Title:
Austrian Arbitration Law 2006

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Austrian Arbitration Law

In force as of July 1, 2006 *

(Excerpt from the Austrian Code on Civil Procedures)

Chapter One: General Provisions

Section 577 Scope of Application

1" All of the provisions of this Part apply if the seat of the arbitral tribunal is in Austria.

2" Sections 578, 580, 583, 584, 585, 593 subsections (3) to (6) and sections 602, 612 and 614 apply even if the seat of the arbitral tribunal is not in Austria or no seat of the arbitral tribunal has yet been determined.

3" Until such time as the seat of the arbitral tribunal has been determined, Austrian courts shall have jurisdiction over the judicial matters contained in the Third Chapter, provided that one of the parties’ place of business, domicile or place of ordinary residence is in Austria.

4" The provisions of this Part are not applicable to institutions set up pursuant to the Law on Associations [ Vereinsgesetz ] for the settlement of disputes arising in relation to the association.

Section 578 Court Intervention

In matters governed by this Part, no court shall intervene except where so provided in this Part.

Section 579 Waiver of Right to Object

If the arbitral tribunal has not complied with a procedural provision of this Part from which the parties may derogate, or with any agreed procedural rules of the arbitral proceedings, a party shall lose its right to rely on such failure if it fails to object promptly upon becoming aware of it, or within the time-limit agreed therefore.

Section 580 Receipt of Written Communication

1" Unless otherwise agreed by the parties, a written communication is deemed to have been received on the day it is delivered to the addressee personally or to an authorised recipient or, if this was not possible, on the day it is delivered to the place of business, domicile or place of ordinary residence of the addressee.

2" If the addressee is aware of the arbitration proceedings and his residence, or the residence of an authorised recipient, cannot be found in spite of reasonable inquiry, a written communication is deemed to have been received on the day proper delivery is shown to have been attempted at a place which, at the time of conclusion of the arbitration agreement or subsequently, was disclosed by the addressee as an address to the other party or to the arbitral tribunal, and which hitherto has not been revoked by indication of a new address.

3" Subsections (1) and (2) do not apply to communications in court proceedings.

Second Chapter: The Arbitration Agreement

Section 581 Definition
1" An arbitration agreement is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of a separate agreement or in the form of a clause in a contract.

2" The provisions of this Part apply analogously to arbitral tribunals which either have been ordered in accordance with the law by testament or other legal transactions which are not based on an agreement by the parties, or are contained in articles of association.

Section 582 Arbitrability

1" Any proprietary claim which lies within the jurisdiction of the court may be subject to an arbitration agreement. An arbitration agreement relating to non-proprietary claims has legal effect insofar as the parties are able to conclude a settlement regarding the matter in dispute.

2" Claims in family law as well as all contractual claims which are wholly or partly subject to the Austrian Landlord and Tenant Act [Mietrechtsgesetz] or to the Austrian Act on Assisted Housing [Wohnungsgemeinnützigkeitsgesetz], including disputes relating to the entry into, existence, dissolution and legal classification of such contracts, as well as all claims in connection with cooperative apartment ownership [wohnungseigentumsrechtliche Ansprüche], cannot be subject to an arbitration agreement. Statutory provisions outside this Part according to which disputes may not, or only under certain circumstances, be subject to arbitration remain unaffected.

Section 583 Formal Requirements of the Arbitration Agreement

1" The arbitration agreement shall be contained either in a document signed by the parties, or in an exchange of letters, facsimiles, e-mails or other means of communication which ensure a record of the agreement.

2" The reference in a contract satisfying the formal requirements of subsection (1) to a document containing an arbitration clause constitutes an arbitration agreement, provided that the reference is such as to make that arbitration agreement part of the contract.

3" Entering the merits of the case in arbitration proceedings cures a formal defect in an arbitration agreement unless the defect is objected to at the latest when the merits of the case are entered.

Section 584 Arbitration Agreement and Claims Before Court

1" A court before which an action is brought in a matter which is the subject of an arbitration agreement shall dismiss the claim unless the respondent enters the merits of the dispute without raising objections to this effect. This rule does not apply if the court establishes that the arbitration agreement does not exist or is incapable of being performed. If such an action is pending before the court, arbitration proceedings may nevertheless be commenced or continued, and an award may be made.

2" If an arbitral tribunal denies its jurisdiction over a matter in dispute on the grounds that no arbitration agreement exists in relation to it, or that the arbitration agreement is incapable of being performed, a court shall not dismiss an action on that matter on the grounds that an arbitral tribunal has jurisdiction over the dispute. A claimant’s right to apply for a judgment under section 611, setting aside an arbitral tribunal’s decision to deny jurisdiction, ceases when he brings a claim in court.

3" No further legal action relating to the claim shall be brought before a court or an arbitral tribunal if arbitration proceedings are pending. An action brought in the same matter shall be dismissed. This does not apply if an objection contesting the arbitral tribunal’s jurisdiction has been raised before the arbitral tribunal no later than the time at which the merits of the case are entered and a decision of the arbitral tribunal thereon cannot be obtained within a reasonable period of time.

4" If a claim is dismissed by a court because of the jurisdiction of an arbitral tribunal, or if a claim is dismissed by an arbitral tribunal because of the jurisdiction of a court or of another arbitral tribunal, or if an arbitral award is vacated in setting aside proceedings due to a lack of jurisdiction of the arbitral tribunal, proceedings shall be deemed duly pursued if an action is brought immediately thereafter in a court or before an arbitral tribunal.
5” If a party relied on the existence of an arbitration agreement at an earlier point in time in a proceeding, it shall be precluded from pleading at a later point in time that such arbitration agreement does not exist, unless the relevant circumstances have since changed.

Section 585 Arbitration agreement and Interim Measures by Court

It is not incompatible with an arbitration agreement for a party to request, before or during arbitration proceedings, from a court a preliminary or protective measure and for a court to grant such a measure.

Third Chapter: Establishment of the Arbitral Tribunal

Section 586 Composition of the Arbitral Tribunal

1” The parties are free to determine the number of arbitrators. If the parties have agreed the number of arbitrators to be even, the arbitrators shall appoint an additional person as chairman.

2” Failing such determination by the parties, the number of arbitrators shall be three.

Section 587 Appointment of Arbitrators

1” The parties are free to agree on the procedure of appointing the arbitrator or arbitrators.

2” Failing an agreement on the procedure of appointment, the following shall apply:

1. In an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator within four weeks of receipt of a party’s written request to do so by the other party, he shall be appointed, upon application of a party, by the court.

2. In an arbitration with three arbitrators, each party shall appoint one arbitrator. The two arbitrators thus appointed shall appoint the third arbitrator who shall act as chairman of the arbitral tribunal.

3. In an arbitration with more than three arbitrators, each party shall appoint an equal number of arbitrators. The arbitrators thus appointed shall appoint another arbitrator who shall act as chairman of the arbitral tribunal.

4. If a party fails to appoint an arbitrator within four weeks of receipt of a written request to do so from the other party, or if the parties, within four weeks of the appointment of the arbitrators, do not receive any communication from them naming the arbitrator to be appointed by them, the arbitrator shall be appointed, upon application of a party, by the court.

5. A party shall be bound by his appointment of an arbitrator as soon as written communication of the appointment has been received by the other party.

3” Where, under an appointment procedure agreed upon by the parties,

1. a party fails to act as required under the procedure; or

2. the parties, or the arbitrators, are unable to reach an agreement in accordance with the procedure; or

3. a third party fails to perform any function entrusted to it under the procedure within three months of receipt of a respective written communication,

4” A written request for the appointment of an arbitrator shall contain particulars of the claim brought and state the arbitration agreement on which the respective party relies.

5” If multiple parties which are bound to appoint one or more arbitrators jointly cannot agree thereon within four weeks of receipt of a respective written communication, the arbitrator or arbitrators, upon application of a party, shall be appointed by a court, provided that the agreement on the appointment procedure provides no other means of securing the appointment.

6” If for other reasons the appointment of the arbitrator or the arbitrators has not taken place within four weeks of receipt of a respective written communication by one of the parties from the other, or if the appointment procedure for securing the appointment does not lead to an appointment within a reasonable time, the court shall likewise appoint the arbitrator or arbitrators upon application of a party.
7" If the appointment takes place prior to the first instance court’s decision and a party submits evidence for this, the application shall be dismissed.

8" The court, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties, and to such considerations which are likely to secure the appointment of an independent and impartial arbitrator.

9" A court decision by which an arbitrator is appointed shall be subject to no appeal.

Section 588 Grounds for Challenge

1" When a person wishes to accept an appointment as an arbitrator, he shall disclose any circumstances likely to give rise to doubt as to his impartiality or independence, or which contradict the agreement between the parties. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall promptly disclose such circumstances to the parties unless they have already been informed of them by him.

2" An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not comply with the qualifications agreed by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment or participation in it.

Section 589 Challenge Procedure

1" Subject to the provisions of subsection (3), the parties are free to agree on a procedure for challenging an arbitrator.

2" Failing such agreement, a party who intends to challenge an arbitrator shall, within four weeks after becoming aware of the composition of the arbitral tribunal, or after becoming aware of any circumstance pursuant to section 588 subsection (2), submit a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal, including the challenged arbitrator, shall decide on the challenge.

3" If a challenge under any procedure agreed upon by the parties or under the procedure of subsection (2) is not successful, the challenging party may apply, within four weeks after having received notice of the decision rejecting the challenge, to the court to decide on the challenge. The decision of the court shall be subject to no appeal. While such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

Section 590 Early Termination of Arbitrator's Mandate

1" The mandate of an arbitrator terminates if the parties agree on the termination, or if the arbitrator withdraws from office. Subject to subsection (2), the parties may also agree on a procedure for the termination of the arbitrator’s mandate.

2" Any party may request the court to decide on the termination of the mandate if the arbitrator is either unable to comply with his duties, or if he fails to comply with them without undue delay, and

1. the arbitrator does not withdraw from his office;
2. the parties cannot agree on the termination of his mandate; or
3. the procedure agreed upon by the parties does not lead to the termination of the arbitrator’s mandate.

A decision of the court shall be subject to no legal recourse.

3" If, under subsection (1) or section 589 subsection (2), an arbitrator withdraws from his office, or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the grounds mentioned in subsection (2) or section 588 subsection (2).

Section 591 Appointment of a Substitute Arbitrator

1" Where the mandate of an arbitrator terminates prematurely, a substitute arbitrator shall be appointed. The appointment
shall take place according to the rules that were applicable to the appointment of the arbitrator being replaced.

2” Unless the parties have agreed otherwise, the arbitral tribunal may continue the proceedings by making use of the outcome of the proceedings up to that point, in particular of the transcript of the hearing and all other records.

Fourth Chapter: Jurisdiction of the Arbitral Tribunal

Section 592 Competence of Arbitral Tribunal to Rule on its Own Jurisdiction

1” The arbitral tribunal may rule on its own jurisdiction. A decision on jurisdiction may be made together with the ruling on the merits or in a separate arbitral award.

2” A plea that the arbitral tribunal does not have jurisdiction shall be raised no later than the first submission on the merits. A party shall not be precluded from raising this plea by the fact that it has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during arbitral proceedings. In either case, a later plea is not admissible; but the arbitral tribunal may admit a later plea if, in the opinion of the arbitral tribunal, the delay is sufficiently excused.

3” Even while a request to set aside an award by which the arbitral tribunal affirmed its jurisdiction is still pending before a court, the arbitral tribunal may continue the arbitration proceedings as well as make an arbitral award.

Section 593 Power to Order Interim or Protective Measures

1” Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, and after having heard the other party, order such interim or protective measures against the other party as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute if otherwise the enforcement of a claim would be frustrated or materially hampered, or if there would be a danger of irreparable damage. The arbitral tribunal may require any party to provide appropriate security in connection with such a measure.

2” Measures pursuant to subsection (1) shall be ordered in writing; a signed copy of the order shall be delivered to each party. Where there is more than one arbitrator on the arbitral tribunal, the signature of the chairman or, in case of his incapacity, the signature of another arbitrator shall be sufficient provided that the chairman or the other arbitrator record the nature of the incapacitation in the order. Section 606 subsections (2), (3), (5) and (6) apply accordingly.

3” At the request of a party, the interim or protective measure shall be enforced by the district court [Bezirksgericht] of the endangered party’s opponent’s domestic seat of business, domicile or place of ordinary residence at the time of the first filing of the application for an interim or protective measure, otherwise by the district court [Bezirksgericht] where the action necessary to the enforcement of the interim or protective measure is to be carried out. If the measure provides for a means of protection unknown to domestic law, the court shall, upon request and after having heard the respondent, apply such other means of protection of domestic law which most closely approximates the means ordered by the arbitral tribunal. In doing so, it may, upon request, couch the means ordered by the arbitral tribunal in different terms in order to ensure that its purpose is implemented.

4” The court shall not enforce an interim or protective measure pursuant to subsection (1) if

1. the seat of the arbitral tribunal is located within domestic territory and the measure contains a defect which would constitute grounds for annulment of a domestic award under section 611 subsection (2), section 617 subsections (6) and (7) or section 618;
2. the seat of arbitration is not located within domestic territory and the measure contains a defect which would constitute grounds for refusing recognition, or for the issuance of an order of enforcement of a foreign arbitral award;
3. the enforcement of the measure is incompatible with a previously requested or issued measure of a domestic court or with a previously issued measure of a foreign court that is to be recognised;
4. the measure provides for a means of security which is unknown to domestic law and no appropriate means of security under domestic law has been applied for.

5” The court may hear the respondent prior to deciding on the enforcement of the measure pursuant to subsection (1). If the respondent has not been heard before a decision has been made, he may appeal the decision [Widerspruch] as
stipulated in section 397 of the Enforcement Act [Exekutionsordnung]. In either case, the respondent may only assert that a reason to refuse enforcement pursuant to subsection (4) exists. The court shall not decide on compensatory claims pursuant to section 394 Enforcement Act in such a proceeding.

6” Upon request, the court shall annul the enforcement if

1. the validity of the measure determined by the arbitral tribunal has expired;
2. the arbitral tribunal has restricted or set aside the measure;
3. any of section 399 subsection (1) nos. 1 to 4 EO applies, provided that the respective circumstances have not already been the subject of an earlier unsuccessful plea before the arbitral tribunal and the respective decision of the arbitral tribunal is not opposed by obstacles related to recognition (subsection (4));
4. a security pursuant to subsection (1) has been provided, which makes the enforcement of the measure unnecessary.

Fifth Chapter: Conduct of Arbitration Proceedings

Section 594 General Provisions

1” Subject to the mandatory requirements of this Part, the parties are free to agree on the procedure to be followed in conducting the proceedings. In doing so, they may refer to rules of procedure. Failing such agreement, the arbitral tribunal may, subject to the provisions of this Part, conduct the arbitration in such a manner as it considers appropriate.

2” The parties shall be treated fairly. Each party shall have the right to be heard.

3” The parties may be represented or advised by persons of their choice. This right shall not be excluded or restricted.

4” An arbitrator who does not fulfil the duty assumed by acceptance of the appointment, or does not fulfil it in a timely manner, shall be liable towards the parties for all damage caused by his culpable refusal or delay.

Section 595 Seat of the Arbitral Tribunal

1” The parties are free to agree on the seat of the arbitral tribunal. They may also leave the determination of the seat to an arbitral institution. Failing such agreement, the seat of the arbitral tribunal shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the suitability of the seat to the parties.

2” Unless otherwise agreed by the parties, and notwithstanding the provisions of subsection (1), the arbitral tribunal may conduct proceedings at any place it considers appropriate, particularly in order to consult among its members, make decisions, conduct oral proceedings and inspect evidence.

Section 596 Language of the Proceedings

The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, this shall be determined by the arbitral tribunal.

Section 597 Statements of Claim and Defence

1” Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall submit his claim and state the facts on which the claim is based on, and the respondent shall respond. The parties may present any evidence they consider to be relevant or indicate further evidence they wish to rely on.

2” Unless otherwise agreed by the parties, both parties may, in the course of the proceedings, amend or supplement their claim or the facts on which the claim or defence is based, unless the arbitral tribunal does not permit this due to delay.

Section 598 Oral Hearing and Written Proceedings

Unless otherwise agreed by the parties, the arbitral tribunal shall decide whether to hold oral hearings or whether the proceedings shall be conducted in writing. Unless the parties have agreed that no oral hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.
Section 599 Conduct of Proceedings and Taking of Evidence

1" The arbitral tribunal has the power to decide on the admissibility of evidence, to take such evidence and to determine its relevance, materiality and weight unrestrictedly.

2" The parties shall be given sufficient notice of any hearing and of any meeting of the arbitral tribunal for the purpose of the taking of evidence.

3" All submissions, documents and other communications supplied to the arbitral tribunal by one party shall be communicated to the other party; expert reports or other evidence on which the arbitral tribunal may rely in making its decision shall be communicated to both parties.

Section 600 Default of a Party to Observe the Course of Proceedings

1" If the claimant fails to communicate his statement of claims in accordance with section 597 subsection (1), the arbitral tribunal shall terminate the proceedings.

2" If the respondent fails to respond pursuant to section 597 subsection (1) within the agreed or ordered term, the arbitral tribunal, if the parties have not agreed otherwise, shall continue the proceedings without treating such failure in itself as an admission of the claimant’s allegations. The same shall apply where a party defaults with respect to another procedural act. The arbitral tribunal may continue the proceedings and decide on the basis of the evidence taken. If, in the opinion of the arbitral tribunal, the default is sufficiently excused, such procedural action may be performed later.

Section 601 Expert Appointed by Arbitral Tribunal

1" Unless otherwise agreed by the parties, the arbitral tribunal may

1. appoint one or more experts to supply it with a report on specific issues to be determined by the arbitral tribunal;
2. require the parties to give to the expert any relevant information, or to produce, or to provide access to, any documents or objects which are relevant to the proceedings in order to make a report.

2" Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his report, participate in an oral hearing where the parties may put questions to the expert and have their own experts testify on the points at issue.

3" Sections 588, 589 subsection (1) and 589 subsection (2) shall apply accordingly to the expert appointed by the arbitral tribunal.

4" Unless otherwise agreed by the parties, each party has the right to present reports of its own expert witnesses. Subsection (2) applies accordingly.

Section 602 Court Assistance

The arbitral tribunal, arbitrators authorized for this purpose by the arbitral tribunal, or any party with the approval of the arbitral tribunal, may request from a court the performance of judicial acts for which the arbitral tribunal does not have authority. Legal assistance may include for a court to ask a foreign court or other authority to carry out such acts. Sections 37 subsections (2)-(5) and sections 38, 39 and 40 Jurisdiction Code apply with the proviso that both the arbitral tribunal and the parties to the arbitration proceedings are entitled to appeal according to section 40 JN. The arbitral tribunal, an arbitrator authorised by the arbitral tribunal, and the parties are entitled to participate in taking evidence before court and to ask questions. Section 289 applies accordingly.

Sixth Chapter: Award and Termination of Proceedings

Section 603 Applicable Law

1" The arbitral tribunal shall decide the dispute in accordance with such rules of law as have been chosen by the parties. An agreement on law or the legal system of a given State shall be construed, unless the parties have explicitly agreed otherwise, as directly referring to the substantive law of the State and not to its conflict of law rules.
2" Failing any designation of the applicable rules of law by the parties, the arbitral tribunal shall apply the laws it considers appropriate.

3" The arbitral tribunal shall decide ex aequo et bono only if the parties have expressly authorized it to do so.

Section 604 Decision Making by Panel of Arbitrators

Unless otherwise agreed by the parties, the following shall apply:

1. In arbitration proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made by a majority of all its members. Questions of procedure may be decided by the chairman alone, if so authorised by the parties or all members of the arbitral tribunal.

2. If one or several of the arbitrators abstain from a vote without a justified ground, the other arbitrators shall decide without them. In such a case, the necessary majority shall still be calculated based on the total number of arbitrators who participate and who abstain. Before any decision on an arbitral award is made, the intention to proceed without the abstaining arbitrator shall be communicated to the parties. For all other decisions, the parties shall be informed about abstentions after the event.

Section 605 Settlement

If, during arbitral proceedings, the parties settle the dispute, and if the matter in dispute is such that the parties are able to conclude a settlement, they may request:

1. the arbitral tribunal to record the settlement, provided that the content of the settlement does not violate Austrian public policy; for this purpose it is sufficient if the parties and the chairman of the tribunal sign the record;

2. the arbitral tribunal to record the settlement as an arbitral award by consent provided that the content of the settlement does not violate Austrian public policy. Such an arbitral award shall be made in accordance with section 606. It has the same effect as an award on the merits.

Section 606 Arbitral Award

1" The arbitral award shall be made in writing and shall be signed by the arbitrator or arbitrators. Unless the parties have agreed otherwise, in arbitration proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the chairman or another arbitrator notes the obstacle which prevented the missing signatures on the award.

2" Unless the parties have agreed otherwise, the award shall state the reasons on which it is based.

3" The award shall state the date on which it has been made and the seat of the arbitral tribunal as determined in accordance with section 595 subsection (1). The award shall be deemed to have been made on that day and at that place.

4" A copy of the arbitral award signed by the arbitrators in accordance with subsection (1) shall be delivered to each party.

5" The arbitral award and the documents relating to its delivery are common instruments [gemeinsame Urkunden] of the parties and the arbitrators. The arbitral tribunal shall discuss a possible custody of the arbitral award and the documents relating to its service with the parties.

6" The chairman or, in case of incapacity, another arbitrator shall, at the request of a party, confirm on one copy of the award that the award is final and enforceable.

7" The making of an arbitral award does not invalidate the underlying arbitration agreement.

Section 607 Effect of Arbitral Award

Between the parties, an arbitral award has the effect of a legally binding judgement.

Section 608 Termination of Arbitration Proceedings
Arbitration proceedings are terminated by an arbitral award on the merits, by settlement, or by an order of the arbitral tribunal in accordance with subsection (2).

The arbitral tribunal shall terminate the arbitration proceedings if

1. the claimant fails to file a statement of claims in accordance with section 597 subsection (1);
2. the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognises a legitimate interest on the respondent’s part in obtaining a final settlement of the dispute;
3. the parties agree on the termination of the proceedings and communicate this to the arbitral tribunal;
4. the continuation of the proceedings has become impossible for the arbitral tribunal; in particular if, in spite of a written request by the arbitral tribunal referring to the possibility of terminating the proceedings, the parties hitherto participating in the proceedings do not pursue the arbitration proceedings further.

The mandate of the arbitral tribunal terminates with the termination of the arbitration proceedings, subject to the provisions of sections 606 subsections (4)-(6), section 609 subsection (5) and section 610 as well as subject to the duty to repeal an ordered preliminary or protective measure.

Section 609 Decision as to Costs

Unless otherwise agreed by the parties, the arbitral tribunal shall decide on the obligation of the parties to reimburse the costs of the proceedings upon termination of the arbitration proceedings. In so doing, the arbitral tribunal has discretion to take into account the circumstances of the case, especially the outcome of the proceedings. The obligation to reimburse costs may include all reasonable costs for adequate enforcement or defence. In case of section 608 subsection (2) number 3, such a decision shall be made only if a party requests such a decision at the same time as communicating the agreement to terminate proceedings.

If the arbitral tribunal decides that it has no jurisdiction for reason of a non-existent arbitration agreement, it may nonetheless, at the request of the respondent, decide on the claimant’s obligation to reimburse the costs of the proceedings.

The arbitral tribunal shall, at the same time as it decides on the obligation for reimbursement of costs, determine the extent of the costs to be reimbursed, to the extent that this is already possible and the costs are not set off against each other.

In all cases, the decision on the obligation for reimbursement of costs and the determination of the amount to be reimbursed shall be made in the form of an arbitral award pursuant to section 606.

If the decision on the obligation to reimburse costs, or on the determination of the amount to be reimbursed has not yet been made, or if this decision can only be made after the termination of the arbitration proceedings, a decision on these costs shall be made in a separate arbitral award.

Section 610 Correction, Interpretation and Addendum to the Arbitral Award

Unless another period of time has been agreed upon by the parties, any party may request the arbitral tribunal within four weeks upon receipt of the award to

1. correct in the award any errors in computation, clerical or typographical errors or errors of similar nature;
2. give an interpretation of specific parts of the award, if so agreed by the parties;
3. make an additional award as to claims asserted in the arbitration proceedings but not decided by the arbitral award.

A request pursuant to subsection (1) shall be communicated to the other party. The other party shall be heard prior to the decision on such a request.

The arbitral tribunal shall decide on the correction or interpretation of the arbitral award within four weeks and on the additional award within eight weeks.

Even where there is no request, the arbitral tribunal may correct the arbitral award pursuant to subsection (1) number 1 within four weeks from the date of the award.

Section 606 applies to the correction and interpretation of an arbitral award or of an additional arbitral award. The interpretation or correction is part of the arbitral award.
Seventh Chapter: Recourse Against Arbitral Award

Section 611 Application to Set Aside an Arbitral Award

1" Recourse to a court against an arbitral award may be made only by an application to set aside. This also applies to arbitral awards by which the arbitral tribunal has ruled on its jurisdiction.

2" An arbitral award shall be set aside if

1. a valid arbitration agreement does not exist, or if the arbitral tribunal denied its jurisdiction although a valid arbitration agreement did exist, or if a party, under the respective applicable law [Personalstatut], was incapable of concluding a valid arbitration agreement;
2. a party was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case;
3. the arbitral award deals with a dispute not falling within the terms of the arbitration agreement, or contains decisions on matters which are beyond either the scope of the arbitration agreement or the submission of the parties to arbitration; if this defect concerns only a separable part of the award, only this part shall be set aside;
4. the constitution or composition of the arbitral tribunal is not in accordance with the provisions of this Part or with a valid agreement of the parties;
5. the arbitration proceedings were conducted in a way so as to violate Austrian public policy.
6. the preconditions under which a judgement of a court of law can be appealed by filing an application for revision pursuant to section 530 subsection (1) numbers 1 to 5 are satisfied;
7. the matter in dispute is not arbitrable under domestic law;
8. the arbitral award violates Austrian public policy.

3" The grounds for setting aside stipulated in subsection (2) numbers 7 and 8 shall also be observed ex officio.

4" An application to set aside shall be filed within three months of the day on which the claimant had received the arbitral award or additional award. An application pursuant to section 610 subsection (1) numbers 1 or 2 shall not extend this time-limit. In case of subsection (2) number 6, the time-limit for the application to set aside shall be assessed in accordance with the provisions about the application for revision.

5" The setting aside of an arbitral award does not affect the validity of the underlying arbitration agreement. If an arbitral award on the same subject matter has been set aside twice and another arbitral award made thereon is to be set aside, the court, upon request of one of the parties, shall at the same time declare the arbitration agreement invalid in relation to that subject matter.

Section 612 Determination of the Existence or Non-existence of an Arbitral Award

A request may be made to determine the existence or non-existence of an arbitral award where the applicant has a legitimate interest in it.

Section 613 Regard to Grounds for Setting Aside in Other Proceedings

If, in another proceeding, such as enforcement proceedings, a court or other authority holds that there are grounds for setting aside under section 611 subsection (2) numbers 7 and 8, the arbitral award shall not be taken into account in those proceedings.

Eighth Chapter: Recognition and Declaration of Enforceability of Foreign Arbitral Awards

Section 614

1" The recognition and declaration of enforceability of foreign arbitral awards is governed by the provisions of the Enforcement Act to the extent not determined otherwise by international law or legal acts of the European Union. The formal requirements for the arbitration agreement shall in any case be deemed satisfied if the arbitration agreement complies with the formalities of section 583 as well as with the formalities of the law applicable to the arbitration agreement.
The presentation of an original or certified copy of the arbitration agreement pursuant to Art.IV(1)(b) of the New York Convention on the recognition and enforcement of foreign arbitral awards shall only be necessary upon request by the court.

Ninth Chapter: Court Procedure

Section 615 Jurisdiction

1” In the first instance, jurisdiction for an application to set aside, an application to determine the existence or non-existence of an arbitral award, as well as for proceedings in matters relating to the third Part, shall be given, without regard to the value of the matter in dispute, to such regional court [Landesgericht] having general jurisdiction in civil matters which either is named in the arbitration agreement, or the jurisdiction of which has been agreed pursuant to section 104 Jurisdiction Code [JN] or, failing such indication or agreement, to the court of the seat of the arbitral tribunal. If the seat of the arbitral tribunal has not yet been determined, or in case of section 612, if the seat is not located in Austria, the Vienna Commercial Court (Handelsgericht Wien) shall have jurisdiction.

2” If the subject matter of the arbitral award is a commercial matter according to section 51 JN, the regional court which has jurisdiction in commercial matters, the Vienna Commercial Court (Handelsgericht Wien) for Vienna, has jurisdiction; if an employment matter according to section 50 subsection (1) Act on the Procedure before the Labour and Social Court [ASGG] is concerned, the regional courts shall decide as labour and social courts; in Vienna the Vienna Labour- and Social Court shall have jurisdiction.

Section 616 Court Proceedings

1” The court proceedings regarding an application to set aside an arbitral award and regarding an application for the determination of the existence or non-existence of an arbitral award are governed by the provisions of this law; the court proceedings in matters pursuant to the third Part are governed by the general provisions of the Act on non-litigious matters [Außerstreitgesetz].

2” The public may be excluded from the proceedings at the request of a party, if that party demonstrates that it has a legitimate interest.

Tenth Chapter: Special Provisions

Section 617 Consumers

1” Arbitration agreements between an entrepreneur [Unternehmer] and a consumer may only be effectively concluded where the dispute has already arisen.

2” Arbitration agreements which involve a consumer shall be contained in a document signed by the consumer himself. The document shall not contain any agreements other than those relating to the arbitration proceedings.

3” In relation to arbitration agreements between an entrepreneur and a consumer, a written legal instruction on the major differences between arbitration and state court litigation shall be issued to the consumer prior to the conclusion of the arbitration agreement.

4” Arbitration agreements between entrepreneurs and consumers shall determine the seat of the arbitral tribunal. The arbitral tribunal may only meet in another place for the oral hearing or the taking of evidence if the consumer gives his consent, or if substantial obstacles prevent the taking of evidence at the seat of the arbitral tribunal.

5” If the arbitration agreement was concluded between an entrepreneur and a consumer and if the consumer’s domicile, place of ordinary residence or place of employment is, neither at the time of the conclusion of the arbitration agreement nor at the time at which a claim becomes pending, in the territory of the state where the seat of the arbitral tribunal is located, the arbitration agreement shall only be valid if the consumer relies on it.

6” An arbitral award shall also be set aside if in arbitration proceedings involving a consumer

1. a mandatory law has been violated, the application of which is such that even if the facts of the case contain a
foreign element, they could not be contracted out by the parties’ choice of law; or
2. such conditions are present which allow for a court judgment to be challenged by means of an application for revision according to sections 530 subsection (1) numbers 6 and 7; in such a case, the time-limit for the application to set aside shall be determined according to the provisions on the application for revision.
7” If the arbitration has taken place between an entrepreneur and a consumer, the arbitral award is likewise to be set aside if the written legal instruction pursuant to subsection (3) has not been issued.

Section 618 Matters Related to Employment Law

Section 617 subsections (2) to (7) apply accordingly to arbitration proceedings in matters related to employment law pursuant to section 50 subsection (1) ASGG.

* This English translation was kindly provided by Dr. Gerold Zeiler/Mag. Barbara Steindl, Schönherr Rechtsanwälte GmbH, Tuchlauben 17, 1010 Vienna.

Referring Principles:

XIII.1.1 - Arbitration agreement
XIII.1.2 - Arbitration agreement and substantive claim before court
XIII.1.3 - Arbitration agreement and interim measures by court
XIII.2.1 - Number of arbitrators
XIII.2.2 - Arbitrator's duty to disclose
XIII.2.3 - Grounds for challenge of an arbitrator
XIII.2.4 - Principle of separability of the arbitration clause
XIII.2.5 - Power of arbitral tribunal to order interim measures
XIII.3.1 - Arbitral due process
XIII.3.2 - Determination of rules of procedure
XIII.3.3 - Seat of arbitration
XIII.3.4 - Language of the arbitration
XIII.3.6 - Hearings and written proceedings
XIII.3.8 - Default of a party
XIII.3.9 - Waiver of right to object
XIII.4.1 - Rules applicable to merits; decision ex aequo et bono
XIII.2.6 - Decision making by panel of arbitrators
XIII.4.3 - Settlement
XIII.4.2 - Form and contents of award
XIII.4.4 - Termination of proceedings