GETTING THE DEAL THROUGH

Arbitration

in 49 jurisdictions worldwide

2014

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Getting the Deal Through is delighted to publish the ninth edition of *Arbitration*, a volume in our series of annual reports, which provide international analysis in key areas of law and policy for corporate counsel, cross-border legal practitioners and business people.

Following the format adopted throughout the series, the same key questions are answered by leading practitioners in each of the 49 jurisdictions featured. New jurisdictions this year include Equatorial Guinea, Mexico, Nigeria and Scotland.

Every effort has been made to ensure that matters of concern to readers are covered. However, specific legal advice should always be sought from experienced local advisers. *Getting the Deal Through* publications are updated annually in print. Please ensure you are referring to the latest print edition or to the online version at www.gettingthedealthrough.com.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We would also like to extend special thanks to contributing editors Gerhard Wegen and Stephan Wilske of Gleiss Lutz for their continued assistance with this volume.

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Austria

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Laws and institutions

1 Multilateral conventions relating to arbitration

Is your country a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Since when has the Convention been in force? Were any declarations or notifications made under articles I, X and XI of the Convention? What other multilateral conventions relating to international commercial and investment arbitration is your country a party to?

Austria has ratified the following multilateral conventions relating to arbitration: the New York Convention, 31 July 1961 (Austria has made a notification under article I, section 3, stating that it would only recognise and enforce awards rendered in other contracting states of this convention); the Protocol on Arbitration Clauses, Geneva, 13 March 1928; the Convention on the Execution of Foreign Arbitral Awards, Geneva, 18 October 1930; the European Convention on International Commercial Arbitration (and the agreement relating to its application), 4 June 1964; and the Convention on the Settlement of Investment Disputes, 24 June 1971.

2 Bilateral investment treaties

Do bilateral investment treaties exist with other countries?

Austria has signed 65 bilateral investment treaties, of which 60 have been ratified, namely with Albania, Algeria, Argentina, Armenia, Azerbaijan, Bangladesh, Belarus, Belize, Bolivia, Bosnia, Bulgaria, Cape Verde, Chile, China, Croatia, Cuba, Czech Republic, Egypt, Estonia, Ethiopia, Georgia, Hong Kong, Hungary, India, Iran, Jordan, (South) Korea, Kuwait, Latvia, Lebanon, Libya, Lithuania, Macedonia, Malaysia, Malta, Mexico, Moldova, Mongolia, Morocco, Oman, Paraguay, Philippines, Poland, Romania, the Russian Federation, Saudi Arabia, Serbia, Slovakia, Slovenia, South Africa, Tajikistan, Tunisia, Turkey, Ukraine, the United Arab Emirates, Uzbekistan, Vietnam and Yemen.

Austria is also a party to a number of further bilateral treaties that are not investment treaties, mainly with neighbouring countries.

3 Domestic arbitration law

What are the primary domestic sources of law relating to domestic and foreign arbitral proceedings, and recognition and enforcement of awards?

Austrian arbitration law is contained in article 577 to 618 of the Austrian Code of Civil Procedure (CCP). These provisions regulate both domestic and international arbitration proceedings.

Recognition of foreign awards is regulated in the aforementioned multilateral and bilateral treaties (see questions 1 and 2). The enforcement proceedings are regulated in the Austrian Enforcement Act.

4 Domestic arbitration and UNCITRAL

Is your domestic arbitration law based on the UNCITRAL Model Law? What are the major differences between your domestic arbitration law and the UNCITRAL Model Law?

As in most countries, the law does not mirror every single aspect of the UNCITRAL Model Law. However, the main features have been introduced.

Unlike the UNCITRAL Model Law, the Austrian law does not distinguish between domestic and international arbitrations or between commercial and non-commercial arbitrations. Therefore, specific rules apply to employment and consumer-related matters (see question 44).

5 Mandatory provisions

What are the mandatory domestic arbitration law provisions on procedure from which parties may not deviate?

The parties are free to agree on the rules of procedure (eg, by reference to specific arbitration rules) within the limits of the mandatory provisions of the CCP. Where the parties have not agreed on any set of rules, or set out rules of their own, the arbitral tribunal must, subject to the mandatory provisions of the CCP, conduct the arbitration in such a manner as it considers appropriate. Mandatory rules of Austrian arbitration procedure include that the arbitrators must be, and remain, impartial and independent. They must disclose any circumstances likely to give rise to doubts about their impartiality or independence. The parties have the right to be treated in a fair and equal manner and to present their case. Further mandatory rules concern the arbitral award, which must be in writing, and the grounds on which an award can be challenged (see question 42).

6 Substantive law

Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?

An arbitral tribunal has to apply the substantive law chosen by the parties, failing which, it has to apply the law that it considers appropriate. A decision on grounds of equity is only permitted if the parties have expressly agreed to a decision in equity (article 603 CCP).

7 Arbitral institutions

What are the most prominent arbitral institutions situated in your country?

The Vienna International Arbitral Centre (viac.eu) administers international arbitration proceedings under its Rules of Arbitration and Conciliation (2013), better known as the Vienna Rules. The fees for the arbitrators are calculated on the basis of the amount in dispute. There are no restrictions as to the place and language of the arbitration.

The Vienna Commodity Exchange at the Vienna Stock Exchange has its own court of arbitration and its own recommended arbitration clause.

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

The International Chamber of Commerce (ICC) maintains a direct presence through its Austrian National Committee.

Arbitration agreement

8 Arbitrability

Are there any types of disputes that are not arbitrable?

In principle, any proprietary claim is arbitrable. Non-proprietary claims are still arbitrable if the law allows the dispute to be settled by the parties.

There are some exceptions in family law or cooperative apartment ownership.

Consumer and employment-related matters are only arbitrable if the parties enter into an arbitration agreement once the dispute has arisen.

9 Requirements

What formal and other requirements exist for an arbitration agreement?

An arbitration agreement must:

- sufficiently specify the parties (they must at least be determinable);
- sufficiently specify the subject matter of the dispute in relation to a defined legal relationship (this must at least be determinable and it can be limited to certain disputes, or include all disputes);
- sufficiently specify the parties' intent to have the dispute decided by arbitration, thereby excluding the state courts' competence; and
- be contained either in a written document signed by the parties, or in telefaxes, e-mails or other communications exchanged between the parties, which preserve evidence of a contract.

A clear reference to general terms and conditions containing an arbitration clause is sufficient.

10 Enforceability

In what circumstances is an arbitration agreement no longer enforceable?

Arbitration agreements and clauses can be challenged under the general principles of Austrian contract law, in particular on the grounds of error, deceit or duress, or legal incapacity. There is controversy over whether such a challenge should be brought before the arbitral tribunal or before a court of law. If the parties to a contract containing an arbitration clause rescind their contract, the arbitration clause is deemed to be no longer enforceable, unless the parties have expressly agreed on the continuation of the arbitration clause. In the event of insolvency or death, the receiver or legal successor is, in general, bound by the arbitration agreement. An arbitral agreement is no longer enforceable if an arbitral tribunal has rendered an award on the merits of the case or if a court of law has rendered a final judgment on the merits and the decision covers all matters for which arbitration has been agreed on.

11 Third parties – bound by arbitration agreement

In which instances can third parties or non-signatories be bound by an arbitration agreement?

As a general principle, only the parties to the arbitration agreement are bound by it. Austrian courts are reluctant to bind third parties to the arbitration agreement. Thus, concepts such as piercing the corporate veil, groups of company etc typically do not apply.

However, a legal successor is bound by the arbitration agreement in which his or her predecessor has entered into. This also applies to the insolvency administrator and to the heir of a deceased person.

12 Third parties – participation

Does your domestic arbitration law make any provisions with respect to third-party participation in arbitration, such as joinder or third-party notice?

Normally, joinder of a third party to an arbitration requires the corresponding consent of the parties, which can either be express or implied (eg, by reference to arbitration rules that provide for joinder). The consent can be given either at the time the request for joinder is made or at an earlier stage in the contract itself. Under Austrian law, the issue is largely discussed in the context of the intervention of a third party that has an interest in the arbitration. Here, it is argued that such a third party intervener must be a party to the arbitration agreement or otherwise submit to the jurisdiction of the tribunal, and that all parties, including the intervener, must agree to the intervention.

The Austrian Supreme Court has held that the joining of a third party in arbitral proceedings against its will, or the extension of the binding effect of an arbitration award on a third party, would infringe article 6 of the European Convention on Human Rights if the third party was not granted the same rights as the parties (eg, the right to be heard).

13 Groups of companies

Do courts and arbitral tribunals in your jurisdiction extend an arbitration agreement to non-signatory parent or subsidiary companies of a signatory company, provided that the non-signatory was somehow involved in the conclusion, performance or termination of the contract in dispute, under the 'group of companies' doctrine?

The group of companies' doctrine is not recognised in Austrian law (see question 11).

14 Multiparty arbitration agreements

What are the requirements for a valid multiparty arbitration agreement?

Multiparty arbitration agreements can be entered into under the same formal requirements as arbitration agreements (see question 9).

Constitution of arbitral tribunal

15 Eligibility of arbitrators

Are there any restrictions as to who may act as an arbitrator? Would any contractually stipulated requirement for arbitrators based on nationality, religion or gender be recognised by the courts in your jurisdiction?

Only physical persons can be appointed as arbitrators. The statute does not provide for any specific qualifications, but the parties may agree on such requirements. Active judges are not allowed to act as arbitrators under the statute regulating their profession.

16 Default appointment of arbitrators

Failing prior agreement of the parties, what is the default mechanism for the appointment of arbitrators?

The courts are competent to make the necessary default appointments, if the parties do not agree on another procedure, and if:

- one party fails to appoint an arbitrator;
- the parties cannot agree on a sole arbitrator; or
- the arbitrators fail to appoint their chairman.

17 Challenge and replacement of arbitrators

On what grounds and how can an arbitrator be challenged and replaced? Please discuss in particular the grounds for challenge and replacement, and the procedure, including challenge in court. Is there a tendency to apply or seek guidance from the IBA Guidelines on Conflicts of Interest in International Arbitration?

Challenge of arbitrators

An arbitrator can only be challenged if circumstances exist that give rise to justifiable doubts as to his or her impartiality or independence, or if he or she does not possess qualifications agreed to by the parties. The party that appointed an arbitrator cannot rely, in its challenge, on circumstances it knew at the time of the appointment (article 588 CCP).

Removal of arbitrators

An arbitrator can be removed if he or she is incapable of discharging his or her tasks, or if he or she does not discharge them within an appropriate time (article 590 CCP).

Arbitrators can be removed, either by way of challenge, or with the termination of their mandate. In both cases, it is ultimately the court that decides upon the request of one party. If early termination of the arbitrator's mandate occurs, the substitute arbitrator must be appointed in the same manner in which the replaced arbitrator was appointed.

In a recent case, the Supreme Court dealt with the grounds for challenges analysing the conflicting views of scholars as to whether, and to what extent, challenges should be permitted after a final award. In its analysis the court also cited and relied on the IBA guidelines.

18 Relationship between parties and arbitrators

What is the relationship between parties and arbitrators? Please elaborate on the contractual relationship between parties and arbitrators, neutrality of party-appointed arbitrators, remuneration, and expenses of arbitrators.

In ad hoc arbitration, an arbitrators' agreement should be concluded, regulating the rights and duties of the arbitrators. This contract should include a fee arrangement (eg, by reference to an official tariff of legal fees, hourly rates or in some other way) and the arbitrators' right to have their out-of-pocket expenses reimbursed. Their duties include the conduct of the proceeding, as well as the drafting and signing of the award.

19 Immunity of arbitrators from liability

To what extent are arbitrators immune from liability for their conduct in the course of the arbitration?

If an arbitrator has accepted his or her appointment, but then refused to discharge his or her tasks in due time, or at all, he or she can be held liable for the damage due to the delay (article 594 CCP). If an award has been set aside in subsequent court proceedings and an arbitrator has caused, in an unlawful and negligent manner, any damage to the parties, he or she can be held liable. Arbitrators' agreements and rules of arbitration of arbitral institutions often contain exclusions of liability.

Jurisdiction and competence of arbitral tribunal

20 Court proceedings contrary to arbitration agreements

What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an existing arbitration agreement, and what time limits exist for jurisdictional objections?

Austrian law does not contain any express rules on the remedies available in the event that court proceedings are commenced in breach of an arbitration agreement or if arbitration is commenced in breach of a jurisdiction clause (other than an adverse cost decision in proceedings that should not have been commenced in the first place).

If a party brings a legal action before a court of law, despite the matter being subject to an arbitration agreement, the defendant has to raise an objection to the court's jurisdiction before commenting on the subject matter itself, namely, at the first hearing or in its statement of defence. The court must generally reject such claims, if the defendant objected to the court's jurisdiction in time. The court must not reject the claim if it establishes that the arbitration agreement is non-existent, not valid or impracticable.

21 Jurisdiction of arbitral tribunal

What is the procedure for disputes over jurisdiction of the arbitral tribunal once arbitral proceedings have been initiated and what time limits exist for jurisdictional objections?

An arbitral tribunal can rule on its own jurisdiction either in a separate award or in the final award on the merits. A party who wishes to challenge the jurisdiction of the arbitral tribunal must raise that objection no later than in the first pleading in the matter. The appointment of an arbitrator, or the party's participation in the appointment procedure, does not preclude a party from raising the jurisdictional objection. A late plea must not be considered, unless the tribunal considers the delay justified and admits the plea. Both courts and arbitral tribunals can determine jurisdictional issues.

Arbitral proceedings

22 Place and language of arbitration

Failing prior agreement of the parties, what is the default mechanism for the place of arbitration and the language of the arbitral proceedings?

If the parties have not agreed on a place of arbitration and on the language of the arbitral proceedings, it is at the arbitral tribunal's discretion to determine an appropriate place and language.

23 Commencement of arbitration

How are arbitral proceedings initiated?

Under Austrian statutory law, the claimant has to submit a statement of claim that must set forth the facts on which the claimant intends to rely and his or her requests for relief. The statement of claim must be filed within the time period agreed between the parties or set by the arbitral tribunal. The claimant may submit relevant evidence at that point. The respondent shall then submit his or her statement of defence.

Under the Vienna Rules, the claimant has to submit a statement of claim to the Secretariat of the VIAC. The statement must contain the following information:

- the full names, addresses, and other contact details of the parties;
- a statement of the facts and a specific request for relief;
- if the relief requested is not exclusively for a specific sum of money, the monetary value of each individual claim at the time of submission of the statement of claim;
- particulars regarding the number of arbitrators;
- the nomination of an arbitrator if a panel of three arbitrators was agreed or requested, or a request that the arbitrator be appointed; and
- particulars regarding the arbitration agreement and its content.

24 Hearing

Is a hearing required and what rules apply?

Oral hearings shall take place at the request of one party, or if the arbitral tribunal considers it necessary (article 598 CCP and article 30 of the Vienna Rules).

25 Evidence

By what rules is the arbitral tribunal bound in establishing the facts of the case? What types of evidence are admitted and how is the taking of evidence conducted?

Austrian statutory law does not contain specific rules on the taking of evidence in arbitral proceedings. Arbitral tribunals are bound by rules on evidence, which the parties may have agreed on. In the absence of such rules, the arbitral tribunal is free to take and evaluate evidence as it deems appropriate (article 599 CCP). Arbitral tribunals have the power to appoint experts (and to require the parties to give the experts any relevant information or to produce or provide access to any relevant documents, goods or other property for inspection), hear witnesses, parties or party officers. However, arbitral tribunals have no power to compel the attendance of parties or witnesses.

As a matter of practice, parties often authorise arbitral tribunals to refer to the IBA Rules on the Taking of Evidence for guidance. If rules such as the IBA Rules are referred to, or agreed, the scope of disclosure is often wider than disclosure in litigation (which is quite limited under Austrian law). The arbitral tribunal has to give the parties the opportunity to take note of and comment on the evidence submitted and the result of the evidentiary proceedings (see article 599 CCP).

26 Court involvement

In what instances can the arbitral tribunal request assistance from a court and in what instances may courts intervene?

An arbitral tribunal may request assistance from a court in order to:

- enforce an interim or protective measure issued by the arbitral tribunal (article 593 CCP); or
- conduct judicial acts where the arbitral tribunal is not authorised to do so (compelling witnesses to attend, hearing witnesses under oath and ordering the disclosure of documents), including requesting foreign courts and authorities to conduct such acts (article 602 CCP).

A court can only intervene in arbitrations if this is expressly provided for in the CCP. In particular the court can (or must):

- grant interim or protective measures (article 585 CCP);
- appoint arbitrators (article 587 CCP); and
- decide on the challenge of an arbitrator if:
  - the challenge procedure agreed upon, or the challenge before the arbitral tribunal, is not successful;
  - the challenged arbitrator does not withdraw from his or her office; or
  - the other party does not agree to the challenge.

27 Confidentiality

Is confidentiality ensured?

The CCP does not explicitly provide for the confidentiality of arbitration, but confidentiality can be agreed upon between the parties. Further, in court proceedings for setting aside an arbitral award and in actions for a declaration of the existence, or non-existence, of an arbitral award, or on matters governed by article 586 to 591 CCP (eg, challenge to arbitrators), a party can ask the court to exclude the public from the hearing, if the party can show a justifiable interest for the exclusion of the public.

Interim measures and sanctioning powers

28 Interim measures by the courts

What interim measures may be ordered by courts before and after arbitration proceedings have been initiated?

Both the competent Austrian court and an Austrian arbitral tribunal have jurisdiction to grant interim measures in support of arbitration proceedings. The parties can exclude the arbitral tribunal's competence for interim measures, but they cannot exclude the court's jurisdiction on interim measures. The enforcement of interim measures is in the exclusive jurisdiction of the courts.

In support of money claims, the court can grant interim remedies if there is reason to believe that the debtor would prevent or impede the enforcement of a subsequent award by damaging, destroying, hiding or carrying away his or her assets (including prejudicial contractual stipulations).

The following remedies are available:

- to place money or moveable property into the court's custody;
- a prohibition to alienate or pledge moveable property;
- a garnishment order in respect of the debtor's claims (including bank accounts);
- the administration of immoveable property; and
- a restraint on the alienation or pledge of immoveable property, which is to be registered in the land register.

In support of non-pecuniary claims, the court can grant interim remedies similar to those mentioned above in relation to money claims. Search orders are not available in civil cases.

Injunctions given by a foreign arbitral tribunal (article 593 CCP) or by a foreign court can be enforced in Austria under certain circumstances. The enforcement measures, however, must be compatible with Austrian law.

29 Interim measures by an emergency arbitrator

Does your domestic arbitration law or do the rules of the domestic arbitration institutions mentioned above provide for an emergency arbitrator prior to the constitution of the arbitral tribunal?

Austrian statutory law does not provide for an emergency arbitrator.

30 Interim measures by the arbitral tribunal

What interim measures may the arbitral tribunal order after it is constituted? In which instances can security for costs be ordered by an arbitral tribunal?

An arbitral tribunal has wide powers to order interim measures on the application of one party, if it deems it necessary to secure the enforcement of a claim, or to prevent irretrievable harm. Differing from interim remedies available in court proceedings, an arbitral tribunal is not limited to a set of enumerated remedies. However, the remedies should be compatible with Austrian enforcement law, in order to avoid difficulties at the stage of the enforcement. Austrian statutory law does not provide for a security for costs in arbitration proceedings.

31 Sanctioning powers of the arbitral tribunal

Pursuant to your domestic arbitration law or the rules of the domestic arbitration institutions mentioned above, is the arbitral tribunal competent to order sanctions against parties or their counsel who use 'guerrilla tactics' in arbitration?

Arbitral tribunals have wide discretion to order interim measures as a way of dealing with guerilla tactics. They may suspend the proceedings in extreme cases, or even dismiss an arbitration with prejudice as a sanction for the wilful misconduct of a party or of its counsel.

Arbitral tribunals may also order a security for costs.

Further, it is a widely accepted possibility of arbitrators to draw negative inferences from a party's failure to comply with the tribunal's requests. For example, if a party refuses to produce documents the tribunal can assume that the documents contained information negative to the party's position.

Another quite effective measure for regulating a party's misconduct is the award of costs in the final award.

Awards

32 Decisions by the arbitral tribunal

Failing party agreement, is it sufficient if decisions by the arbitral tribunal are made by a majority of all its members or is a unanimous vote required? What are the consequences for the award if an arbitrator dissents?

Unless otherwise agreed by the parties, it is sufficient for the arbitral award to be valid if it has been rendered and signed by a majority of arbitrators. The majority has to be calculated on the basis of all appointed arbitrators and not just those present. If the arbitral tribunal intends to decide on the arbitral award without all of its members being present, it must inform the parties in advance of its intention (article 604 CCP).

An arbitral award signed by a majority of arbitrators has the same legal value as a unanimous award.

33 Dissenting opinions

How does your domestic arbitration law deal with dissenting opinions?

Austrian statutory law is silent on dissenting opinions. There is a controversy on whether they are admissible in arbitral proceedings.

In a recent case concerning the enforcement of a foreign arbitral award, the Austrian Supreme Court stated that the requirement to attach the dissenting opinion to the arbitral tribunal's award (which requirement was contained in the applicable rules of arbitration), is not a stringent requirement under Austrian enforcement law.

34 Form and content requirements

What form and content requirements exist for an award?

An arbitral award is to be delivered in writing and has to be signed by the arbitrator or arbitrators. Unless otherwise agreed by the parties, the signatures of a majority of arbitrators is sufficient. In that event, the reason for the absence of some of the arbitrators' signatures should be explained.

Unless otherwise agreed by the parties, the award should also state the legal reasoning on which it is based. It should also indicate the day and place on and in which it is made.

Upon request of any party of the arbitration, the award has to contain the confirmation of its enforceability.

35 Time limit for award

Does the award have to be rendered within a certain time limit under your domestic arbitration law or under the rules of the domestic arbitration institutions mentioned above?

Austrian statutory law does not provide for a specific time period within which an arbitral award has to be delivered.

36 Date of award

For what time limits is the date of the award decisive and for what time limits is the date of delivery of the award decisive?

Under Austrian statutory law, the date of delivery of the award is relevant for both an application to the arbitral tribunal for correction or interpretation of the award, or both, or to make an additional award (see question 41) and any challenge of the award before the courts of law (see question 42). If the arbitral tribunal corrects the award on its own, the time limit of four weeks for such a correction starts from the date of the award (article 610, paragraph 4 CCP).

37 Types of awards

What types of awards are possible and what types of relief may the arbitral tribunal grant?

The following types of awards are usual under Austrian arbitration law:

- award on jurisdiction;
- interim award;
- partial award;
- final award;
- award on costs; and
- amendment award.

38 Termination of proceedings

By what other means than an award can proceedings be terminated?

Arbitral proceedings can be terminated if the claimant withdraws its claim, if the claimant fails to submit its statement of claim within the period of time determined by the tribunal (articles 597 and 600 CCP), by mutual consent of the parties, by settlement (article 605 CCP) and if the continuation of the proceedings has become impracticable (article 608(2) 4 CCP). There are no formal requirements for such a termination.

39 Cost allocation and recovery

How are the costs of the arbitral proceedings allocated in awards?

With respect to costs, arbitral tribunals have wider discretion and are in general more liberal than the Austrian courts. The arbitral tribunal is granted discretion in the allocation of costs, but must take into account the circumstances of the case, in particular the outcome of the proceedings. As a rule of thumb, costs follow the event and are borne by the unsuccessful party, but the tribunal can also arrive at different conclusions if this is appropriate to the circumstances of the case.

Where costs are not set off against each other, and as far as it is possible, the arbitral tribunal must, at the same time as it decides on the liability for costs, also determine the amount of costs to be reimbursed.

In general, attorneys' fees calculated on the basis of hourly rates are also recoverable.

40 Interest

May interest be awarded for principal claims and for costs and at what rate?

An Austrian arbitral tribunal would, in most cases, award interest for the principal claimed, if permitted under the substantive law applicable. Under Austrian law, the statutory interest of civil law claims is 4 per cent. If both parties are entrepreneurs and the default is reproachable, then a variable interest rate, published every six months by the Austrian National Bank, would apply. At present it is 9.2 per cent. Bills of exchange are subject to an interest rate of 6 per cent.

The allocation and recovery of costs in Austrian arbitration proceedings is regulated in article 609 CCP. However, there is no provision as to whether interest may be awarded for costs, and it is therefore at the arbitral tribunal's discretion.

Update and trends

Austrian statutory law on arbitration was enacted in 2006. Up to 1 January 2014, the following changes have been introduced.

Instead of three procedural levels (the court of first instance, the court of appeal and the Supreme Court), article 615 CCP has been changed so that the decision about a claim challenging an arbitration award is made by just one judicial instance.

Article 616, paragraph 1, CCP stipulates that the procedure that follows a claim challenging an arbitration award, or a claim regarding the declaration on the existence or inexistence of an arbitration award, is the same one as performed in front of a court of first instance. This means in fact that the Austrian Supreme Court has to apply the same procedural rules as a court of first instance (eg, in the context of taking evidence).

For disputes about the formation of the arbitral tribunal, the provisions of the Austrian Act on Non-Contentious Matters are applicable.

The amendments add four new paragraphs to article 617 ACCP (special provisions for consumers). In disputes involving a consumer, the present procedural levels remain in force; such cases will continue to involve three instances.

Additionally, the amendment adapts the regulation on the court fees for claims challenging an arbitration award, which, up to 1 January 2014, is 5 per cent of the value in dispute (with a minimum fee of €5,000).

The Vienna International Arbitral Centre has performed a review process aimed at modernising its rules, which had been first enacted in 1975. The new rules have been in force since 1 July 2013. The main changes to the rules can be summarised as follows.

Joinder of third parties
The arbitral tribunal has the authority to order a joinder of third parties upon request of either party or the third party itself. The tribunal has wide discretion provided that all parties (including the joining one) have been heard.

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

Confirmation of arbitrators
All arbitrators must be confirmed by the Arbitral Centre's secretary general.

Multiparty 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 reflecting change to the Austrian arbitration law providing for annulment proceedings to be directly lodged with the Supreme Court.

Expedited proceedings
The new rules contain specific speedy-trial regulations. They must be explicitly agreed upon (opt-in). The final award must be rendered within six months (unless extended).

Austria has not been a party to any investment treaty arbitration so far, and no such proceedings are known to be pending.

Proceedings subsequent to issuance of award

41 Interpretation and correction of awards

Does the arbitral tribunal have the power to correct or interpret an award on its own or at the parties' initiative? What time limits apply?

The parties can apply to the arbitral tribunal requesting a correction (of calculation, typing or clerical errors), clarification or to make an additional award (if the arbitral tribunal has not dealt with all claims presented to it in the arbitral proceedings). The time period for such application is four weeks, unless otherwise agreed by the parties. The arbitral tribunal is also entitled to correct the award on its own within four weeks (an additional award within eight weeks) from the date the award has been rendered.

42 Challenge of awards

How and on what grounds can awards be challenged and set aside?

Austrian courts are not entitled to review an arbitral award on its merits. There is no appeal against an arbitral award. However, it is possible to bring a legal action to set aside an arbitral award (both awards on jurisdictions and awards on merits) on very specific, narrow grounds, namely:

- the arbitral tribunal accepted or denied jurisdiction although no arbitration agreement or a valid arbitration agreement, exists;
- a party was incapable of concluding an arbitration agreement under the law applicable to that party;
- a party was unable to present its case (eg, it was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings);
- the award concerns matters not contemplated by, or not falling within the terms of the arbitration agreement, or concerns matters beyond the relief sought in the arbitration; if such defects concern a separable part of the award, such part must be set aside;
- the composition of the arbitral tribunal was not in accordance with articles 577 to 618 CCP or the parties' agreement;
- the arbitral procedure did not, or the award does not, comply with the fundamental principles of the Austrian legal system (*ordre public*);
- if the requirements to reopen a case of a domestic court in accordance with article 530(1), Nos. 1 to 5 of the CCP are fulfilled, for example:
  - the judgment is based on a document that was initially, or subsequently, forged;
  - the judgment is based on false testimony (of a witness, an expert or a party under oath);
  - the judgment is obtained by the representative of either party, or by the other party, by way of criminal acts (for example, 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);
  - the judgment is based on a criminal verdict that was subsequently lifted by another legally binding judgment; or
  - the award concerns matters that are not arbitrable in Austria.

Further, a party can also apply for a declaration for the existence or non-existence of an arbitral award.

43 Levels of appeal

How many levels of appeal are there? How long does it generally take until a challenge is decided at each level? Approximately what costs are incurred at each level? How are costs apportioned among the parties?

See 'Update and trends'.

44 Recognition and enforcement

What requirements exist for recognition and enforcement of domestic and foreign awards, what grounds exist for refusing recognition and enforcement, and what is the procedure?

Domestic arbitral awards are enforceable in the same way as domestic judgments.

Foreign awards are enforceable on the basis of bilateral or multilateral treaties that Austria has ratified, the New York Convention being by far the most important legal instrument. Thus, the general principle that mutuality of enforcement has to be guaranteed by treaty or decree remains applicable (as opposed to the respective provisions under the UNCITRAL Model Law).

The enforcement proceedings are essentially the same as for foreign judgments.

45 Enforcement of foreign awards

What is the attitude of domestic courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

Under article 5 of the New York Convention, the recognition and enforcement of a foreign arbitral award may be refused if the award has been set aside or suspended by the competent authority of the country in which, or under the laws of which, that award was made.

Austria is a contracting state to the New York Convention and Austrian courts would therefore, in general, refuse enforcement of such an award. However, if an award has been set aside on the grounds that it is in conflict with public policy at the place of arbitration, then the Austrian courts have to assess whether the award would also violate public policy in Austria. If the award is not in conflict with Austrian public policy, Austrian courts would probably enforce such an award.

46 Cost of enforcement

What costs are incurred in enforcing awards?

The prevailing party is entitled to recover the lawyers' fees from the opponent in accordance with Austrian Act on Lawyers' Fees (a schedule of fees based on the amount in dispute).

The court fees are based on the amount in dispute as well. If the principal amount of the enforced claim is, for example, for €1 million, the court fee for the enforcement against moveable property would amount to approximately €2,500; if the enforcement is against immoveable property, the court fee would be approximately €3,000.

Other

47 Judicial system influence

What dominant features of your judicial system might exert an influence on an arbitrator from your country?

In Austrian civil and commercial proceedings, there is no court-ordered discovery, and the possibilities to obtain a court order providing for the production of documents by the other party are rather limited. In Austrian arbitral proceedings, there is no tendency to US-style discovery, but arbitrators may order a certain amount of document production, depending on the applicable rules of arbitration and the agreement between the parties. Written witness statements are common in arbitral proceedings. The IBA Rules on the Taking of Evidence are becoming popular in arbitral proceedings.

48 Regulation of activities

What particularities exist in your jurisdiction that a foreign practitioner should be aware of?

Under Austrian tax law (implementing the Regulations (EC) No. 1798/2003 and No. 143/2008), arbitrators who are based in Austria need not charge VAT if the refunding party is a 'taxable person' under the said regulation and has its place of business outside Austria, but in the EU.

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