



Austria: Arbitration

This country-specific Q&A provides an overview of the legal framework and key issues surrounding arbitration law in [Austria](#) including arbitration agreements, tribunals, proceedings as well as costs, awards and the hot topics concerning this country at present.

This Q&A is part of the global guide to Arbitration.

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1.

What legislation applies to arbitration? Are there any mandatory laws?

The Austrian Code of Civil Procedure (Zivilprozessordnung) dedicates an entire chapter to arbitration (chapter four of the Code, sections 577 to 618).

While most provisions are not mandatory, some are. These concern mainly fundamental procedural safeguards. In the order as they are set forth in the Code of Civil Procedure, the provisions generally seen as mandatory are:

- Availability of interim protection (section 585);
- uneven number of arbitrators (most commonly one or three) (section 586);
- impartiality and independence of arbitrators (section 588);
- recourse to the Austrian Supreme Court in the case of an unsuccessful challenge of an arbitrator (section 589);
- possible early termination of an arbitrator's mandate (section 590);
- fair and equal treatment, the right to be heard and represented (section 594);

- arbitrators' freedom to consider evidence and obligation to duly inform of pieces of evidence, hearings and other parties' briefs (section 599);
- awards in violation of public order (ordre public) or on non-arbitrable matters are not binding (section 613);
- competency and procedure of the Austrian Supreme Court in arbitration (sections 615 et seq);
- special rules on arbitration clauses with consumers (section 617);
- special rules on arbitration in labour law matters (section 618).

2.

Is the country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?

Austria signed the New York Convention back in 1961 and withdrew an initial reservation in 1988. Since then, the Convention fully applies in Austria.

3.

What other arbitration-related treaties and conventions is the country a party to?

Also in the 1960s, Austria signed the European Convention on International Commercial Arbitration. Austria is also a party to the (International) Protocol on Arbitration Clauses and the Geneva Convention on the Execution of Foreign Arbitral Awards.

In 1971, Austria signed the Convention on the Settlement of Investment Disputes between States and Nationals of other States (ICSID Convention) and is party to more than 50 bilateral (investment) treaties.

4.

Is the law governing international arbitration based on the UNCITRAL Model Law? Are there significant differences between the two?

In 2006, the Austrian law governing arbitration was largely aligned with the provisions of the UNCITRAL Model Law; it applies equally to international and domestic arbitration as well as to

commercial and non-commercial matters. Hence, Austria can be considered a “Model Law Country”.

5. **Are there any impending plans to reform the arbitration laws?**

The last major reform took place in 2013 (Schiedsrechtsänderungsgesetz); currently, there are no such impending plans to reform in Austria.

6. **What arbitral institutions (if any) exist? Have there been any amendments to their rules or are there any being considered?**

In 1975, the Vienna International Arbitral Centre (VIAC) was founded (as part of the Austrian Federal Chamber of Commerce) and has played a significant role in international arbitration since. Austria’s location “between east and west” has contributed to the establishment of Vienna as a frequently used seat of arbitration under the auspices of the Vienna Rules as the procedural provisions sponsored by VIAC are called.

Until recently, the VIAC could only administer international arbitration (and regional institutions of the Chambers of Commerce administered domestic arbitrations); since mid 2017, also purely domestic cases can be resolved using VIAC.

7. **What are the validity requirements for an arbitration agreement?**

For an arbitration clause to be valid, the following conditions must be (cumulatively) met:

- The arbitration agreement must significantly specify the parties, ie those that shall be bound to resolve a dispute by arbitration need to be determinable.
- The parties must significantly specify the arbitrable dispute(s) (their subject matter or the legal basis for future disputes) they wish to submit to arbitration under the exclusion of domestic courts.

- The clause must be put in writing. It can feature in a document signed by the parties or in letters, telefaxes, e-mails or other forms of communication exchanged between the parties, which provide the evidence of an agreement. Shortcomings in form may be cured where the parties enter into the arbitration without objection.
- There are additional requirements where consumers or employees are involved (sections 617 and 618, respectively, of the Austrian Code on Civil Procedure).

8.

Are arbitration clauses considered separable from the main contract?

Arbitration clauses are considered separable.

It may also be noted in this context that they can, of course, take the form of an entirely separate agreement or be included in a contract only by way of reference (section 583 para 2 Austrian Code of Civil Procedure).

9.

Is there anything particular to note in your jurisdiction with regard to multi-party or multi-contract arbitration?

There is, in the law, no limit to multi-party or multi-contract arbitrations in Austria. Hence, the parties are free to enter into appropriate arbitration agreements.

However, Austrian law does also not particularly facilitate the consolidation of proceedings either. Without consent by the parties, arbitrators cannot join separate proceedings as their competency is limited to the proceedings where they are appointed (section 594 para 1 Austrian Code of Civil Procedure).

It may also be noted in this context that the Vienna Rules contain a provision (article 15) pursuant to which the secretary general of VIAC can, upon request by a party, join proceedings where the arbitrator(s) and place(s) of arbitration are identical.

10.

How is the law applicable to the substance determined?

There may be choices of law by the parties and it may be distinct from the one to be applied to the contract the arbitration agreement forms part of or relates to (as noted, arbitration clauses are considered separable).

If the parties have not made such choice of law, it is the jurisprudence of the Austrian Supreme Court that the law of the place of arbitration (lex fori) determines the validity of the arbitration agreement including whether it relates to an arbitrable matter. The capacity of the parties to enter into such agreement is ascertained in accordance with the respective personal law(s).

11.

Are any types of dispute considered non-arbitrable? Has there been any evolution in this regard in recent years?

Most disputes are arbitrable under Austrian law and, in particular, those that can be legally settled (such as typically commercial claims but also several non-proprietary claims).

Family law matters are a typical example of non-arbitrable disputes; the same goes for social security claims. This holds true even if the claims involve an economic interest. Also claims based on contracts subject (even if only in part) to the Austrian Tenant Act (Mietrechtsgesetz), the Austrian Non-Profit Housing Act (Wohnungsgemeinnützigkeitsgesetz) or the Austrian Condominium Act (Wohnungseigentumsgesetz) are also non-arbitrable.

While consumer and employment matters are, in principle, arbitrable, Austrian law requires the arbitration agreement to be concluded only once the dispute has arisen to be valid.

12.

Are there any default requirements as to the selection of a tribunal?

If the parties fail to appoint a tribunal (and no institutional rules step in), the Austrian default solution is that the Austrian Supreme Court, upon request, appoints, as the case may be:

- an arbitrator that should have been appointed by one party within four weeks of receipt of the written request by the other party;
- the chairman of the tribunal absent agreement by the party appointed arbitrators on such person;
- a sole arbitrator where the parties could not agree on an appointment.

In so doing, the Supreme Court is to have regard to any qualifications required and to appoint independent and impartial arbitrators.

13.

Can the local courts intervene in the selection of arbitrators? If so, how?

Since the last major amendment to Austrian arbitration law, the only court competent in arbitration matters is the Austrian Supreme Court (as first and last instance) and also this court in principle refrains from intervening in arbitration.

As noted, it may, upon request by a party, under certain circumstances help in the selection of a tribunal.

Further, the appointment of an arbitrator may be challenged before the Supreme Court.

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14.

Can the appointment of an arbitrator be challenged? What is the procedure for such challenge? Has there been an increase in number of challenges in your jurisdiction?

Generally, parties can challenge arbitrators if there are (justified) doubts about their impartiality or independence. To this end, arbitrators are to disclose any circumstances that are likely to give rise to such doubts and the parties may challenge an arbitrator within four weeks after becoming aware of relevant circumstances.

In a first step, the arbitral tribunal decides on the challenge (unless the arbitrator anyway resigns).

If the motion was unsuccessful, in a second step, the challenging party has four weeks to approach the Austrian Supreme Court which ultimately decides.

As far as can be seen, there is no increase in the number of challenges in Austria.

15.

What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?

Under Austrian law, a tribunal is entitled to continue with the proceedings when an arbitrator is challenged (which may be considered a kind of truncation), it may even issue the award.

If the tribunal actually loses one of its members, a new member is to be appointed according to the rules applicable to the appointment of the arbitrator to be replaced. Absent specific agreement(s) by the parties, it is generally up to the tribunal whether it continues or repeats all or part of the proceedings.

16.

Are arbitrators immune from liability?

In principle, arbitrators are liable if they do not or not timely fulfil their obligations under any accepted appointment. According to jurisprudence, however, the setting aside of the award is generally a precondition for any liability. Moreover, also the setting aside of an award does not automatically trigger the involved arbitrators' liability.

17.

Is the principle of competence-competence recognised? What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?

Austrian law recognises the concept of Kompetenz-Kompetenz; in other words, an arbitral tribunal has the competence to rule on its own competence/jurisdiction.

If an action is brought before a domestic court in apparent breach of an arbitration agreement, the charged court is to reject it. Further, such court proceedings do not prevent any parallel arbitral proceedings being commenced or continued. However, in practice, arbitral tribunals usually suspend their proceedings until the domestic court in question has rendered a final decision on the matter (for an award would be exposed to challenge if the court decided that it was competent).

Besides, the breach of an arbitration agreement by bringing an action before a domestic court can trigger liability under general Austrian civil law. Where the arbitration agreement is sufficiently broad, the arbitral tribunal can be competent to decide on respective damages.

18.

How are arbitral proceedings commenced? Are there any key provisions under the arbitration laws relating to limitation periods or time bars of which the parties should be aware?

The Austrian Code of Civil Procedure is silent on when arbitral proceedings are to be considered commenced (*lis pendens*). Generally, the service of a (reasoned) statement of claim on respondent and appointment of an arbitrator is seen as triggering *lis pendens* (and barring parallel court proceedings). Institutional rules typically contain more specific provisions on the issue (such as Article 7 of the Vienna Rules providing that the arbitral proceedings commence already with the VIAC secretariat receiving a statement of claim complying with the Vienna Rules requirements).

The Austrian arbitration law does not set out specific (limitation) periods. Therefore, the service of a (due) statement of claim on respondent within any applicable (general civil law) statute of limitation period(s) generally suffices to protect own claims against time bar arguments.

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19.

What happens when a respondent fails to participate in the arbitration? Can the local courts compel parties to arbitrate? Can they order third parties to participate in arbitration proceedings?

Under the Austrian arbitration law, no one can be compelled to actually participate in an arbitration. However, the parties to a valid arbitration agreement are, of course, bound by it and the Austrian Civil Procedure Code ensures that any non-participation does not inhibit the proceedings from progressing.

As regards third party participation, arbitral tribunals may ask local courts to order the appearance of witnesses and, failing such order, summoned witnesses may be penalized.

20.

In what circumstances is it possible for a state or state entity to invoke state immunity in connection with the commencement of arbitration proceedings?

According to customary international law, states or state entities may not invoke immunity relating to non-sovereign, commercial acts (*acta iure gestionis*).

Entering into an arbitration agreement, may even be regarded as a waiver of immunity in relation to sovereign acts (*acta iure imperii*) as far as subjected to the arbitration agreement. In this context, it may be noted that Austria is party to the Council of Europe's European Convention on State Immunity, which stipulates that a state being a party to an arbitration agreement may not invoke state immunity in relation to proceedings concerning this arbitration agreement. This is also set out in article 17 of the UN Convention on Jurisdictional Immunities of States and Their Property, which Austria ratified in 2006 but has not yet entered into force (21 ratifications out of the necessary 30), as well as in Austrian legislative materials thereto.

Filing an action for annulment of an award or filing a motion under the Austrian Civil Procedure Code by a state may also be regarded as such waiver of immunity.

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21.

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

Third parties may be bound by arbitration agreements or an award only if there are special situations such as, in particular, of legal succession (including assignments, conferment or redemption of debts) or they are beneficiaries (in such cases, the third party is still free to decide whether it consumes the rights under a contract but when it does, it is also considered bound by a respective arbitration clause according to Supreme Court jurisprudence).

22.

What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?

Under the Austrian Code of Civil Procedure, both domestic courts (particularly relevant where the tribunal is still being constituted) and arbitral tribunals may issue interim or protective measures upon request by a party. There is no closed catalogue of what such measure may consist of. However, the endangered party is to demonstrate irreparable harm or significant impediment of claims and the sought remedy must be appropriate relief. Moreover, if it shall be enforced through Austrian courts (arbitral tribunals have no coercive powers), the measure(s) should be comparable to those known to the Austrian court system (such as taking money or chattel into custody, prohibition to dispose of claims, etc).

23. **Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence?**

There are no particular rules governing the taking of evidence in arbitration in Austria.

Domestic courts may be asked for help in making witnesses appear or testify under oath or also in the enforcement of document production orders.

24. **What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings?**

There are no generally applicable codes or standards that would subject international professionals to additional good conduct obligations when acting as counsel or arbitrator in Austria. However, members of the Austrian bar are, as a matter of course, bound by the rules of the Austrian Bar Association, European attorneys by the CCBE Code of Conduct. Further, home state codes or professional standards may set forth additional obligations to be complied with irrespective of the place of arbitration.

25. **How are the costs of arbitration proceedings estimated and allocated?**

Generally, the loser pays principle applies. However, an arbitral tribunal is free to take also factors other than the outcome into account when allocating costs.

As regards the amount of costs, in principle, all reasonable costs for appropriate enforcement of or defence against claims are reimbursable. This includes the costs payable to the tribunal, any institution, expenses, legal fees (not limited to the statutory fees relevant in state litigation) and may also extend to compensation for time spend in-house (e.g. by members of the legal department).

26. **Can pre- and post-award interest be included on the principal claim and costs incurred?**

Interest can, in principle, only be awarded upon request by a party.

The amount payable on the principal claim(s) depends on the applicable substantive law(s). In Austria, the default interest rate in general civil law is 4% per annum; in the case of reproachable default amongst entrepreneurs, it is 9.2% above a certain base rate (currently, negative).

As regards interest on cost, it is generally considered that interest can only start running as of the issuing of the award.

27. **What legal requirements are there for the recognition of an award?**

Domestic awards are enforceable in the same way as court judgements in Austria.

International awards need to be recognised prior to enforcement. Since Austria is a signatory of the New York Convention, recognition of international awards is in practice largely governed by this convention with the peculiarity that the arbitration agreement only needs to be submitted to the court asked for recognition upon request by that court.

28. **Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts?**

Limits are ordre public and given that the enforcement has to be effected by the Austrian court system, alien remedies may prove difficult to enforce in practice.

29. **Can arbitration proceedings and awards be appealed or challenged in local courts? What are the grounds and procedure?**

Arbitral awards can be challenged on (very) limited grounds before the Austrian Supreme Court (as first and last instance). Further, a declaration on the existence or non-existence of an arbitral award may be requested from the Supreme Court if the one seeking such declaration can demonstrate a special (legal) interest in the declaration.

The Austrian Code of Civil Procedure contains an exhaustive list of grounds on which the setting aside of an arbitral award can be sought:

- In-existence of a valid arbitration agreement or the award extends to matters that are not covered by such agreement;
- composition or constitution of the tribunal in violation of the (few) mandatory provisions of the Austrian Code of Civil Procedure or against the agreement of the parties;
- (serious) violations of the right to be heard (such as not being informed of the arbitration proceedings in question);
- contravention of (other) fundamental principles of good arbitration procedures (procedural ordre public);
- the award suffers from a deficiency that would allow a court judgment to be challenged by an action for revision; namely, the award is based on a tampered document, a false testimony or a revised criminal judgment, was obtained by means of criminal behaviour or members of the tribunal pursued their duties to the detriment of a party and in violation of criminal provisions;
- non-arbitrable subject matter;
- the award is not in line with the fundamental values of the Austrian legal system (general ordre public).

All but the last two grounds (objective arbitrability and general ordre public) must actively be put forward by the party seeking the remedy. The last two grounds can be taken up ex officio if any challenge of the award is brought (as the award is then deemed non-existent).

30.

Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?

A general waiver of the rights to appeal is impermissible in Austria. Apart from objective arbitrability and general ordre public, grounds for appeal may be waived once the award has been issued.

31.

To what extent might a state or state entity successfully raise a defence of state or sovereign immunity at the enforcement stage?

In practice, the issue of state immunity is largely governed by customary international law. Even where a state has waived immunity, the Austrian Supreme Court has held that only property designated to non-sovereign purposes is subject to enforcement.

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32. **To what extent might a third party challenge the recognition of an award?**

Awards are generally recognised without even hearing the opposing party to the arbitration.

33. **Have there been any significant developments with regard to third party funding recently?**

There have not been significant developments on third party funding in Austria. However, particularly in state litigation, it is more common than in the past that third party funders are involved.

34. **Is emergency arbitrator relief available? Is this frequently used?**

The concept of emergency arbitrator is alien to Austrian law. The Vienna Rules set forth an expedite procedure (Article 45), which is, however, subject to the parties agreement.

35. **Are there arbitral laws or arbitration institutional rules providing for simplified or expedited procedures for claims under a certain value? Are they often used?**

The mentioned expedite procedure under the Vienna Rules can not only be applied to claims of limited value; however, its practical relevance is generally limited.

36. **Have measures been taken by arbitral institutions to promote transparency in arbitration?**

VIAC has published a selection of awards in an anonymised form to increase transparency. Further, VIAC is publishing the names of the arbitrators sitting on cases pending as of January 1, 2017.

37. **Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted? If so, how?**

Diversity is actively promoted on a voluntary basis and it may also be mentioned in this context that VIAC is now headed by two female professionals as general secretary and deputy general secretary.

38. **Have there been any developments regarding mediation?**

VIAC has also sponsored rules on mediation. And there are other institutions seated in Austria that are also promoting mediation such as the Energy Community.

39. **Have there been any recent court decisions considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?**

There is no such recent decision.