtor's creditworthiness may instruct a lawyer or notary to access the Enforcement Register (*Exekutionsregister*), which contains court data regarding enforcement proceedings conducted against the debtor. The information includes the number of pending enforcement proceedings (including the amounts owed) for the past two years, whether enforcement measures regarding movable assets have been successful, and

whether the debtor was ordered to provide a list of all assets (*Vermögensverzeichnis*) in the past year.

The Register of Beneficial Owners (*Register der wirtschaftlichen Eigentümer*) is accessible for certain groups of registered users – generally entities who are subject to anti-money laundering obligations, including lawyers, notaries, (chartered) accountants, banks and various types of agents. It allows the determination of the (indirect) commercial owners of companies registered in Austria.

The Association for Credit Protection (*Kreditschutzverband von 1870*) maintains a database with information on companies and individuals. It contains company profiles, branch profiles, and monitoring and early warning systems for the purpose of informing (potential) creditors about the financial standing of their business partners. As the accuracy of this online database cannot be guaranteed, a double check with other available data is always highly recommended.

Asset Disclosure Orders

Asset Disclosure Orders are limited under Austrian law, but they are available in enforcement proceedings. Upon the application of the creditor, the court will order third-party debtors, social security agencies and the debtor to disclose specific information.

In enforcement proceedings aimed at seizing monies in Austrian bank accounts held by the debtor, it suffices to name the bank and request the court to order the bank to disclose any accounts. Austrian banks are obliged to comply with this information request by law, and are liable for any incorrect information.

Enforcement proceedings for the attachment of earnings may be initiated even if the identity of the debtor's employer is unknown. Upon the application of the creditor, the court will request this information from the social security agencies, which are obliged to provide such information by law.

Should a request to the social security agencies not show any regular income or if no movable assets of value are found, the debtor can be ordered by the court to provide an inventory disclosing all assets (*Vermögensverzeichnis* Section 47 et seq of the EA). If the debtor refuses to draw up an inventory of assets, the court may impose imprisonment for up to six months. Incorrect disclosures are sanctioned by criminal law.

Execution Packages Under Sections 19 and 20 of the Austrian Enforcement Act

The fallback means of enforcement is the "simple execution package", which is triggered if the creditor does not specify any enforcement measures in the enforcement application, and automatically includes enforcement against all movable goods in the debtor's possession, attachment of salary claims (the debtor need not be specified) and a subsidiary asset disclosure statement from the debtor (Section 47 of the EA) if the other two enforcement measures did not suffice to satisfy the creditor's monetary claims. Creditors can also apply for an "extended enforcement package", whereby an enforcement administrator is tasked with tracing and liquidating the debtor's assets and obtaining a statement from the debtor disclosing their assets (Section 47 et seq of the EA).

Freezing Orders

If a creditor has already obtained a (first instance) court decision that has not yet become final and

binding (because it is subject to an appeal by the debtor), Austrian law provides for "preliminary enforcement" to secure monetary claims (*Exekution zur Sicherstellung* Section 370 et seq of the EA). Such protective measures are, however, only available based on a decision rendered by an Austrian court or a court of a member state of the EU.

Prior to a court decision, freezing orders and injunctions are available as "interim measures" (*einstweilige Verfügungen* Section 378 et seq of the EA). Moreover, as Austria is a member state of the EU, its courts may issue a European Account Preservation Order (based on Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014) to freeze bank accounts within the EU.

To prevent the enforcement of a future court decision from becoming considerably more difficult or even impossible, a party may request interim relief in the course of pending proceedings or before filing a claim. In the latter case, a short period (often one to three months) is usually set by the court as the deadline for initiating main proceedings to decide upon the claim that is to be secured. If no main proceedings are initiated within the given period, the interim relief will be lifted by the court.

Although it is not necessary to fully prove the underlying claim, the requesting party will be required to show that its claim is sufficiently substantiated. If in doubt, courts will order the party requesting interim relief to post security that serves to mitigate against loss by the opposing party should it incur damages based on an interim measure that is not ultimately justified.

Interim measures to secure monetary claims require the requesting party to plausibly show “subjective endangerment” of the claim based on specific actions of the opposing party. This subjective endangerment is a high threshold and requires the party to demonstrate to the court that, if the interim relief is not granted, the opposing party will ultimately undermine the outcome of the main proceedings in the meantime, by taking steps to hamper enforcement by damaging, destroying, hiding or otherwise dissipating assets.

In limited cases, it is sufficient to show “objective endangerment”, which is given, in particular, if enforcement would otherwise be outside the EU or in states where international treaties ensuring enforcement are not in place.

Interim measures are also available to secure non-monetary claims, such as the performance of specific acts and obligations to cease and desist. For such claims, it suffices to demonstrate to the court that there will be “objective endangerment”, such as imminent violence or irreversible harm.

Procedure to obtain interim relief

In general, if the claim is already subject to ongoing main proceedings, the court competent for the main proceedings also has jurisdiction over requests for interim relief. In other cases, the jurisdiction lies with the competent district court (*Bezirksgericht*) at the opposing party’s domicile (primary jurisdiction) or, if no Austrian domicile is available, at the location of the asset that is subject to the interim injunction, at the place where the act of enforcement will take place or – in cases of garnishment orders – at the third party’s domicile.

In many cases, Austrian courts will decide on an application for interim relief within a few days. In more complex cases, it may take a week or two until a decision is rendered. Upon application, the court may issue its decision *ex parte* if the requesting party convinces it that, otherwise, the goal of the relief sought could be frustrated.

Each party may file legal remedies against the court’s decision on the interim injunction within 14 days after the respective party has been served with the court’s decision.

To protect parties from the adverse consequences of an interim measure, Austrian law imposes liability on the requesting party for damages incurred as a result of an unjustified interim injunction. In addition, the court may impose a fine on the requesting party if it transpires that the request was baseless and filed wilfully (ie, with malintent).

2. Domestic Judgments

2.1 Types of Domestic Judgments

Austrian courts decide by means of determinations (*Beschlüsse*) and judgments (*Urteile*). Determinations generally deal with procedural issues and order measures, and can dispose of a claim if it is rejected for procedural reasons. Judgments are decisions on a claim based on its merits.

Generally, a judgment will finally decide on the subject matter of a dispute in its entirety. However, under various circumstances (usually related to the complexity of the case), the courts may decide on the matter in several steps and issue interlocutory, partial or supplementary judgments.

An interlocutory judgment (*Zwischenurteil* Section 393 of the CCP) ultimately serves to structure proceedings into various phases by first deciding on an issue that needs to be clarified in order for a final decision to be rendered. In most cases, the aim will be to determine whether a claim is, in principle, justified on the merits (without review of quantum). There are two types of interlocutory judgments that must be distinguished in terms of their binding effect:

- a “simple” interlocutory judgment, which only has binding effect on the court itself within the proceedings; and
- a “declaratory” interlocutory judgment upon the application of a party, which is a genuine declaratory judgment and therefore has binding effect between the parties.

In both cases, an interlocutory judgment is not enforceable.

A partial judgment (*Teilurteil* Section 391 of the CCP) may be employed if multiple (unrelated) claims (or claims and counterclaims) are raised within one action, or if the claim is otherwise severable. A partial judgment can then, for example, be rendered regarding individual (counter)claims that are ready for decision, or parts of a (counter)claim that have been acknowledged by the defendant. A partial judgment has the effect of a final judgment and is fully enforceable.

A supplementary judgment (*Ergänzungsurteil* Section 423 of the CCP) is rendered upon the application of a party if the court failed to initially deal with all claims raised in their entirety or failed to render a decision on costs. A supplementary judgment has the effect of a final judgment and is fully enforceable.

Judgments can also be distinguished and have different effects based on the nature of the relief granted.

A performance judgment (*Leistungsurteil*) contains a performance order that can relate to the performance of payment or specific performance. Specific performance includes an order of positive action by the defendant, an order to the defendant to tolerate an action of the plaintiff, or an order to the defendant to cease and desist. A performance judgment is always enforceable. However, attention must be paid to formulate the request so that relief shall be granted in a manner that is clear and specific as to what the performance shall be.

A constitutive judgment (*Rechtsgestaltungsurteil*) directly affects the rights of the parties and changes the legal situation directly. A constitutive judgment establishes, amends or nullifies a legal relationship between the parties. This effect is automatic as soon as the judgment is final and binding. Accordingly, a constitutive judgment does not require enforcement.

A declaratory judgment (*Feststellungsurteil*) clarifies the existence or non-existence of a legal relationship or right. It may also be requested to establish the authenticity or falseness of a document. A declaratory judgment can be relied upon but cannot be enforced.

If one party refrains from participating in the proceedings and, in particular, fails to appear in court, the court may – upon request of the other party that is not in default – render a default judgment (*Versäumnungsurteil* Section 396 of the CCP). If the non-defaulting party fails to make such an application, the proceedings are suspended.

The main prerequisite is that the defaulting party has properly been served with a writ – ie, the party is aware that it is required to file a written submission or appear in court. Moreover, the defaulting party has various legal remedies against the default judgment at its disposal. However, if no action is taken, the default judgment becomes final and binding, and is fully enforceable.

2.2 Enforcement of Domestic Judgments

Austrian enforcement proceedings are bifurcated into two steps:

- authorisation proceedings (*Exekutionsbewilligung*); and
- the actual enforcement (*Exekutionsvollzug*).

Both fall within the competence of the enforcement court.

The prerequisite for enforcement is an enforceable title, such as the judgment of a court that has been formally confirmed as enforceable (usually by means of an official stamp). Such confirmations are issued by the court that rendered the judgment, after the judgment has become final and binding (no further appeal possible) and the performance period (in which the judgment debtor has the opportunity to voluntarily comply with the judgment) has expired.

For the sake of completeness, under Austrian law, an enforcement title (*Exekutionstitel*) is not only a judgment but may also, inter alia, be a public deed or an enforceable notarial deed. In all cases, the enforcement title must be sufficiently specific – ie, allow the court of enforcement to clearly determine what the creditor is entitled to receive.

Once a creditor has obtained an enforceable title, it can apply for enforcement at:

- the competent district court at the debtor's domicile;
- the location of the asset that is the subject of the enforcement;
- the place where the act of enforcement will take place; or
- the third party's domicile, in cases of garnishment orders.

The application for enforcement is done by means of official standard forms.

The court of enforcement will only examine the formal requirements based upon the application; if it is satisfied that all formal requirements are met, it will authorise enforcement by means of a court order.

There is also a simplified enforcement authorisation procedure that does not require the submission of the enforceable title. This simplified procedure is only applicable to Austrian judgments where the value of the claim to be enforced does not exceed EUR50,000.

In Austria, actual enforcement – ie, implementation of the enforcement measures – also falls within the competence of the courts and its officers. There is no private enforcement.

Enforcement Measures

Austrian law provides for a number of enforcement measures and allows the creditor to choose which enforcement measure(s) shall be implemented, and to combine several measures, if this is appropriate. However, only those enforcement measures listed in the EA are available. Furthermore, certain enforcement measures are only available for certain types of

claims. The available enforcement measures are categorised according to whether they serve to enforce either monetary claims or specific actions of the debtor.

Enforcement of Monetary Claims

Monetary claims can be enforced by means of measures directed against immovable property (*Liegenschaftsexekution*), measures directed against movable property (*Fahrnisexekution*), claims of the debtor against third parties (*Forderungsexekution*), or rights such as IP (*Rechteexekution*).

Movable property constitutes all objects that can be moved from one place to another without damaging their substance.

An application for the enforcement of monetary claims that does not specify the measure by which the claim shall be enforced will be understood to be an application for a “simple enforcement package”.

The predominant enforcement measures available are as follows.

Enforcement package (Sections 19 and 20 of the EA)

The “simple enforcement package” (Section 19 of the EA) entails a mix of measures directed against movable property, as well as the attachment of earnings and the drawing up of a record of assets. It always applies when the creditor does not request specific enforcement measures.

The law also provides for an “extended enforcement package” (Section 20 of the EA), setting out the appointment of an administrator. The administrator shall, with the involvement of the debtor, identify potential assets that may

satisfy the claim and document these in an inventory. To do so, the administrator shall have access to relevant registers and the records of the debtor. In addition, the administrator may order the debtor to draw up a record of assets, and to disclose them. An application for an extended enforcement package is only admissible if the creditor’s monetary claim exceeds EUR10,000, or if the “simple enforcement package” has failed.

Once an extended enforcement package is applied for and granted to one creditor, any further creditors with later applications will be joined to these enforcement proceedings. Effectively, these creditors will benefit from the fact that assets have already been identified and attached. However, the later applications will also be subordinated to the claims of the creditor whose application was earlier.

Establishment of lien (Section 88 et seq of the EA)

This measure does not directly lead to the satisfaction of the claim of the enforcing creditor but merely secures the subsequent satisfaction of the enforceable claim in the rank of incorporation as entered into the Land Registry (meaning it does not give priority over pre-existing liens). It is usually combined with other measures.

Foreclosure (Section 133 et seq of the EA)

This measure leads to the auction of the debtor’s real estate by the court. The order of the court will promptly be entered into the Land Register, thus barring any subsequent transactions that would affect the property. However, the creditor does not obtain priority over pre-existing liens, etc. In the actual enforcement, the court will have the property appraised by an expert and set an auction date; both the appraisal and the date of the auction are made public. The auction

itself will be carried out by the judge in a court hearing. The lowest bid is half of the appraised value. The highest bidder wins the auction.

Administration (Section 97 et seq of the EA)

The measure of administration aims to satisfy the claim from the proceeds of the administration of a property (such as rental income) or a part of a property of the debtor. The measure will be recorded in the Land Registry and restricts certain rights of the debtor regarding the administration of the property, as the court will appoint a receiver for this purpose. The measure is terminated as soon as the creditor's monetary claim has been satisfied.

Attachment and auction (Section 249 et seq of the EA)

This measure leads to the court-ordered seizure of the debtor's property, followed by a public auction (in a licensed auction house). The objects are seized by means of describing them and recording them in a list. The destruction, damage or removal of already seized items is punishable by law, so the objects are only physically seized if so requested by the creditor. Certain objects of personal use (that allow for a decent but modest lifestyle), of emotional value (such as family photos) or covering basic needs (food for four weeks) may not be seized. The auction procedure is similar to that described above regarding immovable property.

Surrender of specific property (Section 346 et seq of the EA)

This measure is directed against a specific movable object. The officer of the court may seize the precisely defined movable object and hand it over to the creditor against a receipt.

In most cases, monetary claims of the debtor against third parties are claims against banks

holding accounts of the debtor and attachment of earnings (salary or wages) of the debtor. However, the debtor must be left with an amount that is equivalent to the minimum subsistence level (defined by law).

Attachment and collection (Section 289 et seq of the EA)

This measure consists of two orders: one forbidding the third-party debtor to make payment to the debtor (prohibition of payment) and another forbidding the debtor from disposing of its claim against the third-party debtor (prohibition of disposal). The third-party debtor is subsequently obliged to provide the court with any relevant information regarding the attached claim (such as assignment of the claim or attachments by other creditors; in the case of an employer, known family maintenance obligations of the debtor) and is liable for damages incurred by the creditor due to incorrect or incomplete information. The collection (and then transfer to the creditor) is generally effected by bank transfer.

Rights or intangible assets of the debtor may also be the subject of enforcement proceedings. The most common cases are IP or shares in companies.

Attachment and exploitation (Section 327 et seq of the EA)

As a first step, this measure entails attachment of the right and an order forbidding the debtor from disposing of this right. The actual measures that shall allow the creditor to recover its monies depend on the right. For example, the court may order a patent to be subject to receivership (allowing the creditor to collect any licence fees) or that the patent shall be subject to administration (including the right to grant licences – again, allowing the creditor to collect

any monies paid for such licences); the court may (ultimately) also order sale of the patent (allowing the creditor to be satisfied from the proceeds).

Enforcement of Non-monetary Claims

Non-monetary claims are, in general, specific acts that the debtor is obliged to undertake (or cease and desist from).

Substitution of the act (Section 353 et seq of the EA)

This measure obliges the debtor to undertake an act within a specified time. If the debtor fails to do so, the creditor may have this act performed by another person and request enforcement of the costs incurred as a monetary claim.

Penalisation for failure to comply (Section 353 et seq of the EA)

If the act can only be performed by the debtor or if the debtor violates its obligation to cease and desist, the court will first threaten, and can then impose, penalties in the form of fines or imprisonment.

Special Scenario: Insolvency of the Debtor

The 2021 amendment of the EA introduced an intersection between enforcement and insolvency law (Section 49a of the EA). The underlying aim of the legislature was to ensure that debtors that are unable to pay are removed from enforcement proceedings that are directed against debtors that are unwilling to pay. Accordingly, enforcement officers or administrators appointed to execute an “extended enforcement package” shall alert the enforcement court if they find, in the course of identifying assets, that the debtor is evidently insolvent. In these cases, the enforcement of already granted measures shall be stayed, unless assets have already been attached in

the creditor’s favour or statutory liens exist. After giving both the debtor and the creditor(s) an opportunity to be heard, the enforcement court shall decide on the insolvency of the debtor.

Once this decision declaring insolvency has become final and is no longer subject to appeal, it is published in the Insolvency Register. The creditor may then initiate insolvency proceedings. The proceedings are governed by the specific provisions that apply in insolvency proceedings, which aim to ensure fair allocation of the assets to the creditors.

2.3 Costs and Time Taken to Enforce Domestic Judgments

In general, enforcement proceedings are concluded quickly and effectively by Austrian courts. The authorisation process takes place ex parte and a decision is often rendered within a week or two. Should the decision authorising enforcement be appealed, it may take between two and six months to obtain a final decision.

Regarding the actual enforcement process, much depends on the measure chosen; foreclosure and the auction of real estate will take longer than an attachment of earnings.

The costs for enforcement comprise lawyers’ fees, a possible advance to cover the costs of actual enforcement measures (such as obtaining an appraisal of the value of real estate to be auctioned or the fees of an administrator who receives a percentage of the recovered amounts) and court fees.

Court fees for enforcement amount to approximately 0.25% to 0.3% of the amount to be enforced. Should the decision on enforcement be subject to appeal, the court fees are approximately 0.4% to 0.45%. Should

a further recourse to the Austrian Supreme Court – which is limited – be permissible, the court fees are approximately 0.5% to 0.6% of the amount to be enforced.

2.4 Post-judgment Procedures for Determining Defendants' Assets

All available means to identify defendants' assets are described in 1.1 Options to Identify Another Party's Asset Position.

2.5 Challenging Enforcement of Domestic Judgments

The decision to grant (or deny) enforcement is subject to appeal, which must be raised within 14 days of service of the decision on the party. This ensures the debtor's right to be heard because the authorisation of enforcement proceedings is generally granted ex parte.

Overall, Austrian enforcement law is "creditor-friendly", which is also reflected in the fact that legal remedies against decisions of the enforcement court do not generally have a suspensory effect. However, it is possible to request a stay of enforcement measures together with the appeal.

There are three actions that lead to the suspension of enforcement proceedings:

- opposition on substantive grounds (*Oppositionsklage* Section 35 of the EA) – if the debtor asserts circumstances that occurred after the rendering of the judgment on the main claim that annul the substantive claim or at least lead to postponement of enforcement (eg, full performance, deferment of performance);
- opposition on formal grounds (*Impugnationsklage* Section 36 of the EA) – if the debtor asserts circumstances according

to which the prerequisites for enforcement are not (yet) given (eg, the performance period determined in the judgment on the main claim has not lapsed); and

- third-party action (*Exzindierungsklage* Section 37 of the EA) – if, in fact, the object against which enforcement measures are directed does not belong to the debtor, the entitled third party can obtain a declaration of inadmissibility of the enforcement measure (which is then repealed), by showing its entitlement.

If the conditions for enforcement are no longer met, the enforcement may be discontinued (or limited) upon application or ex officio.

2.6 Unenforceable Domestic Judgments

A constitutive judgment does not require enforcement. A declaratory judgment can be relied upon but cannot be enforced (see 2.1 Types of Domestic Judgments).

2.7 Register of Domestic Judgments

In Austria, judgments are not freely accessible to the public. There is no central repository of judgments but there is an online register of judgments, which publishes a selection of judgments of the (mostly higher) Austrian courts in anonymous form.

Regarding enforcement proceedings specifically, it is possible to access the Enforcement Register, which contains court data regarding enforcement proceedings conducted against a debtor, including the number of pending enforcement proceedings.

3. Foreign Judgments

3.1 Legal Issues Concerning Enforcement of Foreign Judgments

The main difference between the enforcement of domestic and foreign judgments is the need, in principle, to first obtain a declaration of recognition and enforceability of a foreign judgment. Once this prerequisite is fulfilled, the same provisions apply to the enforcement proceedings and no further differentiation from domestic judgments is made.

From the perspective of the Austrian enforcement courts, there are two main groups of foreign judgments:

- judgments rendered by courts of EU member states (including Denmark) and Lugano Convention parties, which do not require separate recognition proceedings; and
- judgments rendered by courts of other states, which require recognition proceedings.

The general rule under Austrian law (Section 406 of the EA) is that, if no treaties apply, foreign judgments will only be recognised and declared enforceable if:

- they are enforceable in the state of origin (a certification of enforceability must be provided); and
- “formal reciprocity” has been agreed in international treaties or determined by an Austrian regulation – exceptions apply in family law and with regard to civil/marital status, and formal reciprocity requires that Austrian judgments are, in practice, not treated any differently to judgments of that state.

In cases where the respective treaties do not already contain special rules on recognition requirements (this includes the international transportation treaties in particular), Austrian law further requires that:

- hypothetically applying Austrian rules on jurisdiction, the court of origin had international jurisdiction;
- the statement of claim (or writ or other document initiating the proceedings) was duly served on the defendant(s) under the laws applying in the state of origin; and
- no grounds for refusal of recognition/enforceability exist (Section 407 of the EA).

3.2 Variations in Approach to Enforcement of Foreign Judgments

Differentiation According to Country of Origin
Within EU member states, Regulation (EU) No 1215/2012 of 12 December 2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (“Brussels I recast”) provides uniform laws for the recognition and enforcement of judgments.

Brussels I recast has been applicable since January 2015 and has simplified the enforcement of judgments within the EU, which now only requires the filing of a copy of the judgment and a standard form certificate.

In parallel, the Lugano Convention, which contains a very similar set of rules, continues to apply between Austria and Iceland, Norway and Switzerland.

Further EU Regulations governing specific enforcement issues include:

- Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April

- 2004, creating a European Enforcement Order for Uncontested Claims;
- Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006, creating a European Order for Payment Procedure;
- Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007, establishing a European Small Claims Procedure;
- Regulation (EC) No 2201/2003 of the Council of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility, which replaces Council Regulation (EC) No 1347/2000;
- Regulation (EC) No 4/2009 of the Council of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and co-operation in matters relating to maintenance obligations;
- Regulation (EU) No 2016/1104 of the Council of 24 June 2016, implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships; and
- Regulation (EU) No 2015/848 of the European Parliament and of the Council of 20 May 2015 on Insolvency Proceedings.
- the Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters;
- the Hague Convention of 1 March 1954 on Civil Procedure and the Convention of 5 October 1961, Abolishing the Requirement of Legalisation for Foreign Public Documents;
- various international transportation treaties, including the Convention concerning International Carriage by Rail (COTIF), the International Convention concerning the Carriage of Passengers and Luggage by Rail (CIV), the International Convention concerning the Carriage of Goods by Rail (CIM), the Convention on the Contract for the International Carriage of Goods by Road (CMR) and the Convention on the Registration of Inland Navigation Vessels of 25 January 1965; and
- in the area of family law, the Hague Conventions on matters of family law and civil status of 1958, 1961, 1980, 1996, 2000 and 2007, and the Convention on the Recognition of Decisions relating to the Validity of Marriages of 8 September 1967.

Where Brussels I recast and the Lugano Convention do not apply, multilateral and bilateral treaties have priority over the subsidiary provisions of the Austrian Enforcement Act.

The following multilateral treaties to which Austria is a party (exemplary list) contain specific rules on enforcement or provisions relevant to enforcement proceedings:

Outside such multilateral treaties, Austria has been reluctant to enter into bilateral treaties on the recognition and enforcement of judgments. Currently, bilateral treaties are in place, for example, with Israel (BGBl 1968/349), Liechtenstein (BGBl 1956/212, 1975/114), Tunisia (BGBl 1980/305) and Turkey (BGBl 1992/257).

3.3 Categories of Foreign Judgments Not Enforced

The main prerequisite for judgments to be enforced is that the relief granted is clearly stated.

In general, Austrian law does not differentiate between categories and types of judgments. Special rules do apply, however, particularly in the area of family law (adoption, matrimonial issues, parental responsibility) and the recognition of insolvency proceedings.

Regarding default judgments, the right to be heard is safeguarded by the Austrian courts, both under Brussels I recast and under Austrian law. Pursuant to Section 408 of the EA, Austrian courts may refuse recognition and enforcement of the judgment if the defendant was not given sufficient opportunity to participate in the proceedings due to procedural irregularities.

Brussels I recast further provides a stricter regime for interim measures than for final judgments, requiring, in particular, that the court issuing an interim relief is also competent for the main proceedings. However, if this requirement is met, Brussels I recast also permits the enforcement of ex parte interim measures, provided the decision has been served on the defendant(s) before enforcement. Outside the regime of Brussels I recast, ex parte interim orders are generally not enforceable in Austria.

Austrian law does not have an instrument equivalent to punitive damages and, accordingly, will not enforce a judgment (or that part of a judgment) awarding such damages.

3.4 Process of Enforcing Foreign Judgments

Enforcing Contested EU Judgments Proceedings

Under Brussels I recast, no separate recognition proceedings are required, allowing the creditor to move directly to obtaining a declaration of enforceability and proper enforcement proceedings.

The application for enforcement is to be made to the competent domestic court (for more detail, see **2.2 Enforcement of Domestic Judgments**). Together with the enforcement application, the creditor must provide a copy of the judgment, which must be accompanied by a certificate issued by the court that rendered the decision in the country of origin (pursuant to Article 53, Annex 1 of Brussels I recast). The translation of the judgment is not mandatory but the court may order the creditor to produce a (certified) translation of the judgment.

According to Article 41 paragraph 1 of Brussels I recast, the procedure for enforcement shall be governed by the law of the member state in which enforcement is sought. This means that, in effect, domestic Austrian enforcement provisions apply directly (see **2.2 Enforcement of Domestic Judgments**).

Debtor's defences

There are several limited grounds on which recognition of a judgment rendered by the courts of an EU member state can be denied. These exceptions include cases in which the recognition of the judgment is manifestly contrary to the public policy of the EU member state in which recognition is sought, or if the judgment was rendered in violation of due process. Other grounds for the denial of recognition include if the decision is irreconcilable with a previous judgment between the same parties.

According to the Austrian Supreme Court, the requirement that the foreign judgment be enforceable in the state of origin does not imply a requirement that the judgment could indeed be enforced in the country in which it was rendered, but rather that such judgment is formally enforceable.

Enforcing Uncontested EU Judgments

According to Article 20 of Council Regulation (EC) 805/2004, “a judgment certified as a European Enforcement Order shall be enforced under the same conditions as a judgment handed down in the member state of enforcement”. A claim is considered uncontested if:

- the debtor has expressly agreed to it by admission or by means of a settlement that has been approved by a court or concluded before a court;
- the debtor has never objected to it in the course of the court proceedings;
- after having initially objected to the claim in the course of the court proceedings, the debtor has not appeared or been represented at the further court hearings, provided that such conduct amounts to a tacit admission of the claim or of the facts alleged by the creditor under the law of the member state; or
- the debtor has expressly agreed to it in an authentic instrument.

Proceedings

The application for the enforcement of a European Enforcement Order must be accompanied by the following documents:

- a copy of the judgment that satisfies the conditions necessary to establish its authenticity;
- a copy of the European Enforcement Order certificate that satisfies the conditions necessary to establish its authenticity; and
- where necessary, a transcription of the European Enforcement Order certificate or a translation thereof into the official language of the court of enforcement.

Debtor’s defences

The enforcement of a European Enforcement Order can be refused only if, upon application of the debtor, the court determines that the European Enforcement Order is irreconcilable with an earlier judgment rendered in any member state or in a third country.

Enforcing Judgments Not Rendered Within the EU nor Covered by the Lugano Convention

Any decision by a court of a state that is outside the EU and not party to the Lugano Convention must be formally recognised and declared enforceable by an Austrian court in order for enforcement proceedings to be permissible in Austria.

Proceedings

The creditor must request the declaration of recognition and enforceability from the Austrian court competent for enforcement proceedings (for more detail, see **2.2 Enforcement of Domestic Judgments**). In addition, the creditor is required to enclose certified copies of all relevant documents with such request.

The creditor may combine the application for recognition/declaration of enforceability with the application for enforcement.

The court issues its decision without hearing the debtor. An appeal against the decision may be filed within four weeks of service of the decision (or eight weeks if the debtor is domiciled outside Austria and this is the first opportunity to participate in the proceedings).

Once the declaration of recognition and enforceability has become effective, the foreign judgment is considered equal to domestic judgments. Accordingly, the ensuing

enforcement proceedings are governed by the same laws applicable to the enforcement of domestic judgments (see **2.2 Enforcement of Domestic Judgments**).

Debtor's defences

The declaration of enforceability may, inter alia, be refused if:

- according to Austrian laws on jurisdiction, the foreign court could not have had jurisdiction over the matter, under any circumstances;
- the opposing party was not served with the document that initiated the foreign proceedings;
- the opposing party could not properly participate in the foreign proceedings due to procedural irregularities; or
- the foreign judgment violates the fundamental principles of Austrian law (*ordre public*).

3.5 Costs and Time Taken to Enforce Foreign Judgments

An application for the recognition and declaration of enforceability alone does not trigger court fees, unless it is combined with an application for enforcement, in which case the general rules apply.

The enforcement of EU judgments (or judgments falling within the scope of the Lugano Convention) is standard procedure in Austrian courts and generally takes place without delay, comparable to the enforcement of domestic judgments. The enforcement of other judgments, however, can be cumbersome and lengthy, depending on the origin of the judgment. The proceedings to obtain recognition and a declaration of enforceability may – with an appeal – last between two and six months.

As in all court proceedings, the duration also depends on the conduct of the debtor, which may file appeals and request a stay of proceedings, etc.

3.6 Challenging Enforcement of Foreign Judgments

Objections to the recognition and declaration of the enforceability of a judgment must be raised by the debtor, except for an *ordre public* objection; they are not reviewed *ex officio*.

In general, Austrian courts will not undertake a substantive review of a foreign judgment. However, in proceedings regarding the recognition and declaration of enforceability, certain grounds may result in a partial substantive review, particularly if there is any indication that the judgment contravenes Austrian public policy (*ordre public*). On balance, Austrian courts take a rather liberal approach and will only refuse recognition and a declaration of enforceability if this would manifestly violate the fundamental principles of Austrian law.

The debtor may also challenge enforcement based on procedural irregularities, including defects in service that made it impossible for the defendant to duly participate in the main proceedings.

Brussels I recast provides further bars to enforcement if the judgment is irreconcilable with an earlier, recognisable judgment involving the same cause of action and the same parties.

4. Arbitral Awards

4.1 Legal Issues Concerning Enforcement of Arbitral Awards

Austria is an arbitration-friendly jurisdiction, so it is rare to encounter issues in proceedings to obtain the recognition and enforcement of an arbitral award in Austria.

The relevant provisions pertaining to the recognition and enforcement of an arbitral award are contained in the CCP (which is based on the UNCITRAL Model Law), the EA and the relevant international treaties, so international arbitration practitioners will find a familiar legal environment in Austria. In particular, Austria has ratified the following:

- the Geneva Convention on the Execution of Foreign Arbitral Awards 1927 (the “Geneva Convention”);
- the European Convention on International Commercial Arbitration 1961 (the “European Convention”);
- the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention”);
- the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the “ICSID Convention”); and
- a number of bilateral investment treaties.

At the time of writing, Austria has not yet signed the agreement for the termination of intra-EU bilateral investment treaties, which aims to implement the “Achmea decision” rendered by the ECJ.

4.2 Variations in Approach to Enforcement of Arbitral Awards Differentiation Between Domestic and Foreign Arbitral Awards

Regarding recognition and enforcement, Austrian law distinguishes between domestic arbitral awards (with the seat of arbitration in Austria) and foreign arbitral awards (with the seat of arbitration outside Austria).

Domestic arbitral awards are, by law, deemed to have the same effect as a final court judgment (Section 607 of the CCP). Based on this and pursuant to Section 1 paragraph 16 of the EA, domestic arbitral awards constitute an enforceable title under Austrian law.

Foreign awards must first be formally recognised and declared enforceable (generally referred to as “exequatur”) by an Austrian court to constitute an enforceable title under Austrian law (see Section 406 et seq of the EA).

4.3 Categories of Arbitral Awards Not Enforced Enforceability of Arbitral Awards

All arbitral awards that are final and binding are generally enforceable under Austrian law. This includes partial awards (disposing of part of the main claim), final awards, additional awards and awards granting specific performance.

Both the finality of a decision and the fact that it deals with the merits of the case are generally considered prerequisites for an enforceable arbitral award. This applies under Austrian law as well as the New York Convention. Therefore, the enforcement of interim or interlocutory awards that are not final or that deal only with procedural issues raises a number of questions.

Since the amendment of the Austrian arbitration law (Section 577 et seq of the CCP) in 2006, these questions have been clarified to the extent that Section 592 of the CCP explicitly provides that a decision on the jurisdiction of the arbitral tribunal may be rendered in the form of an (interim) award, and Section 609 paragraph 4 of the CCP determines that the cost decision shall be rendered in the form of an award. In both cases, such awards are subject to the same provisions that apply to arbitral awards in general – ie, they become final and binding, are subject to setting-aside proceedings and are enforceable. Legal analysis has taken this as an indication that interim awards are to be treated as final awards.

Enforceability of Interim Measures

Interim measures issued by an arbitral tribunal are dealt with separately under Section 593 of the CCP. The relevant provision applies irrespective of the seat of arbitration – ie, it applies equally to domestic and international arbitrations.

Interim measures issued by an arbitral tribunal are enforceable under Austrian law, subject to the following conditions:

- the other party has been heard (ie, the interim measure was not rendered ex parte);
- the interim measure is issued in writing and is undersigned by the sole arbitrator or the president of the arbitral tribunal; and
- there are no reasons to deny such enforcement.

The list of grounds for refusal is limited and the competent district court may only refuse enforcement if:

- the seat of arbitration is in Austria and the measure suffers from a defect that constitutes

a ground for setting aside an arbitral award under Austrian law;

- the seat of arbitration is not in Austria and the measure suffers from a defect that would constitute grounds for refusal to recognise and enforce a foreign arbitral award;
- the enforcement would be incompatible with a previous domestic or recognised foreign court measure; or
- the means of protection is unknown under Austrian law and no appropriate means as provided by Austrian law were requested.

4.4 Process of Enforcing Arbitral Awards

Domestic arbitral awards are, by law, deemed equivalent to a court judgment. They are considered final and binding upon service on the parties. In order to apply for enforcement, the arbitral award must be confirmed as final, binding and enforceable by the sole arbitrator or presiding arbitrator, as the case may be. This requires parties to revert to the arbitrator(s) after service of the arbitral award to have confirmed on the original that the award is final and binding; see also Article 36(6) of the Vienna International Arbitral Centre's Rules of Arbitration and Mediation 2021 (Vienna Rules).

For foreign arbitral awards, a declaration of recognition and enforceability must be obtained from the Austrian courts to apply for enforcement. The prerequisites under Austrian domestic law (Section 406 of the EA) and the provisions of international treaties to which Austria is a party – in particular, the New York Convention – are very much aligned. The competent courts are the district courts at which the award debtor has its seat, domicile or habitual residence, or at the place where the enforcement measure shall be implemented (see Section 409 of the EA).

In most cases, the formal requirements of an application for a declaration of recognition and enforceability are those of the New York Convention, as international treaties take precedence over Austrian national law, pursuant to Section 614 of the CCP. However, in deviation from Article IV paragraph 1 lit b of the New York Convention, Austrian law explicitly states that it is only necessary to provide the original or a certified copy of the arbitration agreement upon request by the court (see Section 614 of the CCP).

The most important prerequisite to be fulfilled is that the applicant shall submit the “duly authenticated original award” or a “duly certified copy” thereof to the competent district court together with the application to recognise and enforce the award. In line with case law of the Austrian Supreme Court (*Oberster Gerichtshof* – OGH), this requirement is met if the authenticity has been confirmed by:

- an Austrian authority (see OGH 3 Ob 62/69);
- an authority of the country whose law governs the arbitration (see standing case law RS0109158); or
- a representative of the administering arbitral institution if the rules of the institution expressly authorise the representative to do so (see OGH 3 Ob 65/11x) – as an example, see Article 36-(4) of the Vienna Rules.

In practice, in the absence of a bilateral treaty, it is necessary to super-legalise (or obtain an apostille for) an authentication that was issued outside Austria in order for it to be recognised and fulfil the formal requirements.

Furthermore, if the arbitral award is not in the official court language of Austria (ie, German), it shall be translated and the translation shall

be certified by an official or sworn translator, or by a diplomatic or consular agent. In Austria, all translators listed as court-sworn translators fulfil the requirement of “official or sworn translator” under the New York Convention. Austrian courts require the translation of the entire award, in comparison to other countries, where partial translations may be deemed sufficient (OGH 3 Ob 211/05h).

The proceedings for the declaration of recognition and enforceability of a foreign arbitral award are, in principle, conducted *ex parte*. In practice, award creditors combine the application for the declaration of recognition and enforceability with the application for the actual enforcement of the arbitral award, which is permissible under Section 412 paragraph 1 of the EA.

The actual enforcement proceedings are conducted in the same way as domestic proceedings (see **2.2 Enforcement of Domestic Judgments**) by means of application to the competent district court where the award debtor has its seat or where the object, asset or third-party debtor is registered or located.

4.5 Costs and Time Taken to Enforce Arbitral Awards

Court Fees

An application for a declaration of recognition and enforceability does not trigger court fees. For the application for enforcement, the general rules apply (see **2.2 Enforcement of Domestic Judgments**).

Duration of Proceedings

A declaration of recognition and enforceability can be obtained very quickly. Provided that all relevant documents have been submitted, the rendering of the *ex parte* decision may take no more than two to four weeks. However, in

complex cases, it may take longer. Very often, a relevant factor affecting the duration of proceedings is the service of the decision on the award debtor (which may take time regarding a foreign debtor outside the EU). Should the decision be appealed, the proceedings will, on average, take between four and ten months, and possibly longer in complex cases. In the event of a recourse to the Austrian Supreme Court, a further six months may be expected until a decision is rendered. For the duration of enforcement proceedings, see **2.2 Enforcement of Domestic Judgments**.

4.6 Challenging Enforcement of Arbitral Awards

Appeal Proceedings

The award debtor has a right to appeal (*Rekurs*) the decision within four weeks after being served the decision, or within eight weeks if the award debtor has its seat or domicile abroad. The appeal decision may also be appealed before the Austrian Supreme Court (*Revisionsrekurs*) under certain conditions – in particular, if the dispute hinges on a legal question of general significant importance that has not previously been dealt with in the case law of the Austrian Supreme Court, or if the appeal court has deviated from existing case law of the Austrian Supreme Court.

The general approach of the courts towards the recognition and enforcement of arbitral awards is pragmatic, and the grounds to oppose recognition and enforcement as exhaustively listed in the applicable conventions are interpreted restrictively. The award debtor that opposes enforcement bears the burden of proof for the grounds it relies upon.

The options available to appeal the enforcement of an award are identical to those generally

available to appeal enforcement (see **2.2 Enforcement of Domestic Judgments**).

Impact of Parallel (Appeal or Setting-Aside) Proceedings

In practice, an arbitral award may be subject to setting-aside proceedings. In this case, the court may suspend the proceedings upon the application of the award debtor until a decision in the setting-aside proceeding has been rendered. Furthermore, to the extent that enforcement measures shall continue, the court may order the award creditor to post security. This approach is in line with both Article VI of the New York Convention and Section 411 paragraph 5 of the EA. In this context, the Austrian Supreme Court has held that Article VI of the New York Convention is only applicable regarding proceedings relating to the declaration of recognition and enforceability, while the EA applies during enforcement proceedings (3 Ob 248/11h).

If an arbitral award is successfully set aside, the award debtor can apply to the court of first instance to lift (or amend) its decision with regard to the originally granted recognition and enforceability (see Section 414 of the EA).

The Austrian Supreme Court has held that a foreign arbitral award is not to be recognised and enforced in Austria if the underlying arbitration agreement sets forth that the arbitral award may be appealed before another “second instance” arbitral tribunal (OGH 3 Ob 39/13a). In such cases, the arbitral award lacks binding force until the period provided for such an appeal has expired unused, or until the review proceedings initiated by one of the parties have been terminated and the arbitral award confirmed.

Relevance of Relief Requested

Arbitral awards granting declaratory relief can, due to their nature, only be recognised and relied upon. Under Austrian law, such awards will be observed but cannot be the subject of enforcement proceedings.

In principle, Austrian law allows specific performance as a relief, and will recognise and enforce arbitral awards granting such relief. However, in such cases, the specific performance must be clearly described and constitute an adequate remedy that can effectively be enforced under the law.

Public Policy Objection

Public policy grounds are to be observed by the courts *ex officio*. The obligation to observe public policy is derived from Article V paragraph 2 lit b of the New York Convention as a ground to refuse the declaration of recognition and enforceability of foreign arbitral awards and from Section 613 in combination with Section 611 paragraph 2 No 8 of the CCP as a ground to refuse the enforcement of domestic arbitral awards.

The restrictive approach regarding the public policy objection is reflected in the case law of the Austrian Supreme Court (see, eg, OGH 18 OCg 1/19z), which has held that:

- public policy concerns only the fundamental principles of Austrian law and may not lead to a factual or legal review of the award (ie, no *révision au fond*);
- it is not decisive whether the foreign law contradicts the fundamental values of the Austrian legal system, but merely whether its concrete application by the arbitral tribunal leads to a result that is incompatible with

the fundamental values of the Austrian legal system; and

- the fundamental values of Austrian law include EU regulations as well as national constitutional principles, such as the protection of personal freedom, equal rights, the prohibition of discrimination, and the prohibition of exploitation of the economically weaker party.

Moreover, it has been held that Austrian public policy cannot be infringed if a foreign arbitral award has no close relationship with Austria. If, for example, parties to the arbitration proceedings were not Austrian and the only relationship to Austria consists of the location of an asset owned by one of the parties, the foreign arbitral award cannot infringe the Austrian *ordre public* because there is no close relationship to Austria (see OGH 4 Ob 199/00v and OGH 2 Ob 170/18s).

Where the European Convention is applicable, the successful setting aside of an arbitral award in the country of origin due to a violation of public policy is not a ground for the refusal of enforcement in Austria. The arbitral award must be incompatible with the Austrian *ordre public* in order to refuse enforcement in Austria (OGH 3 Ob 115/95).

Special Constellations: Awards by Consent/ Default Awards

Arbitral awards by consent are enforceable. Note that Austrian law also provides for a mere record of a settlement between the parties by an arbitral tribunal (*Schiedsvergleich* Section 605 of the CCP), which is not an arbitral award. Such a record of settlement constitutes an enforceable title under Austrian law but may not be enforceable internationally.

As the agreement of the parties is a prerequisite for rendering an arbitral award on agreed terms (or consent award), most of the grounds to refuse enforcement will not be applicable. However, consent awards may still be reviewed for violation of public policy (see above).

Under Austrian law, if the respondent fails to participate in the proceedings (Section 600 of the CCP), the arbitral tribunal may not draw negative inferences from the fact of default; in particular, it may not automatically assume that the contentions of the non-defaulting party are true. The claimant must still prove its case and the arbitral tribunal must respect the right to be heard, also towards the defaulting party.

The enforcement of an award that was rendered without the participation of the respondent therefore depends on the condition that the defaulting party was properly informed of the arbitration and provided with sufficient opportunity to participate in the proceedings (see OGH 18 OCg 9/19a). It will also require proof that the request for arbitration was properly served on the respondent.

Issues of Limitation

Austrian law does not contain any specific procedural rules that impose time limitations during which an arbitral award shall be enforced. It does, however, provide for a statute of limitations of 30 years to enforce a final court decision (*Judikatschuld*) in its civil law (see Section 1479 of the Civil Code; *Allgemeines Bürgerliches Gesetzbuch*).

The Austrian Supreme Court has held (OGH 3 Ob 172/00s) that the statute of limitations relating to a judgment or arbitral award is to be determined according to the law governing the obligation that was decided upon.

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