

## 1. What is the structure of the court system in respect of civil proceedings?

At the first level, civil proceedings are initiated before either the district courts ('Bezirksgerichte') or regional courts ('Landesgerichte').

District courts have jurisdiction in most disputes relating to tenancy and family law (subject matter jurisdiction) and in matters with an amount in dispute of up to €15,000 (monetary jurisdiction). Appeals on points of fact and law have to be made to the regional courts. If a legal question of fundamental importance is concerned, another final appeal can be lodged with the Supreme Court ('Oberster Gerichtshof'); see below.

Regional courts have monetary jurisdiction in matters involving an amount in dispute exceeding €15,000 and subject matter jurisdiction in intellectual property and competition matters, as well as various specific statutes (Public Liability Act, Data Protection Act, Austrian Nuclear Liability Act). Appeals must be directed to the Higher Regional Courts ('Oberlandesgerichte'). The third and final appeal goes to the Supreme Court.

As a general rule, a matter may only be appealed to the Supreme Court if the subject matter involves the resolution of a legal issue of general interest (i.e. if its clarification is important for purposes of legal consistency, predictability or development), or in the absence of coherent and previous decisions of the Supreme Court.

With respect to commercial matters, special Commercial Courts ('Handelsgericht und Bezirksgericht für Handelssachen') exist only in Vienna. Apart from that, the above-mentioned ordinary courts act as Commercial Courts. Commercial matters are, for example,

actions against businessmen or companies in connection with commercial transactions, unfair competition matters, etc. Other special courts are the Labour Courts ('Arbeits- und Sozialgericht'), which have jurisdiction over all civil law disputes between employers and employees resulting from (former) employment as well as over social security and pension cases. In both commercial (insofar as Commercial Courts decide in panels) and labour matters, respectively, lay judges and professional judges decide together. The Court of Appeal in Vienna decides as the Cartel Court ('Kartellgericht') at the trial level. This is the only Cartel Court in Austria. Appeals are decided by the Supreme Court sitting as the Appellate Cartel Court ('Kartellobergericht'). In cartel matters, lay judges sit on the bench with professional judges.

## 2. What is the role of the judge in civil proceedings?

Compared to common law countries, the role of judges in Austria is rather inquisitorial. To establish the relevant facts, judges can order witnesses to appear at a hearing (unless this is opposed by both parties), or appoint experts at their own discretion.

In some proceedings, the tribunal will consist of a panel involving 'expert' lay judges, especially in anti-trust cases, and 'informed' lay judges in labour and social cases.

## 3. Are court hearings open to the public? Are court documents accessible to the public?

In most cases, court hearings are open to the public. However, a party may ask the court to exclude the public from the hearing, provided

that it can show a justifiable interest for the exclusion of the public.

In principle, file inspection is permitted only to parties involved in the proceedings. Third parties may inspect files and/or even join the proceedings if they can demonstrate sufficient legal interest (in the potential outcome of the proceedings).

#### 4. Do all lawyers have the right to appear in court and conduct proceedings on behalf of their client? If not, how is the legal profession structured?

Attorneys-at-law are authorised to represent parties in all court and out-of-court proceedings (be it in public or private matters). No official appointment is required; however, professional practice is conditional upon the requirements set out below.

After finishing law school, at least five years of practice in professional legal work (of which at least nine months must be spent at court and three years at law offices as candidate) are required, as well as completion of mandatory courses prescribed by the Bar Association and a successful bar exam.

#### 5. What are the limitation periods for commencing civil claims?

Limitation periods are determined by substantive law.

Claims are not enforceable once they become statute-barred. The statute of limitations generally commences when a right could have been first exercised. Austrian law distinguishes between a long and a short limitation period. The long limitation period applies whenever special provisions do not provide otherwise. The short limitation period is three years and applies, for example, to accounts receivable or damage claims.

The statute of limitations must be argued explicitly by one of the parties; however, it cannot

be taken into consideration by the initiative of the court ('ex officio').

#### 6. Are there any pre-action procedures with which the parties must comply before commencing proceedings?

No, there are none. However, as a matter of general practice, a claimant will give notice to their opponent before commencing proceedings.

#### 7. What is the typical civil procedure and timetable for the steps necessary to bring the matter to trial?

The proceedings are initiated by submitting a lawsuit ('Klage') with the court. The lawsuit is considered officially submitted upon receipt. If the potential defendant does not respond within four weeks, an enforceable title is afforded to the claimant, who may proceed to the enforcement stage. If the defendant replies, of course, a regular litigation follows. Most often, the first hearing takes place within 6–10 weeks from receipt of the statement of defence. At such first hearings, the parties are invited to discuss settlement options. If the parties do not settle, the proceedings continue. Additional briefs are exchanged. Further hearings follow, the duration of which depends on the number of witnesses/experts to be heard. The time between the submission of a lawsuit and final judgement usually ranges between 10 and 16 months.

#### 8. Are parties required to disclose relevant documents to other parties and the court?

If a party is able to show that the opposing party is in possession of a specific document, the court may issue a submission order if: (a) the party in possession has expressly referred to the document in question as evidence for its own allegations; or (b) the party in possession is under a legal obligation to hand it over to the other party; or (c) the document in question

was made in the legal interest of both parties, certifies a mutual legal relationship between them, or contains written statements which were made between them during negotiations of a legal act.

Rules on pre-action disclosure do not exist.

**9. Are there rules regarding privileged documents or any other rules which allow parties to not disclose certain documents?**

A party is not bound to present documents which concern family life if the opposing party violates obligations of honour by the delivery of documents, if the disclosure of documents leads to the disgrace of the party or of any other person or involves the risk of criminal prosecution, or if the disclosure violates any state-approved obligation of secrecy of the party from which it is not released or infringes

a business secret (or for any other reason similar to the above).

Attorneys have the right of refusal to give oral evidence if information was made available to them in their professional capacity.

**10. Do parties exchange written evidence prior to trial or is evidence given orally? Do opponents have the right to cross-examine a witness?**

Evidence is taken during the course of the litigation, not before. The parties are required to produce the evidence supporting their respective allegations or where the burden of proof is on them, respectively.

Yes. After the initial examination of the witness by the judge, the witness may be subject to direct-examination, followed by opponent's cross-examination.



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Klaus Oblin is Vice Chairman of Euro-American Lawyers Group (EALG), having received both continental and common law legal education (PhD, University of Vienna

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Having acted as chairman, co-arbitrator and counsel in numerous high-profile international disputes in front of domestic and foreign courts as well as arbitral institutions, Klaus has developed exceptional expertise on a wide range of contentious matters, focusing on construction, corporate, energy and natural resources, insurance, distribution, sales and transport.

He has given lectures on International Supply Agreements and has co-authored several international legal guides on commercial litigation and arbitration.

**11. What are the rules that govern the appointment of experts? Is there a code of conduct for experts?**

Any qualified person may be publicly appointed as an expert. In practice, courts choose an expert who is accredited with the Austrian Federal Ministry of Justice. The litigants may propose a specific expert but the judge is not bound by this. Once appointed, the expert is obliged to follow the court's instructions. Experts may be disqualified on the same grounds as judges.

There is no special code of conduct for experts, but all experts must take an oath.

The register of all accredited experts is available on the Austrian Justice Department's website at [www.sdgliste.justiz.gv.at](http://www.sdgliste.justiz.gv.at).

**12. What interim remedies are available before trial?**

Discovery proceedings do not exist in the Austrian civil procedure.

However, the parties may turn to the court for assistance with safeguarding evidence both before and after a statement of claim has been filed. The required legal interest is considered established if the future availability of the evidence is uncertain or if it is necessary to examine the current status of an object.

Interim relief by injunctions is granted by various measures such as freezing orders on bank accounts or the seizure of assets including plots of land. In addition, third parties may be ordered not to pay accounts receivables.

**13. What does an applicant need to establish in order to succeed in such interim applications?**

See question 12.

**14. What remedies are available at trial?**

The Austrian Civil Procedure Code ('ACCP') provides for several remedies that are available

during the proceedings. These are available against all court rulings that were made during the course of proceedings and do not constitute a final judgment or any other form of decision on the merits. Many such remedies need to be submitted within 14 days from issuance, some immediately during the hearing.

For remedies available against court judgments and other decisions on the merits, see question 17.

**15. What are the principal methods of enforcement of judgment?**

If the defendant does not satisfy the claims awarded by the judgment, the claimant may obtain compulsory enforcement.

Judgments are enforceable once they have become final and binding (e.g. if no appeal has been raised within the respective time limit).

The European ('Brussels') Convention and the Lugano Convention are the most relevant multilateral treaties on the recognition and enforcement of foreign judgments. In addition, a couple of bilateral treaties exist.

The enforcement of a domestic court decision requires a court order warranting enforcement which will be granted if the general requirements (admissibility of proceedings, capacity to be a party or to bring proceedings, etc) are met.

In order to be enforceable, foreign judgments require a formal declaration of enforceability which is to be granted if the title is enforceable in accordance with the provisions of the country of issuance and if reciprocity is guaranteed in state treaties or by way of regulation. District courts are competent to decide ex parte. However, the decision is appealable.

As far as European Union decisions are concerned, recognition proceeds automatically according to the above-mentioned Conventions.

## 16. Are successful parties generally awarded their costs? How are costs calculated?

In its final judgment, the court will order who will have to bear the procedural costs (including court fees, legal fees and certain other costs of the parties, such as costs for the safeguarding of evidence, travel expenses etc). The court's decision on costs is subject to redress, along with or without an appeal on the court's decision on the merits.

In principle, the prevailing party is entitled to reimbursement by the losing party of all costs of the proceedings. If either party prevails with and loses parts of its claims, either party shall bear its own costs, or costs will be divided on a pro-rata basis. The calculation of reimbursable legal fees is subject to the calculation method under the Austrian Act on Attorneys' Tariffs, irrespective of the agreement between the prevailing party and its attorney. Thus, the reimbursable amount may be lower than the actual payable legal fee, as any claim for reimbursement is limited to necessary costs.

Foreign claimants, on the defendant's request, in principle have to provide security to cover the defendant's costs. However, this does not apply, for example, to citizens of a member state of the European Union and/or the Lugano Convention.

## 17. What are the avenues of appeal for a final judgment? On what grounds can a party appeal?

There are several types of legal remedies against final court judgments.

First appeals against judgments are available against judgments issued by the court of first instance and may be raised on the grounds of procedural errors or errors of law.

Second appeals can be made if the subject matter involves the resolution of a legal issue of general interest (i.e. if its clarification is

important for purposes of legal consistency, predictability or development), or in the absence of coherent and previous decisions of the Supreme Court (see question 1).

Actions to re-open proceedings can be based on the following grounds:

- (a) the judgment is based on a document that was initially or subsequently forged;
- (b) the judgment is based on false testimony (of a witness, an expert or a party under oath);
- (c) the judgment is obtained by the representative of either party, or by the other party, by way of criminal acts (e.g. deceit, embezzlement, fraud, forgery of a document or of specially protected documents, or of signs of official attestations, indirect false certification or authentication or the suppression of documents);
- (d) the judgment is based on a criminal verdict that was subsequently overruled by another legally binding judgment;
- (e) the judgment was issued without due regard to a preliminary ruling with prejudicial significance.

## 18. Are contingency or conditional fee arrangements permitted between lawyers and clients?

Yes; however, they are permissible only if they are not calculated as a percentage of the amount awarded by the court ('pactum de quota litis').

## 19. Is third-party funding permitted? Are funders allowed to share in the proceeds awarded?

Third-party financing is permitted and usually available for higher amounts in dispute; yet, it is more flexible regarding fee agreements. Note that fee agreements which give a part of the proceeds to the lawyer are prohibited.



20. May parties obtain insurance to cover their legal costs?

Yes. Most insurances cover necessary payments, i.e. attorneys' fees, court fees, witness- and expert-related costs, and the reimbursement obligation in case of not prevailing.

21. May litigants bring class actions? If so, what rules apply to class actions?

Although the ACCP does not contain any provision on class actions, the Austrian Supreme Court held that a 'class action with a specific Austrian character' is legally permissible. The ACCP allows a consolidation of claims of the same plaintiff against the same defendant. A joinder may be filed if: (a) the court has jurisdiction for all claims; (b) the same type of procedure applies; and (c) the subject matter is of the same nature regarding facts and law. Another possibility is to organise mass claims and assign them to an institution which then proceeds as a single claimant.

22. What are the procedures for the recognition and enforcement of foreign judgments?

See question 15.

23. What are the main forms of alternative dispute resolution?

The main extra-judicial methods provided for by statute are arbitration, mediation (mainly in family law matters) and conciliation boards in housing or telecommunication matters.

In addition, various professional bodies (such as those for lawyers, public notaries, doctors, civil engineers) provide for dispute resolution mechanisms concerning disputes between their members or between members and clients.

24. Which are the main alternative dispute resolution organisations in your jurisdiction?

The Vienna International Arbitral Centre of the Austrian Federal Economic Chamber ('VIAC') is Austria's most relevant (international commercial) arbitration institution. The framework for the conduct of arbitration proceedings is referred to as 'Rules of Arbitration and Conciliation of the VIAC' ('Vienna Rules').

Certain professional bodies and chambers provide for their own rules or administer alternative dispute resolution proceedings, or both.

25. Are litigants required to attempt alternative dispute resolution in the course of litigation?

The ACCP provides for neither obligatory settlements nor binding mediation or arbitration. Yet, it is not uncommon that judges – at the beginning of a trial – informally encourage parties to explore settlement options or turn to mediators first.

26. Are there any proposals for reform to the laws and regulations governing dispute resolution currently being considered?

The VIAC aims at modernising and streamlining its rules, which was first enacted in 1975. In its quest to do so, the rules were reviewed as recently as 2013, simplifying and adding several provisions.

The main changes to the rules can be summarised as follows:

Joinder of Third Parties

The arbitral tribunal has the authority to order the joinder of third parties upon the request of either party or of the third party itself. The tribunal has wide discretion provided that all parties (including the joining one) have been heard. A cross-claim against the party to be joined is permissible, which also results in that

party's right to participate in the formation of the arbitral tribunal.

**Consolidation of Proceedings**

The consolidation of two or more proceedings is possible. The decision on consolidation is made by the VIAC's executive board (after having heard the parties and members of the tribunal).

**Confirmation of Arbitrators**

All arbitrators must be confirmed by the VIAC's Secretary General.

**Multi-party Proceedings**

If one party (group) fails to agree on a nominee to be confirmed as arbitrator, the failure will not automatically invalidate the other side's nomination.

**Remission**

The new rules also address cases in which a court refers proceedings to an arbitral tribunal, thereby already anticipating the expected change to the Austrian arbitration law providing for annulment proceedings to be directly lodged with the Supreme Court.

**Expedited Proceedings**

The reviewed rules also contain specific speedy trial regulations. They must be explicitly agreed upon (opt-in). The final award must be returned within six months (unless extended).

27. Are there any features regarding dispute resolution in your jurisdiction or in Asia that you wish to highlight?  
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No.

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