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Austria: Law and Practice & Trends and Developments

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AUSTRIA

Law and Practice

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KNOETZL HAUGENEDER NETAL GmbH is Austria's first large-scale disputes resolution powerhouse dedicated to high-profile, important and complex cases. The firm's diverse expertise encompasses civil, commercial, sovereign, corporate and fraud litigation, focusing significantly on liability claims; corporate – including M&A, financing and joint venture disputes – banking, insurance and financial derivatives cases; investor protection; digital transformation; data protection and social media; business and political crime; asset-tracing and provisional measures, such as freeze orders and attachments, in the domestic and international contexts; and the enforcement of foreign judgments and arbitral awards. KNOETZL's practice also covers international commercial arbitration, investment protection and arbitration-related court proceedings, mediation and ADR. The firm is well-recognised for its disputes work at the intersection of civil and criminal matters. Distinguished international law firms, corporate decision-makers and general counsel frequently turn to KNOETZL to act as counsel in their significant disputes with an Austrian nexus.

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Bettina Knoetzl is a founding partner at KNOETZL. She has over 25 years' experience in high-profile international and Austrian matters, specialising in high-stakes international and commercial litigation, focusing on investor protection, liability claims, corporate disputes, and fraud and asset recovery. She has led clients from banking, finance, life science, and energy industries to remarkable successes. Bettina has successfully defended against class action lawsuits, and represents corporate and investor clients in shareholder disputes. She counsels government institutions and has designed and led successful defences of ultra-high net worth individuals. She led the International Bar Association (IBA) multi-committee AI showcase in Paris, 2023, is president of Transparency International, Austrian Chapter, vice president of the Vienna Bar, and lectures on dispute resolution.

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1. General

1.1 General Characteristics of the Legal System

Austrian Civil Law System

The Austrian legal system is steeped in civil law. Laws are based on codes and statutes. Civil procedure contemplates an adversarial process with inquisitorial elements: The proceedings and the judge are limited to the factual allegations of the parties, however, the judge is not a mere "referee" (eg, in the judges' inquisitorial role, they will be the primary interrogator of parties and witnesses).

Obligatory Public Hearings

A public hearing is obligatory. The judge will determine all relevant facts of the case in the hearing, hear parties and witnesses, discuss the content of documents and – if needed – appoint and consider expert witnesses. Parties and lawyers are entitled to interrogate witnesses and experts. The underlying principle is that the judge (as the finder of fact) should get an immediate and personal impression of the parties, the witnesses and the case.

1.2 Court System

Court Hierarchy

Austrian courts are organised at four levels: District Courts, Regional Courts, Higher Regional Courts and the Supreme Court. The District Courts are the courts of first instance in matters involving a maximum amount in dispute of EUR15,000 and, regardless of the amount in dispute, in certain subject matters (primarily family law and tenancy law). Regional Courts have jurisdiction over first instance rulings on all legal matters not assigned to District Courts. They are also competent to rule on appeals from District Court decisions. Higher Regional Courts adjudicate appeals from Regional Court decisions.

Specialised Commercial Courts

Commercial matters are decided by commercial courts. In the capital city, Vienna, a separate commercial district court and commercial regional court are established. In other provinces, the regional (district) courts also function as commercial courts.

The Supreme Court

The Supreme Court is the highest court of appeal. There is no further (domestic) remedy available with respect to its decisions. Its function is to ensure uniform application of the law throughout Austria. Although lower courts are not legally bound by its decisions, the Supreme Court's law has an effective precedential value.

1.3 Court Filings and Proceedings

Court filings are not public. Hearings, however, are open to the public. It is only possible to restrict public access if, for instance, such restrictions are necessary for maintaining public order, protecting certain categories of information (such as banking secrets, business secrets or state secrets), or if the hearing involves personal family matters.

1.4 Legal Representation in Court

In certain legal disputes, the parties must be represented by a lawyer admitted to the Austrian Bar and they may not represent themselves. A foreign lawyer may not represent a party in these cases.

This limitation applies to:

- disputes of first instance before Regional Courts;
- disputes before District Courts if the amount in dispute exceeds EUR5,000; and
- all appeal proceedings.

In all other proceedings, the parties may (with a few exceptions) be represented by any person, including by foreign counsel.

2. Litigation Funding

2.1 Third-Party Litigation Funding

The permissibility of third-party litigation funding was the subject of fierce debate in the early 2000s. Yet third-party litigation funding is now an accepted tool in Austria and is generally recognised without any restrictions. The political reason for this was the limited possibility of a collective suit in Austria, which was compensated by third-party financing and "Austrian-type mass claims". However, Austria recently implemented the EU Directive 2020/1828 on representative actions for the protection of the collective interests of consumers. This new regime on collective redress explicitly permits third-party funding, albeit with certain restrictions – eg, the third-party funder must not be a competitor of the defendant or economically or legally dependent on the defendant (as for the newly implemented regime on collective redress in Austria see **3.7 Representative or Collective Actions**).

The state provides legal aid for parties, including legal entities unable to afford litigation.

2.2 Third-Party Funding: Lawsuits

There are no formal restrictions to litigation funding. But generally, funding will only be available to plaintiffs or defendants in lawsuits regarding cash-value civil claims.

2.3 Third-Party Funding for Plaintiff and Defendant

In most cases, funders provide their financial support to the plaintiff, but it is also permitted for defendants.

2.4 Minimum and Maximum Amounts of Third-Party Funding

Litigation funders often provide funds to prosecute cases with significant financial impact, as they tend to be compensated for their services with a proportion of the proceeds (approximately one-third). This proportion must cover the risk undertaken by the funder, the costs of their own lawyers, overheads, including due diligence costs, and investor profit. Therefore, cases with low financial impact tend to attract funders only if there are multiple, similar cases that can aggregated through collective action.

2.5 Types of Costs Considered Under Third-Party Funding

Litigation funding agreements generally cover all legal fees and court costs incurred by the party being funded that arise in the proceedings (ie, court fees, lawyer's fees, fees for expert witnesses and/or translators, and travel expenses for witnesses). The opponent's legal fees are usually also provisionally covered to provide for a scenario in which the funded party loses the case and must reimburse the opponent for its legal fees or costs. The litigation funder will usually reserve the right to terminate the agreement at any time in order to avoid having to cover further costs while bearing the existing costs.

2.6 Contingency Fees

Members of the legal profession are prohibited from entering into a pactum de quota litis (contingency fee arrangement) with their clients, but this rule does not apply to those outside of the legal profession. Accordingly, a third-party funder's compensation is generally determined by a percentage of the amount recovered. Other fee structures may also be permissible as long as they are not excessive, contrary to good morals or violate consumer protection laws. A suc-

cess fee arrangement is possible, if it constitutes only a certain portion of the fee agreement.

2.7 Time Limit for Obtaining Third-Party Funding

Litigation funding is available at the commencement of litigation or during ongoing proceedings (eg, for appeals). It should be remembered that entering into a litigation funding agreement often takes several weeks, while procedural deadlines and limitation periods continue to run.

3. Initiating a Lawsuit

3.1 Rules on Pre-action Conduct

General Rule

There is no prerequisite to filing a lawsuit. Nevertheless, it may be advisable to notify a potential defendant, demanding satisfaction of the dispute, because, for example, if the potential defendant immediately performs upon initiation of the lawsuit or does not dispute the claim, this can lead to a cost decision, requiring the "successful" plaintiff to bear the costs for the (unnecessary) proceedings. The defendant is not required to respond to such a letter.

Exceptions

In a limited number of cases relating to:

- neighbourly disputes;
- tenancy disputes; and
- disputes between members of certain professional groups subject to a code of conduct (eg, architects, lawyers, medical doctors),

alternative dispute resolution (ADR) mechanisms are contemplated as a prerequisite to filing a lawsuit. If the plaintiff does not comply with applicable prerequisites, the claim may be rejected.

3.2 Statutes of Limitations

Limitation Periods

Statutes of limitations applied to civil suits are fixed by substantive law. The limitations periods generally commence when a right could have been first exercised and, as a general rule, are 30 years. However, due to numerous specified exceptions, most claims, including for damages, are subject to a shorter limitations period of three years. In the case of damage claims, the three-year period starts with knowledge of the damage and the identity of the party causing the damage. For contractual claims, the statute of limitations generally begins when the claim is due.

Specific Rules

There are numerous shorter or longer limitations periods. For example, a negligence claim against a managing board member may only be brought within five years.

Interruption and Suspension

There are different reasons for interruption and suspension of the limitations period. An acknowledgement, for example, interrupts the limitations period, and settlement negotiations suspend the expiry; the claim must be filed within a reasonable period after the negotiations giving rise to such tolling have failed.

Procedural Aspects

The fact that a claim is time-barred is an affirmative defence that must be raised by the defendant. It will not be imposed by the court sua sponte.

3.3 Jurisdictional Requirements for a Defendant

Relevant Rules

In domestic cases, the jurisdiction of Austrian courts is determined by the Law on Jurisdiction (*Jurisdiktionsnorm*). In most international cases,

the jurisdiction of Austrian courts is guided by Regulation (EC) 1215/2012 (the recast Brussels Regulation).

These provisions establish jurisdiction of all types of courts. Whether a specific court is competent to hear a case may also depend on other factors, such as the nature of the dispute (eg, to establish the competence of the commercial courts to hear a case).

Jurisdiction at the Seat of the Defendant

The general rule is that Austrian courts will have jurisdiction if the defendant has its seat in Austria. In addition, there are numerous other factors that are considered to establish the jurisdiction of Austrian courts, including:

- whether Austria is the place of performance of a contract;
- the place where the damage occurred; and
- when the dispute relates to real estate located in Austria.

Jurisdiction Clause

The jurisdiction of Austrian courts can also be agreed by means of a forum selection clause.

3.4 Initial Complaint

Filing the Claim

Proceedings commence with the filing of a statement of claim. Unless the amount in dispute is below EUR5,000, or concerns matters (such as family and real estate) that are allocated to the District Courts irrespective of the amount in dispute, the statement of claim must be signed and filed by a lawyer licensed to practice in Austria through the official electronic filing system (Web ERV).

Content of the Claim

Moreover, the statement of claim must clearly identify the following:

- the competent court;
- the parties to the dispute;
- their occupations, addresses, roles in the proceedings, and representatives (if any);
- the subject matter of the dispute; and
- the exhibits attached (including whether the exhibits are submitted in their original form or as copies).

The statement of claim should state the principal facts on which the claim is based, and the relief sought. While it is not necessary for all evidence to be attached, the statement of claim should identify the evidence on which it relies.

Amendment of the Claim

The plaintiff may amend its claim at any time prior to service on the defendant. After service, an amendment affecting either the relief requested or introducing a different legal basis for the claim must be agreed upon by the defendant or permitted by the court. The decisive factors are whether the amendment affects the jurisdiction of the court and whether proceedings could be significantly prolonged by the amendment.

Additional Submissions to the Claim

Presentation of new facts and evidence, or additional submissions substantiating the claim, are not considered amendments, and are thus admissible, unless they could have been submitted earlier and their late introduction will significantly delay the proceedings. The final cut-off date for any new facts, evidence or pleading is at the end of the oral hearing. In appellate proceedings, no new facts or evidence may be presented.

3.5 Rules of Service

Service by Court

The statement of claim is served on the defendant(s) by the court, together with an order to file an answer to the statement of claim within four weeks. The means of service must ensure proof of receipt. In most cases, the court will effect service by using registered mail.

Service Abroad

A party that is located outside of Austria can be served either in accordance with Regulation (EC) 2020/1784 on the service of judicial and extrajudicial documents in civil or commercial matters (within the European Union) or in accordance with bilateral or multilateral treaties containing provisions on the service of documents (outside the European Union), such as the Hague Service Convention (HCCH 1965).

Austrian law also provides supplementary rules, according to which service of documents is allowed by means of postal service in a number of states. Otherwise, service is provided by diplomatic channels (ie, embassies or consulates).

3.6 Failure to Respond

If the defendant has been served with the statement of claim but fails to respond or to attend the hearing, the plaintiff can request a default judgment. Various remedies are available to the defendant to reinstate proceedings, but these must be filed within 14 days after service of the default judgment on the defendant or – if the defendant was prevented from responding for reasons beyond its control – within 14 days after the impediment ceases to exist.

3.7 Representative or Collective Actions

Austrian Legal Tradition

Austrian law has not historically provided a vehicle for class actions. Traditionally, class actions in the Anglo-American style have even been viewed as contrary to Austrian legal culture, based on individual action and individual parties who assert their own individual claims. That said, Austria nevertheless recently implemented the EU Directive 2020/1828 on representative actions for the protection of the collective interests of consumers. Outside of the scope of this new regime, the previous ways to bring collective actions remain intact.

Class Actions, Representative Actions and Sample Lawsuits

Until recently, Austrian law only provided for representative sample lawsuits in which certain organisations (eg, consumer protection organisations or the Chamber of Labour) were permitted to file a case on behalf of an individual and – irrespective of the amount in dispute – bring it before the Supreme Court. Such a claim was required to be assigned to the organisation and had to fall within its scope of responsibility (eg, consumer claim assigned to a consumer protection organisation). While the judgment only has legal effect regarding the specific case, the lower courts will generally honour the decision of the Supreme Court as a practical precedent. The judgment does not affect the limitations periods of other claims.

The same organisations may also file for injunctions against the use of unlawful general terms and conditions and against business practices that violate unfair competition practices (so-called representative actions). With this instrument, the Austrian legislature implemented the Directive (EC) 98/27 on injunctions for the protection of consumers' interests.

Austrian-Type Mass Claims

Until recently, Austrian law prohibited representative actions. Only a party with a claim in

substantive law was entitled to be a plaintiff in proceedings. Consequently, in cases of mass claims, an "Austrian-type mass claims procedure" became established by practice. This concept enables claims that may be assigned for collection to be filed, and a plaintiff may file a single lawsuit to deal with multiple claims it may have against the defendant. Thus, the party that has been assigned all claims can raise all such claims against a single defendant in the same proceeding.

Recently Implemented Collective Redress for Consumers

On 18 July 2024, the Act on Qualified Entities for Collective Redress (the "Qualified Entities Act"), along with amendments to the Austrian Code on Civil Procedure, the Consumer Protection Act, the Court Fees' Act and the Lawyer's Fees Act came into force, providing significant changes to collective redress under Austrian law. Under this newly implemented regime, so-called "qualified entities" are entitled to bring collective actions. At the heart of the new regime is the "representative action for redress". This is a novelty in Austrian civil procedure law. It aims to provide effective procedural means to not only end unlawful practices threatening or harming the interests of a large number of consumers but also to provide redress in any form. Consumers can participate in a representative action for redress if they actively join (opt-in). Once at least 50 consumers have joined, the qualified entity can assert claims for all consumers who have joined. Upon a redress decision, the company is required to extend redress to the affected consumers, depending on the case, in the form of compensation, repair, replacement, price reduction, contract termination, or reimbursement of the price paid. As a result of such a decision, consumers directly benefit from the redress specified in the decision without having to file a separate lawsuit.

3.8 Requirements for Cost Estimate

There is no legal requirement to provide clients with a cost estimate of the potential litigation at the outset. Nevertheless, in practice, clients will often ask counsel to provide such a cost estimate. It is advisable to address the issue in a timely fashion because, upon filing its claim, the plaintiff must pay an advance on the court fees that are calculated on the basis of the amount in dispute.

4. Pre-trial Proceedings

4.1 Interim Applications/Motions

There are only a few, specified applications available that may be decided before a trial takes place, such as:

- a request for injunctive relief (to secure future enforcement or to safeguard evidence, see **6. Injunctive Relief**);
- an application for security of costs;
- an application for legal aid;
- an application to dismiss the claim for lack of jurisdiction; and
- the intervention of a third party.

Otherwise, Austrian procedural law does not provide for pre-trial proceedings as are known, for example, in Anglo-American jurisdictions.

4.2 Early Judgment Applications

Early, Interim and Partial Judgments

Before a substantive hearing of the claim takes place, an early judgment on some of the issues in dispute or to dismiss the claim is possible, particularly with respect to procedural grounds

for dismissal, such as lack of jurisdiction or improper venue.

Also, interim and partial judgments are possible, but only during the main proceedings.

Time-Barred Claims

An important example of a pre-trial dispositive motion is one in which a party requests an early dismissal because the claim is time-barred. If a claim is time-barred, the court may decide only this question without going into the merits of the matter.

Early Judgments on Procedural Grounds

Usually, a defence on procedural grounds must be raised before pleading on the merits of the case. A significant number of procedural grounds are disregarded by the court if raised at a later time. Some very severe procedural defects can also be raised at a later stage or can be observed by the court on its own without a motion. For example, directly after receiving the claim, the court must determine and verify its jurisdiction a limine, even before service of the claim on the defendant. If the court lacks jurisdiction, the claim is dismissed immediately – before trial.

4.3 Dispositive Motions

The trial begins with a preparatory hearing. Most of the dispositive motions are brought beforehand and are discussed in such a hearing. They may be based on procedural grounds such as failure of jurisdiction or improper venue, or on substantive grounds such as the claim being time-barred or the "inconclusiveness" of the complaint. A claim can be dismissed by the court during this first preparatory hearing, at which point no evidence will have been taken.

4.4 Requirements for Interested Parties to Join a Lawsuit

Legal Interest

A third party may join the proceedings on the side of the plaintiff or defendant if it has a legal interest in the success of that party. Legal interest is established if the decision will have a legal effect on the third party's position (eg, an insurer may join proceedings of an insured party against the damaging party).

Procedural Aspects

In practical terms, a joinder is effected by written application of the third party that must be granted by the court. Admission of the joinder may be opposed by the parties, but this opposition can be overruled by the court.

A third party may join the proceedings at any stage, even in appeal proceedings, up to the moment when the judgment becomes final.

4.5 Applications for Security for Defendant's Costs

If a foreign plaintiff is not an EU national and does not have domicile within the EU, the defendant may, in many cases, request an order compelling the plaintiff to secure the defendant's costs (the same applies for parties that do not have a seat within the EU).

No order for security is granted in these cases if:

- it would be contrary to certain bilateral or international conventions;
- a cost award could be enforced in the country where the plaintiff has its domicile/seat; or
- the plaintiff has sufficient assets in the form of immovable property or registered rights in rem.

4.6 Costs of Interim Applications/ Motions

In general, the "loser pays" principle applies. Depending on the subject of the interim motion, this principle applies for final and binding decisions upon the interim motion. Alternatively, the decision regarding costs is made dependent upon the outcome of the final decision in the main proceedings. In general, courts decide which party is required to pay costs along with their dispositive decision regarding the main claim.

Other decisions may include an order on costs if the obligation to pay costs does not depend on the outcome of the proceedings (eg, dismissal of a third-party intervention or a challenge to a judge or expert witness on the basis of bias).

4.7 Application/Motion Timeframe

There is no fixed time limit within which a court must deal with an application. Parties are nevertheless protected against unreasonable delay by Article 6 of the European Convention on Human Rights and Article 47 on the European Charter of Human Rights, which guarantee an impartial tribunal within reasonable time. The court is thus required to provide prompt and effective action. If a court does not render a decision or order within reasonable time, the interested party may file a request to establish a deadline for the court.

5. Discovery

5.1 Discovery and Civil Cases

No Pre-trial Discovery

There are no pre-trial discovery procedures in Austria. Evidence can be secured in specific circumstances, but otherwise production of documents and taking evidence takes place within the actual court proceedings.

Document Production in the Proceedings

In civil proceedings, a party may be ordered by the court to produce evidence at its disposal if the court considers such evidence material, on the court's own initiative (this rarely occurs) or upon request by the other party.

If a party does not comply with such a court order, there is no enforcement available. The court will consider the refusal in its assessment of evidence, and adverse inferences may be drawn by the court as finder-of-fact.

5.2 Discovery and Third Parties

Prerequisites to Order a Third Party

A party may, in the proceedings, request the court to order a third party to provide a copy of a specific document if:

- substantive law requires the third party to produce the document; or
- the document may be of joint use to the parties (as in the case of a written contract).

The requesting party must:

- present plausible reasons for believing that the document is in the possession of the third party; and
- accurately describe the contents of the document.

Enforcement

In contrast to the document production order addressed to a party, the production obligation of a third party is given rise through an enforceable court order. The court may impose a fine for non-compliance. Ultimately, contempt of court findings may even lead to imprisonment for a period of up to two months. In practice, however, such orders are rarely issued against third parties.

5.3 Discovery in This Jurisdiction

There are no pre-trial discovery proceedings. Taking evidence is considered a sovereign task of the court and is conducted exclusively by the court at the request of the parties.

5.4 Alternatives to Discovery Mechanisms

Order for Document Production

In civil proceedings, a party may be ordered by the court to produce evidence at its disposal upon request by the other party or even without such a request (this rarely occurs).

The prerequisites for an order to produce documents upon request are that:

- the requesting party can present plausible reasons for the allegation that the document is in the possession of the other party;
- the requesting party either provides a copy of the document it is requesting (to be produced in the original) or can accurately and fully describe the content of the document (it is not permissible to request a category of documents); and
- the requesting party must state which facts it expects to prove with the requested document.

Criminal Investigation

If there is a suspicion of criminal misconduct, discovery may also be pursued through the initiation of a criminal investigation. Evidence, particularly in the form of documents obtained by the criminal authorities (eg, through house searches), may be obtained for use in civil proceedings. Any (potential) victim of a criminal offence as well as third parties with qualified legal interest may be granted access to the contents of a criminal file.

5.5 Legal Privilege

Austria recognises the concept of legal privilege. Members of legal professions, particularly attorneys-at-law, must refuse to testify with respect to any one of their mandates before any authority unless released by their client. Neither the party nor its counsel can be forced to produce client-attorney work product. No adverse inferences may be drawn by the court from such a refusal. Client-attorney correspondence and attorney work product are protected by legal privilege irrespective of where such documents are located.

5.6 Rules Disallowing Disclosure of a Document

A party ordered to produce a piece of evidence is entitled to object to the order in order to protect:

- family affairs;
- the party's duty of preserving honour;
- itself or third parties from criminal prosecution;
- legal privilege; or
- business secrets.

However, the requested party may not refuse to produce the requested evidence if:

- it previously referred to the piece of evidence (mostly documents) in the proceedings;
- substantive law requires the requested party to produce the evidence (this also applies to evidence in the possession of third parties); or
- the evidence is in the form of a document and may be considered to be of joint use with respect to both parties (eg, a written contract).

This also applies to evidence in the possession of third parties if the piece of evidence is of joint

use with respect to the third party and either party to the litigation.

6. Injunctive Relief

6.1 Circumstances of Injunctive Relief

Timing

The Austrian Enforcement Act provides for accelerated preliminary proceedings in which the court may order injunctive relief (preliminary injunctions) to prevent the frustration or significant obstruction of future enforcement. A creditor may apply for a preliminary injunction together with the claim initiating legal proceedings, prior to the actual initiation of legal proceedings, during legal proceedings and – if foreign courts have jurisdiction in the case – independently from legal proceedings in Austria.

Prerequisites

The Enforcement Act distinguishes between preliminary injunctions:

- for securing monetary claims;
- for securing other claims; and
- for securing a right.

For the purpose of securing monetary claims, injunctive relief may be granted if:

- the creditor can credibly show its claim (compelling evidence is not necessary);
- the debtor is likely to frustrate or significantly obstruct enforcement by damaging, destroying, hiding or removing assets ("subjective endangering"); or
- the judgment would have to be enforced in a state where enforcement is secured neither by international agreements nor by EU law ("objective endangering").

Injunctions for Securing Monetary Claims

Injunctions available for securing monetary claims include:

- orders for the deposit of money at the court;
- freeze orders regarding movable and immovable assets; and
- orders against third party debtors (ie, debtors of the debtor), enjoining them from paying the debtor.

By an order against a debtor's bank, bank accounts can also be frozen.

Practice

Courts are typically reluctant to assume that a party is likely to damage, destroy, hide or remove assets, and therefore require a showing of a strong and concrete likelihood in this regard.

No Anti-suit Injunctions

Austrian law does not provide for injunctions to prevent parallel proceedings in another jurisdiction. If the same case is pending in different courts, the principle of priority applies – similar to the system in the Brussels Regulation.

6.2 Arrangements for Obtaining Urgent Injunctive Relief

Injunctive relief is granted in accelerated preliminary proceedings. Depending on the concrete circumstances, injunctive relief can sometimes be obtained within 24 hours. Sometimes, the applicant has to wait for 14 days, or even more.

6.3 Availability of Injunctive Relief on an Ex Parte Basis

Upon request of an applicant, injunctive relief can be awarded ex parte. The respondent will not be heard, in order to avoid frustration of the intended – interim – enforcement act. If injunctive relief is granted ex parte, the respondent's

right to be heard is satisfied only in challenge proceedings.

6.4 Liability for Damages for the Applicant

The applicant may be held liable for damages suffered by the respondent if the respondent later successfully discharges the injunction. In order to compensate possible damages to the respondent, the court may order that a preliminary injunction be subject to posting security by the applicant. This applies irrespective of whether the proceedings are ex parte.

6.5 Respondent's Worldwide Assets and Injunctive Relief

Whenever Austrian courts have international jurisdiction for a claim to be secured, they also assume international jurisdiction to issue a preliminary injunction. This also applies if the asset subject to the preliminary injunction is situated in another country. It is necessary to check with each applicable jurisdiction individually whether an Austrian injunction is enforceable in foreign jurisdictions. The new regime of the recast Brussels Regulation substantially facilitates the recognition and enforcement of interim measures.

6.6 Third Parties and Injunctive Relief

It is a general principle that a preliminary injunction must not interfere with the rights of a third party. It is, however, possible to obtain injunctive relief against a third-party debtor, affirmatively enjoining them from making payments to the debtor. In this way, it is also possible to freeze bank accounts.

6.7 Consequences of a Respondent's Non-compliance

In order to enforce a preliminary injunction, no additional request for enforcement is necessary. The injunction implies the approval of enforcement. If necessary, a court can enforce the injunction with the help of an enforcement officer. Compliance with an injunction is therefore assured.

7. Trials and Hearings

7.1 Trial Proceedings

Preparatory Hearing

Once proceedings have been initiated with a Statement of Claim served on the defendant, the court will set a date for a preparatory hearing in which the court maps out a schedule and a plan for the course and content of the remaining proceedings. This is also an occasion on which the court is required to explore the possibility of a settlement.

Exchange of Written Submissions and the Oral Hearing

Usually, the next step involves a further exchange of written submissions prior to the oral hearing. The hearing mainly serves for the court to take evidence, in accordance with the principle that judgments are only based on evidence taken by the court. It is mandatory for witnesses to appear before the court. Written witness statements and affidavits are used only in preliminary proceedings, where the general level of proof is intentionally lowered so that a speedy decision can be reached, or when the interrogation of a witness or party is practically impossible, for example, due to a prolonged absence or illness.

Simplified Proceedings for Smaller Claims

For monetary claims not in excess of EUR75,000, proceedings are significantly simplified. A payment order will be issued, predicated only on the plaintiff's request. If the defendant objects, regular proceedings will be initiated. Otherwise, the payment order becomes enforceable.

7.2 Case Management Hearings

The two main purposes of an oral hearing are:

- case management at the beginning of proceedings; and
- the court's taking of evidence in the main hearing.

Parties may file written submissions presenting facts, offering evidence and presenting legal issues at any time prior to one week before the main hearing.

Case Management Hearing

The case management hearing is referred to as a "preparatory court session", which structures how evidence will be taken following this court session. It is also set to explore the possibility of an amicable settlement.

Second Part of the Hearing

The second part of the hearing focuses on witnesses and experts. The process (including the direct examination of witnesses) is led by the judge. The parties and/or their counsel are allowed to interrogate witnesses only after the court has finished its direct examination. The judge will formally "close" the oral hearing once the taking of evidence is completed.

7.3 Jury Trials in Civil Cases

Jury trials are not available in Austrian civil cases.

7.4 Rules That Govern Admission of Evidence

The Court's Role and the Burden of Proof

The court will take evidence as the parties may request (eg, through witness testimony) and/or as submitted (eg, through documents). The court may disregard evidence it considers to be immaterial, or if it is already sufficiently convinced of a certain fact. The general rule is that each party is responsible for discharging its burden of proof and providing the court with the evidence that may establish the facts favourable to its position. There are some specific rules available, such as those regarding prima facie, evidence, which shift the need to establish certain facts to the other side.

Types of Evidence

Evidence may be in the form of documents, visual inspection of places or things, witness testimony, experts, and the testimony of the parties.

Evidence obtained by illegal means may be used in civil proceedings. Judges will evaluate the evidence before them and state the basis of their evaluation.

7.5 Expert Testimony

Court-Appointed Experts

Austrian civil procedure relies on court-appointed experts who owe their duties primarily to the court and are required by statute to be neutral. If there are doubts as to neutrality or competence, court-appointed experts may be challenged. The same rules apply regarding judges. Even the mere appearance of lack of neutrality can suffice for a successful challenge.

Party-Appointed Experts

Party-appointed experts are permitted but are regarded as other witnesses. They do not have the same special status as court-appointed experts and their testimony may be disregarded at the discretion of the court.

7.6 Extent to Which Hearings Are Open to the Public

Hearings are open to the public, other than in the unusual case upon application of a party and in specific circumstances (eg, if personal issues are discussed or trade secrets are at stake). Tran-

scripts of the hearing (usually a summary by the judge) are not made public.

7.7 Level of Intervention by a Judge

Active Role of the Judge

The judge has the predominant and most active role throughout a hearing and will not only preside in the process of the hearing but will also take the lead in examining witnesses. The judge decides when to end the trial. The court may disregard open requests for taking evidence, such as hearing one of the witnesses, if it has been satisfied by the evidence already taken.

Timing of Judgments

While an immediate oral judgment at the end of the trial is possible, in practicse, judgments are generally rendered in writing at a later time. This process may take several months from the time the oral hearing is closed.

7.8 General Timeframes for Proceedings

Average Duration

Proceedings before Austrian courts are generally efficient. In civil proceedings, most procedural steps are taken within two to four weeks of each other. The average duration of proceedings is one to one and a half years at the first stage and from nine months to one year at the appellate level.

Complex Duration

Complex disputes may take longer. Especially in more complex cases, appellate court proceedings may reveal errors in the lower court proceedings and the case will then be remanded to the lower court for repetition and/or completion of the taking of evidence. The judgment rendered in such a remand is also subject to appeal according to the general procedural rules. In such cases, it can take several years before a final, binding judgment is rendered.

8. Settlement

8.1 Court Approval

Austrian law distinguishes between extrajudicial and judicial settlements.

Extrajudicial Settlements

Extrajudicial settlements are concluded without a court being involved and – in order for the lawsuit to be stopped – the parties would need to agree to withdraw the claim or to an indefinite stay of proceedings. This is common in practice.

Judicial Settlements

Judicial settlements are concluded before the court and – unless they contain a specifically agreed revocation clause (see **8.4 Setting Aside Settlement Agreements**) – are immediately enforceable. The parties are not limited by the pending dispute and may also agree on matters that have yet to be a part of the dispute. This, however, could trigger additional court fees. The court will only review if the subject matter in dispute is capable of being settled (eg, something that is fundamentally within the authority of the parties). Some courts also check whether the terms of the settlement are specific enough to be enforced. In practice, courts are open to recording a settlement in the form reached by the parties.

Costs

The conclusion of a settlement agreement triggers a specific settlement tax duty, a concept unknown in many other jurisdictions. Parties should consult with their local lawyer before concluding a settlement under Austrian law.

If the legal dispute is settled at the first hearing, the court fees are halved.

8.2 Settlement of Lawsuits and Confidentiality

Parties can agree to keep their settlements confidential.

The confidentiality of settlements concluded during a trial is somewhat limited by the principle of public court hearings. In practice, however, there are suitable ways to maintain confidentiality. For example:

- a settlement may be negotiated by the parties outside of the public hearing;
- a confidentiality clause can be included in the settlement agreement; and
- during the hearing, the judge may exchange the text of the settlement for approval by the parties, but only in writing.

The parties and their counsel sign the court agreement and the judge makes it part of the court records. Third parties can access the court records only if they can establish a legal interest.

8.3 Enforcement of Settlement Agreements

Judicial settlements (concluded before the court) are enforceable in the same manner as judgments. Within the European Union, judicial settlements can, upon application, be certified as a European Enforcement Order which can be directly enforced under 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. To the extent that an extrajudicial settlement is drawn up in the form of an "authentic instrument", such as a notarial deed by which content and signature of the extrajudicial settlement are confirmed with public authority, certification as a European Enforcement Order is possible. Otherwise, an extrajudicial settlement is simply treated as a contract and cannot be directly enforced. Claims arising from a disputed extrajudicial settlement agreement must be pursued before a competent court.

8.4 Setting Aside Settlement Agreements

Revocation Clauses

It is general practice to conclude a judicial settlement subject to a revocation clause. Such clauses enable legal representatives to conclude a settlement and create the possibility of consulting their client, and it provides the parties with a period for reflection to take care of the necessary internal approvals, for instance by the supervisory board or by the insurer of that claim.

Limitations to Challenges

The substantive reasons to challenge settlement agreements are significantly fewer than those available to challenge other agreements, as they are limited to cases of severe mistake or deceit.

9. Damages and Judgment

9.1 Awards Available to the Successful Litigant

A successful litigant may obtain a judgment:

- ordering performance;
- enjoining a certain action;
- creating or altering a legal status; or
- ordering declaratory relief.

A performance judgment may order, for example:

- the payment of an amount of money;
- the transfer of a certain object; or
- the submission of a certain declaration.

An enjoining judgment orders a party to stop or desist from a certain act. A divorce is an example of a judgment that alters legal status. Declaratory judgments may be obtained regarding the existence of a certain legal relationship or a certain claim.

Civil courts limit their decisions to the relief requested by the plaintiff.

9.2 Rules Regarding Damages

Monetary and Declaratory Judgments

There are no special rules regarding awards in damage proceedings. The most important forms of awards for damages are monetary judgments (ordering the payment of money) and declaratory judgments regarding foreseeable future damages. For such damages, declaratory judgments may be necessary to avoid the expiration of a limitations period.

No Punitive Damages

Austrian tort law is based on the principle of compensation and provides for damage claims only insofar as the plaintiff actually suffers damages. Punitive damages are not available. Contractual penalties are nevertheless allowed and intellectual property law provides for lump sum damages, which are considered to be partly punitive in nature. Moreover, the European Court of Justice has ruled in connection with the "Diesel" matters that, under certain circumstances, a compensation of 5% to 15% of the purchase price of the car should be paid by the car producer to the car owner independent of actual damage. In 2023, the Austrian Supreme Court adopted this ruling, in essence granting punitive damages.

There are no general rules that limit the maximum amount of damages. However, some provisions of substantive law establish maximum amounts for particular types of damages, particularly in cases of strict liability.

9.3 Pre-judgment and Post-judgment Interest

Amount of Interest

Under Austrian civil law, the debtor is required to compensate the creditor for the damage caused by any delay of payment, together with legal interest. If not otherwise agreed by the parties, legal interest amounts to 4% per annum. Between entrepreneurs it amounts to 9.2 percentage points above the base interest rate if the default is attributable to the debtor's negligence. As a rule, the base rate applicable is the base rate that was in effect on the first day of the relevant half year (1 January for the first half and 1 July for the second half) and is available on the Austrian National Bank's website. The creditor can also claim, in addition to the legal interest, compensation for other damage caused by late payment.

Starting Date

The starting date for interest accrual is the date when the payment obligation is due. It is owed from the day after the payment obligation becomes due until the day of actual payment. This applies both to pre-judgment and post-judgment interest.

9.4 Enforcement Mechanisms of a Domestic Judgment

Types of Enforcement

Different enforcement rules apply:

- to monetary claims on the one hand and claims for specific performance on the other; and
- depending on the assets against which the claim is to be enforced.

For monetary claims, the following types of enforcement are available: enforcement on movables, real estate, receivables, claims for delivery and other pecuniary rights (eg, patents or company shares).

In claims for specific performance, the following methods can be considered:

- eviction;
- substitute performance; or
- penalties for contempt (fines and, ultimately, imprisonment for up to a maximum of two months).

Assets Subject to Enforcement

Creditors can choose to enforce against real property or other specific assets (eg, a specific bank account, a specific share); or, alternatively, to request enforcement in the form of:

- a "small bundle", which includes enforcement against movables and the attachment of salary from existing employment; or
- if the claim is in excess of EUR10,000 or the small bundle proved insufficient, an "extended bundle", which also includes all other assets with the exception of real property (in this case, an administrator is appointed by the court to investigate and to realise the assets).

9.5 Enforcement of a Judgment From a Foreign Country

As to recognition and enforcement of foreign titles in Austria, a distinction must be drawn between titles under the Brussels Regulation and titles which do not fall under this regime.

Enforcement Under the Brussels Regulation

Under the Brussels Regulation, a judgment of an EU member state shall be recognised in other member states without any special procedure being required. A judgment rendered in a member state and enforceable in that state shall be enforced in another member state without any declaration of enforceability being required and under the same conditions as apply to a domestic judgment.

Enforcement Outside the Scope of the Brussels Regulation

For titles which do not fall under the regime of the Brussels Regulation, it is necessary to initiate exequatur proceedings and to obtain a "declaration of enforceability". The application for the declaration of enforceability may be joined with the application for the authorisation of enforcement itself. If the applications are joined, there is only one proceeding, and the relevant decisions are rendered at the same time.

A declaration of enforceability is only granted if the foreign judgment is enforceable according to the law of the state where it was issued and if reciprocity is guaranteed by international conventions, treaties or by regulations. This means that it is not within a court's discretion to determine reciprocity but that there must be a legal basis confirming that Austria and the other state mutually recognise each other's court decisions. If a court is uncertain in this regard, it will turn to the Austrian Ministry of Justice for determination and guidance.

10. Appeal

10.1 Levels of Appeal or Review to a Litigation

There are two appeal levels, one to the court of appeal and one to the Supreme Court. An appeal to the Supreme Court is limited to matters of sig-

nificance for the judicial system (see **10.5 Court-Imposed Conditions on Granting an Appeal**).

10.2 Rules Concerning Appeals of Judgments

Admissibility of an Appeal to the Supreme Court

Parties may appeal "first instance decisions" to Regional Courts which hear appeals from decisions of District Courts, and to Higher Regional Courts in cases of appeals from Regional Court decisions. The decision of the court of appeal will include a statement on whether its judgment is open to an appeal to the Supreme Court.

If it does not allow for an appeal to the Supreme Court, the party seeking further appeal may challenge the court of appeal's decision and request permission to seek further appeal to the Supreme Court. In such cases, the challenge must contain the challenge of the decision of the court of appeal denying further appeal to the Supreme Court but also set forth the actual appeal.

No Factual Findings by the Supreme Court

If the Supreme Court accepts its competence, it will only review questions of (material and/or procedural) law. Factual findings are never subject to revision by the Supreme Court. Factual findings and the assessment of the evidence can only be challenged before the courts of appeal.

10.3 Procedure for Taking an Appeal

The service of the judgment triggers a four-week period during which the partly or entirely unsuccessful party may file an appeal. The opponent may respond thereto within four weeks of service of the appeal. These time periods cannot be extended.

10.4 Issues Considered by the Appeal Court at an Appeal

Grounds of Appeal

The appellant may claim errors of procedural and/or material law, errors of fact and/or nullity (which rarely occurs).

Procedure Before the Court of Appeal

The court of appeal may retake evidence (mostly rehearing witnesses) if it decides to independently assess certain evidence. However, it will not rehear the entire case. In practice, the court of appeal rarely conducts an oral hearing or takes evidence itself, but rather upholds or changes the decision, or remands the case to the court of first instance to rehear parts of the case.

The appeal proceedings serve to review the correctness of the judgment at first instance, but not to raise any new facts or bring new claims. The court of appeal must disregard new allegations and new evidence.

10.5 Court-Imposed Conditions on Granting an Appeal

The possibility of seeking a review of second instance decisions by the Supreme Court is highly restricted.

Appeals on the points of (material and/or procedural) law may only be brought if the decision upon such points of law is of significant importance to ensure (i) uniformity, or (ii) certainty of legislation, or (iii) to allow for its development. The appellate court must include in its decision a determination on the admissibility of an appeal on the point of law to the Supreme Court. This determination can be contested by the parties and is not binding for the Supreme Court. Consequently, the Supreme Court may still dismiss an appeal determined as admissible by the appellate court or allow an appeal determined

as inadmissible by the court of second instance provided that the appeal is not inadmissible by law for other reasons (eg, because the amount still in dispute does not exceed EUR5,000).

10.6 Powers of the Appellate Court After an Appeal Hearing

In practice, the court of appeal rarely conducts an oral hearing (see 1 **0.4 Issues Considered by the Appeal Court at an Appeal**).

The court of appeal may, on the grounds of a procedural deficiency:

- set aside the judgment and refer the case back to the court of first instance; or
- complete the proceedings and decide by judgment on the merits.

In the event of an incorrect legal assessment, the court of appeal may confirm or amend the first instance judgment.

If the procedure/judgment is rendered null and void, the court of appeal will nullify the procedure/judgment and refer the case back to the first instance.

As a rule, the Supreme Court decides on the merits by confirming or amending the appellate judgment. On the grounds of procedural deficiency and if factual findings are missing, the Supreme Court will set aside the judgment and refer the case back to the court of appeal or the court of first instance.

11. Costs

11.1 Responsibility for Paying the Costs of Litigation

Austrian law operates under the "loser pays" principle. Accordingly, every party is required to pay its own costs during the proceedings. At the end of proceedings, the court will render a decision on costs, ordering the unsuccessful party to reimburse the legal costs of the other party.

Legal costs and fees consist of:

- court fees (to be paid by the plaintiff when filing a claim or an appeal);
- lawyers' fees; and
- cash expenses such as expert/translator costs and travel costs of witnesses.

The reimbursable fees for lawyers are fixed according to a tariff, depending on the amount in dispute and the procedural steps taken by the lawyer. The actual fees a lawyer charges a client may, and often do, exceed the tariff. The winning party may still end up having to pay the excess amount.

11.2 Factors Considered When Awarding Costs

The court's decision on costs depends on which party prevails and in what proportion.

11.3 Interest Awarded on Costs

By law, Section 54a Austrian Code of Civil Procedure, and without the need for being explicitly stated in the decision on costs, the party liable to pay compensation shall be obliged to pay statutory default interest on the amount of costs from the date of the decision on costs.

12. Alternative Dispute Resolution (ADR)

12.1 Views of ADR Within the Country

ADR and, particularly, mediation, is viewed positively in Austria. Yet mediation is still rarely used to settle commercial disputes. Parties to complex commercial and corporate disputes prefer to sue in court or to initiate arbitration proceedings, thereby delegating the resolution of the dispute to judges or arbitrators. However, nowadays a good number of judges are aware of and appreciate the power of mediation and actively refer parties to mediation.

The Law on Mediation Regarding Civil Claims (*Zivilrechts-Mediations-Gesetz*), enacted in 2004, aims to promote and facilitate access to mediation by setting out basic parameters for mediation. It establishes required qualifications of certified mediators, provides that mediation conducted by a certified mediator prevents the limitation period from expiring, and sets out that certified mediators shall not be required to testify in court proceedings. In many areas, the Austrian Law on Mediation Regarding Civil Claims pre-empted most of the provisions foreseen by the (EC) Directive 2008/52 of 21 May 2008 regarding certain aspects of mediation in civil and commercial matters.

12.2 ADR Within the Legal System

The prevailing opinion is that parties should engage in ADR proceedings voluntarily. There are only a few situations in which mediation is compulsory. These cases mainly relate to:

- disputes between neighbours;
- tenancy disputes; and
- disputes between members of certain professional groups subject to a code of conduct (eg, architects or lawyers).

Judges increasingly encourage parties to consider ADR, generally in the form of mediation. Some Austrian courts have engaged in a pilot project in which, at the beginning of the court proceedings, parties are informed about the option to engage in mediation. In the event that one or both parties refuse to engage in mediation or fail to co-operate in mediation proceedings, no adverse consequences arise.

12.3 ADR Institutions

Several organisations offer and promote ADR in Austria, including the Austrian Bar Association. For commercial cases, the Vienna International Arbitral Centre of the Federal Economic Chamber (VIAC) is the leading institution.

VIAC offers ADR rules that provide a flexible procedural framework that caters to the need of commercial clients. To promote understanding and use of ADR, VIAC published a handbook, which gives guidance on ADR proceedings under the auspices of VIAC. In addition, VIAC does not charge administration fees more than once should the parties wish to switch from arbitration to mediation (or vice versa), thereby providing an incentive to consider hybrid forms of ADR.

13. Arbitration

13.1 Laws Regarding the Conduct of Arbitration

If the seat of the arbitration is in Austria, the arbitration proceedings will be governed by the Austrian arbitration law, which is contained in the Fourth Chapter of the Austrian Code of Civil Procedure (Sections 577-618).

Since 2006, the legislation governing arbitration in Austria has been strongly based on the UNCI-

TRAL Model Law, with a few minor deviations. Significantly, Austrian arbitration law does not differentiate between domestic and international arbitration.

13.2 Subject Matters Not Referred to Arbitration

Under Austrian arbitration law, the definition of arbitrability is broad. The general rule is that pecuniary claims are usually considered arbitrable. Non-pecuniary claims are considered arbitrable if the parties have the capacity to enter into a settlement agreement addressing the specific claim.

As a specific exception, family law matters, and all claims based on contracts that are – even partially – subject to the Tenancy Act (*Mietrechtsgesetz*) or to the Non-Profit Housing Act (*Wohnungsgemeinnützigkeitsgesetz*), as well as all claims concerning condominium property, are precluded from being subject to an arbitration agreement.

Moreover, certain collective labour and social security matters are not arbitrable.

Although they are generally arbitrable, disputes involving consumers or employees may only be made subject to an arbitration agreement (with additional formal requirements) after the dispute has arisen. The additional formal requirements are extensive and lead to a very high threshold to validly conclude an arbitration agreement with consumers or employees, rendering arbitration agreements in these areas impracticable.

13.3 Circumstances to Challenge an Arbitral Award

Within three months of receiving an arbitral award, a party is entitled to file an action to set the award aside based on one or more of the following grounds.

- A valid arbitration agreement does not exist, the arbitral tribunal has denied its jurisdiction despite the existence of a valid arbitration agreement, or a party was incapable of concluding a valid arbitration agreement under the law governing its personal status.
- A party was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was for other reasons unable to present its case.
- The award deals with a dispute not covered by the arbitration agreement, contains decisions on matters beyond the scope of the arbitration agreement or exceeds the relief requested; if the defect concerns only a part of the award that can be separated, only that part of the award shall be set aside.
- The composition or constitution of the arbitral tribunal was contrary to a provision of Austrian arbitration law or with a permissible agreement of the parties.
- The arbitral proceedings were conducted in a manner that conflicts with the fundamental values of the Austrian legal system (procedural *ordre public*).
- The decision was based on a fraudulent action or forged document or a criminal verdict that has since been reversed (the three-month period to file the action for setting aside does not apply to this ground).
- The subject matter of the dispute is not arbitrable under Austrian law.
- The arbitral award conflicts with the fundamental values of the Austrian legal system (substantive *ordre public*).

Additional grounds are available if a consumer or an employee is involved. Otherwise, the grounds are exhaustive. It is firmly established in the case

law of the Austrian Supreme Court that there is no *révision au fond* of the merits of the case.

An action to set aside an award is filed with the Austrian Supreme Court, which decides as first and last instance (ie, without possibility of a further appeal). Practice has shown that a well-reasoned decision will be rendered within a comparatively short period of six to eight months on average.

13.4 Procedure for Enforcing Domestic and Foreign Arbitration

Jurisdiction on Enforcement

Under Austrian law, arbitral awards are deemed equivalent to judgments of state courts and will be enforced the same way by means of application to the District Court where:

- the award debtor has its seat; or
- the object, asset or third-party debtor, which shall serve to satisfy the award creditor, is registered or located.

Prerequisites

An authenticated original or a duly certified copy of the arbitral award must be submitted together with the application for enforcement. The original or a certified copy of the arbitration agreement must only be presented upon a request by the court.

If the seat of arbitration was outside Austria, the award will first require formal recognition and be declared enforceable by the District Court that is competent for enforcement. The application for recognition can be made together with the request for enforcement, and the courts will decide simultaneously on both requests. After being declared enforceable, the foreign award is treated as a domestic arbitral award – ie, equivalent to the judgment of an Austrian Court.

Recognition and enforcement of foreign arbitral awards (ie, where the seat of arbitration was outside Austria) is governed by international treaties to which Austria is a party, including:

- the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards;
- the Geneva Convention on the Execution of Foreign Arbitral Awards;
- the European Convention on International Commercial Arbitration; and
- the Washington Convention on Settlement of Investment Disputes between States and Nationals of Other States.

14. Outlook

14.1 Proposals for Dispute Resolution Reform

Currently there are no proposals for dispute resolution reform. Elections for a new government took place in September 2024 and currently the efforts to form a new government are underway.

14.2 Growth Areas

Please refer to the Austria Trends & Developments chapter in this guide. Insolvency-related litigation is on the rise, as large insolvencies are currently driving the legal market. AI-supported services are also expected to boom. Whether the new reform of collective redress will lead to growth remains to be seen.

Trends and Developments

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KNOETZL HAUGENEDER NETAL GmbH is Austria's first large-scale disputes resolution powerhouse dedicated to high-profile, important and complex cases. The firm's diverse expertise encompasses civil, commercial, sovereign, corporate and fraud litigation, focusing significantly on liability claims; corporate – including M&A, financing and joint venture disputes – banking, insurance and financial derivatives cases; investor protection; digital transformation; data protection and social media; business and political crime; asset-tracing and provisional measures, such as freeze orders and attachments, in the domestic and international contexts; and the enforcement of foreign judgments and arbitral awards. KNOETZL's practice also covers international commercial arbitration, investment protection and arbitration-related court proceedings, mediation and ADR. The firm is well-recognised for its disputes work at the intersection of civil and criminal matters. Distinguished international law firms, corporate decision-makers and general counsel frequently turn to KNOETZL to act as counsel in their significant disputes with an Austrian nexus.

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In the face of economic uncertainty and political upheaval following the Russian invasion in the Ukraine, the Austrian judicial system remains stable and effective. Ultra-high-volume insolvencies are keeping the courts and dispute resolution and insolvency practitioners busy. In parallel, practitioners in law firms and at court are continuing to progress the development of procedural and technological tools to improve access to justice.

The Dispute Resolution Industry in Austria

Insolvency-related litigation

Austria is experiencing the largest insolvency in its history – indeed, one of Europe's largest insolvencies: The former poster entrepreneur René Benko and his SIGNA Group, one of the country's prominent real estate and retail conglomerates, has filed for insolvency, with over EUR14 billion of debt registered against the various insolvent Austrian SIGNA entities to date. The complexity of the group, with over 1,000 companies, is proving a challenge to the Austrian courts, with multiple parallel insolvencies and, additionally, criminal investigations by a specially established task force.

These insolvencies are providing a wide scope of activity for Austrian insolvency, litigation, arbitration, white collar crime and asset tracing practitioners: pursuing claims against the insolvent entities, tracing assets that appear to have disappeared into René Benko's foundations, filing and defending against contestation claims and damages claims, filing criminal complaints and acting as defence counsel in criminal investigations, acting as administrators or otherwise supporting the activities of the insolvency administrators of the many insolvent SIGNA entities or seeking remedies against such activities. The sheer volume of legal activity triggered by the SIGNA insolvencies is extraordinary for the Austrian market.

On a slightly smaller scale, Fisker GmbH, the Austrian subsidiary of the US electric vehicle manufacturer Fisker Inc. has disclosed insolvency claims exceeding EUR3.5 billion.

Both cases illustrate the impact of current economic strains on large corporations in Austria, as high financing costs, market uncertainties, and liquidity pressures drive major restructurings and insolvency actions across industries, particularly in the real estate and automotive sectors. Insolvency rates in Austria have significantly risen in 2024, with business insolvencies increasing by a startling 24% (Q2 2023 v Q2 2024), with complete defaults in 27% of the cases. Many of the latter are "zombie, firms" – ie, businesses

that survived the pandemic due primarily to government aid and are now succumbing in large numbers. The insolvency courtrooms are currently being likened to doctors' waiting rooms, with "patients" (debtors) being called up every 15 minutes. While experts expect the situation to stabilise in 2025, the backlog of insolvency cases can be expected to keep the courts busy for far longer.

Class actions

The new – belatedly implemented – EU collective redress rules in Austria are set to change the class action landscape in Austria.

While some of the more ambitious changes – eg, broader discovery rules – were not implemented, the new class action system nonetheless benefits from the two-phase system that is designed to prevent abusive class actions and to steer the proceedings to increase effectivity and speed. Class action claimants will also benefit from substantially reduced court fees; the high Austrian court fees may otherwise have prevented major class actions being filed in Austria.

Practitioners, including litigation funders, are cautious, given the lack of clarity of some of the rules. Once the first-class action claims have been filed – presumably in 2024 and 2025, in particular once the new qualified entities in Austria and other EU member states have obtained the required authorisations – the courts will likely clarify how these rules will be implemented in practice. A framework for a functioning class-action litigation system can be expected to be established within the next five to ten years.

Austrian-style discovery

US and UK litigators involved in Austrian trials are often surprised that, while the burden of proof largely lies with plaintiffs, neither pre-trial disclosure nor document production are available in a form that would be recognisable to a common-law practitioner.

Document production, for example, is limited by law to specifically named documents that are directly relevant to the case at hand, with broad rights of refusal (similar to the grounds to refuse to give evidence, such as avoiding the risk of prosecution and preserving confidentiality obligations, personality and family rights, business secrets, etc). If a party refuses to produce a document without a valid reason, the court may draw a negative inference, but there are no further penalties for non-compliance. More generally, the courts regularly refuse document-production requests and witness interrogation on the grounds that "fishing expeditions" are not permitted.

This frustrating lack of access by the plaintiff to relevant information is alleviated in some areas by a reversal of the burden of proof to the defendant (eg, D&O liability) or by allowing prima facie, evidence (in particular in medical liability cases). However, in most cases plaintiffs are well-advised to ensure they possess the necessary information and evidence before filing a claim.

Currently, a remarkable new line of case law appears to be developing that could profoundly enhance the scope of discovery in Austrian proceedings: Section 184 of the Austrian Civil Procedural Code (CPC) allows parties to direct questions to the opposing party or their counsel to clarify the facts of the case. In the past, this provision was interpreted narrowly and rarely invoked. The Austrian Supreme Court has now indicated that it will apply Section 184 more broadly to enable "the most comprehensive and truthful findings of fact". In a recent case against

the former auditor of a bankrupt entity, the court expert was unable to complete his expert opinion on the correctness of the audit because the necessary documentation was not available (the plaintiff, an insolvency administrator, had been unable to retrieve financial information from the management of the bankrupt entity). The plaintiff's initial document-production request was denied as the plaintiff was unable to sufficiently identify the requested documents. The plaintiff then requested that 15 questions concerning receipt, knowledge of and generation of relevant documents be asked of the defendant's managing director, to achieve the necessary identification of the relevant documents. The Supreme Court found that in cases where only the opponent has knowledge of the relevant factual circumstances, Section 184 CPC provides a basis for questions to the opponent, provided that the questions are within the scope of at least reasonably substantiated factual allegations (ASC 4 Ob 78/22g, see also 6 Ob 44/09b,). This new line of cases is seen by many – some disapprovingly – as a route to US-style discovery. Indeed, some speculate that the broader discovery rules were not included in the new class action rules because, in view of the Supreme Court's case law on Section 184 CPC, they were deemed not necessary.

It remains to be seen to what extent litigators will adjust their trial strategies to make greater use of Section 184 CPC going forward and whether the Austrian Supreme Court will continue to uphold the use of this provision as a tool for discovery.

ESG

ESG is increasingly the focus of compliance officers and controllers of large Austrian firms and the local subsidiaries of international firms. While civil climate-related claims (eg, liability in tort for failing to act in time to prevent flooding damage) have been filed in the past, disputes related to the violation of the new ESG obligations have not yet reached the Austrian civil courts. The focus is currently primarily in the administrative/constitutional arena, with activists filing a complaint with the Austrian Constitutional Court claiming that the Austrian Climate Protection Act failed to set thresholds for greenhouse gas emissions (the "Generation Claim" filed by a group of children) and, in a current case filed with the European Court of Human Rights (Müllner v Austria), claiming that the Austrian government has failed to curb the climate crisis.

Given the public awareness and focus on ESG, it is likely that activist shareholders and/or NGOs will soon be seeking to base damage claims against companies on ESG violations. In the absence of special rules for ESG liability claims, such damages will be difficult to successfully argue because, under the current regime, plaintiffs would have to prove causality for specific damages. Austrian court fees are prohibitively high for high-volume claims, making high-volume test claims unattractive.

Looking forward, future implementations of EU regulations – eg, of the Corporate Sustainability Due Diligence Directive – may well include "hard" obligations that could provide a suitable basis for damages claims for financial damages and lead to a reversal of the burden of proof. Once such provisions arrive, ESG-related claims may begin to hit the Austrian civil courts, potentially in the form of class-action claims under the new collective redress rules that were introduced in 2024.

Developments in the Judicial System

International studies (CEPEJ) attest that the Austrian judicial system remains highly efficient,

with lower disposition times and higher clearance rates than most of its neighbours.

This is presumably related to Austria's continuing investments into improving and modernising the judiciary. High court fees generated within the system – the Austrian judicial system remains the only one in Europe to not only fully finance itself (eg, EUR 1.8 billion in 2022) but to generate additional income – provide the resources for such investments.

The ongoing "Judicial 3.0" (e-Justice) project is formidable in its scope, positioning Austria as a pioneer in judicial technology.

- The interface between the courts and court experts and translators as well as lawyers and parties has already been electronic for many years, with many courtrooms now outfitted with high-range electronic equipment and files being handled electronically (no hard copies). By the end of 2025, all courts should be completely digitalised.
- The public prosecutors' offices are already using an AI-supported tool, "EliAs", which organises and assigns incoming police reports and assists in file management. This application is a key element of managing Austria's increased caseload, especially in complex criminal and cybercrime matters.
- Most recently, AI is being incorporated increasingly to enhance judicial efficiency and accessibility. Besides being incorporated into document management tools, efforts are currently underway to improve the use of AI in the form of text-generation tools to assist in drafting routine court documents and judgments, allowing judges to focus on more complex decision-making. The use of AI to create automatic minutes during hearings using speech recognition is under development (currently, judges use a dictation device to summarise the proceedings and testimony). More sophisticated AI applications are currently being explored, such as using machine learning to identify case patterns and analyse legal data across extensive case archives. These tools could ultimately support judges by offering data-driven insights or precedent-based suggestions. Such applications are still in experimental stages, with the Austrian judicial authorities maintaining a progressive, but cautious approach to ensure that the enhancement of procedural efficiency does not come at a cost to fairness and transparency of judicial proceedings.

AI in Law Firm Practice

Dispute resolution practitioners worldwide are facing similar challenges in the form of economic uncertainty and rising costs. At the same time, highly motivated and skilled "next generation" lawyers are in high demand, but scarce. For law firms in countries that are hit particularly hard by inflation, such as Austria, this sets a particular challenge.

In this environment, the willingness to engage with the ever-improving AI-enhanced legal technology tools are likely to prove the key element for successful dispute resolution. Handling cases using AI-enhanced tools will mean that fewer lawyers and support staff will be needed. They will be freed from repetitive and routine work so that they can expend their time and creative energy on complex and strategic work and on client interaction.

One area that has seen particularly rapid development in the last year is legal research. The two main legal databases in use in Austria – LexisNexis and Manz (RDB) – are offering early access to AI enhanced "research assistants".

ChatGPT and similar tools – while imperfect – help to expedite and present supplementary factual research. While most Austrian law firms are prevented from using AI on casefile documents due to professional ethics and confidentiality obligations, many practitioners are optimistic that solutions will become available within the next year or two that will allow AI to be used to analyse confidential documents and to generate (parts of) legal submissions.

AI and innovative legal tech tools will allow routine cases (traffic accidents, small claims) to be handled expeditiously. In more complex cases, used correctly and judiciously, these tools should facilitate the application of a more concentrated and focused level of legal skills for the benefit of both the law firm and its clients.

Summary

After much turbulence over the past few years – the epidemic, high inflation, massive insolvencies, the effects of the Russian-Ukrainian war – the Austrian legal environment is settling into a period of industriousness and profitability. Law firms and courts are, simultaneously, looking to the future to adapt practice methods and to make the best use of the new tools and opportunities offered by the rapidly developing AI technology.

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