

VIAC || Vienna International
Arbitral Centre

VIAC VIAC VIAC VIAC VIAC VIAC VIAC VIAC VIAC VIAC VIAC
AUSTRIAN
ARBITRATION ACT
as amended by **SchiedsRÄG 2013**

www.viac.eu

International Arbitral Centre of the Austrian Federal Economic Chamber

Imprint

Publisher

International Arbitral Centre (VIAC) of the Austrian Federal Economic Chamber
Wiedner Hauptstrasse 63, 1045 Vienna, Austria

Translation

This translation was made by Stefan Riegler / Alice Fremuth-Wolf / Martin Platte (cf. Riegler/Petsche/Fremuth-Wolf/Platte and Liebscher, *Arbitration Law of Austria: Practice and Procedure*, Juris Publishing, Huntington, New York, 2007, Chapter 5) and was revised with respect to the amendments made in Sections 615-618.

Layout

WKO Inhouse GmbH | Media
Wiedner Hauptstrasse 120-124, 1050 Vienna, Austria

AUSTRIAN ARBITRATION ACT

SEC 577-618 AUSTRIAN CODE OF CIVIL PROCEDURE^{*)}
as amended by SchiedsRÄG 2013 in force as of 1 January 2014



^{*)} Law of 1 August 1895 Austrian Code of Civil Procedure, RGBl. Nr. 113/1895
as amended by the 2013 Amendment to the Austrian Arbitration Act -
“SchiedsRÄG 2013”, BGBl. I Nr. 118/2013 in force as of 1 January 2014

INDEX

AUSTRIAN CODE OF CIVIL PROCEDURE – FOURTH CHAPTER: ARBITRATION PROCEDURE

First Title: General Provisions

Sec 577	Scope of Application	4
Sec 578	Court Intervention	4
Sec 579	Duty to Object.....	4
Sec 580	Receipt of Written Communications	4

Second Title: Arbitration Agreement

Sec 581	Definition	5
Sec 582	Arbitrability	5
Sec 583	Form of Arbitration Agreement	5
Sec 584	Arbitration Agreement and Action before Court.....	6
Sec 585	Arbitration Agreement and Interim Measures by Court	6

Third Title: Constitution of the Arbitral Tribunal

Sec 586	Composition of the Arbitral Tribunal	7
Sec 587	Appointment of arbitrators	7
Sec 588	Grounds For Challenge	8
Sec 589	Challenge Procedure.....	8
Sec 590	Early Termination of an Arbitrator’s Mandate	9
Sec 591	Appointment of a Substitute Arbitrator	9

Fourth Title: Jurisdiction of the Arbitral Tribunal

Sec 592	Competence of the Arbitral Tribunal to Rule on Its Own Jurisdiction ...	10
Sec 593	Ordering of Interim or Protective Measures	10

Fifth Title: Conduct of the Arbitral Proceedings

Sec 594	General Provisions	12
Sec 595	Seat of the Arbitral Tribunal	12
Sec 596	Language of Proceedings	12
Sec 597	Statements of Claim and Defense	12
Sec 598	Oral Hearings and Written Proceedings	13
Sec 599	Proceedings and Taking of Evidence.....	13
Sec 600	Default of a Procedural Act.....	13
Sec 601	Expert Appointed by Arbitral Tribunal.....	14
Sec 602	Judicial Assistance.....	14

Sixth Title: Making of Award and Termination of Proceedings

Sec 603	Applicable Substantive Law	15
Sec 604	Decision Making by Panel of Arbitrators	15
Sec 605	Settlement	15
Sec 606	Arbitral Award	16
Sec 607	Effect of the Arbitral Award	16
Sec 608	Termination of Arbitral Proceedings	16
Sec 609	Decision on Costs.....	17
Sec 610	Correction, Explanation of the Award and Additional Award	17

Seventh Title: Recourse Against the Arbitral Award

Sec 611	Action for Setting Aside an Arbitral Award.....	18
Sec 612	Declaration of Existence or Non-Existence of an Arbitral Award	19
Sec 613	Consideration of Grounds of Setting Aside in Other Proceedings.....	19

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

Sec 614	Recognition and Declaration of Enforceability of Foreign Arbitral Awards.....	19
---------	--	----

Ninth Title: Court Proceedings

Sec 615	Jurisdiction.....	20
Sec 616	Proceedings	20

Tenth Title: Special Provisions

Sec 617	Consumers.....	20
Sec 618	Labour Law Matters.....	21

FIRST TITLE: GENERAL PROVISIONS

SCOPE OF APPLICATION

Section 577

- (1) The provisions of this Chapter shall apply if the seat of the arbitral tribunal is within Austria.
- (2) Sections 578, 580, 583, 584, 585, 593 paragraphs (3) to (6), sections 602, 612 and 614 shall also apply if the seat of the arbitral tribunal is not within Austria or has not yet been determined.
- (3) As long as the seat of the arbitral tribunal has not yet been determined, the Austrian courts shall have jurisdiction for those judicial matters stipulated in the Third Title hereof if one of the parties has its seat, domicile or habitual residence within Austria.
- (4) The provisions of this Chapter shall not be applicable to panels according to the Austrian Act on Associations and Societies (“Vereinsgesetz”) for the conciliation of disputes arising out of disputes within an association or society (“Verein”).

COURT INTERVENTION

Section 578

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

DUTY TO OBJECT

Section 579

If the arbitral tribunal has not complied with a procedural provision of this Chapter from which the parties may derogate, or with an agreed procedural requirement of the arbitral proceedings, a party who proceeds with the arbitral proceedings without stating its objection immediately after having become aware thereof, or within the provided time period, may not raise that objection later.

RECEIPT OF WRITTEN COMMUNICATIONS

Section 580

- (1) Unless otherwise agreed by the parties, any written communication is deemed to have been received on the day upon which it is delivered personally to the addressee or to an authorized recipient or, if this was not possible, on the day upon which it is delivered to the seat, domicile or habitual residence of the recipient.
- (2) Where the addressee has knowledge of the arbitral proceedings and where his or the authorized recipient’s whereabouts remain unknown despite reasonable inquiries, any written communication is deemed to have been received on the day upon which orderly delivery was demonstrably attempted at a place indicated by the addressee in the arbitration agreement or subsequently indicated to the other party or to the arbitral tribunal and which has not hitherto been revoked upon indication of a new address.
- (3) Paragraphs (1) and (2) shall not apply to communications in court proceedings.

SECOND TITLE: ARBITRATION AGREEMENT

DEFINITION

Section 581

- (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. The arbitration agreement may be concluded in the form of a separate agreement or as a clause within a contract.
- (2) The provisions of this Chapter shall apply accordingly to arbitral tribunals that are, in a legally valid manner, mandated by testamentary disposition or other legal transactions that are not based on agreements by the parties or through articles of association or incorporation.

ARBITRABILITY

Section 582

- (3) Any claim involving an economic interest that lies within the jurisdiction of the courts of law can be subject of an arbitration agreement. An arbitration agreement concerning claims not involving an economic interest shall have legal effect to the extent that the parties are entitled to conclude a settlement on the subject-matter in dispute.
- (4) Claims in family law matters as well as all claims based on contracts that are even only partly subject to the Tenancy Act (“Mietrechtsgesetz”) or to the Non-Profit Housing Act (“Wohnungsgemeinnützigkeitsgesetz”), including all disputes regarding the conclusion, existence, termination and legal characterization of such contracts and all claims concerning the condominium property may not be made subject of an arbitration agreement. Statutory provisions outside this Chapter by virtue of which certain disputes may not, or may only under certain conditions, be made subject to arbitral proceedings, remain unaffected.

FORM OF ARBITRATION AGREEMENT

Section 583

- (5) The arbitration agreement must be contained either in a written document signed by the parties or in letters, telefax, e-mails or other means of transmitting messages exchanged between the parties, which provide a record of the agreement.
- (6) The reference in a contract complying with the form requirements of paragraph (1) to a document containing an arbitration agreement constitutes an arbitration agreement, provided that the reference is such as to make that arbitration agreement part of the contract.
- (7) E A defect in the form of the arbitration agreement is cured in the arbitral proceedings by entering into argument on the substance of the dispute, unless an objection is raised, at the latest, when entering into argument on the substance of the dispute.

ARBITRATION AGREEMENT AND ACTION BEFORE COURT

Section 584

- (1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall reject the claim, unless the defendant makes submissions on the substance of the dispute or orally pleads before the court without making an according objection. This shall not apply if the court establishes that the arbitration agreement does not exist or is incapable of being performed. While such proceedings are pending before a court, arbitral proceedings may nevertheless be commenced or continued and an award may be made.
- (2) If an arbitral tribunal denies its jurisdiction for the matter in dispute because an arbitration agreement relating to the matter does not exist, or the arbitration agreement is incapable of being performed, the court may not reject an action on this matter on the grounds that an arbitral tribunal has jurisdiction for the matter. The right of the claimant to bring an action under section 611 for setting aside the decision, with which the arbitral tribunal denied its jurisdiction, ceases when he brings an action in court.
- (3) While arbitral proceedings are pending, no further action may be brought before a court or an arbitral tribunal concerning the asserted claim; an action brought because of the same claim shall be rejected. This shall not apply if an objection to the jurisdiction of the arbitral tribunal was raised with the arbitral tribunal, at the latest, when entering into argument on the substance of the dispute and a decision of the arbitral tribunal thereon cannot be obtained within a reasonable period of time.
- (4) If an action is rejected by a court due to the jurisdiction of an arbitral tribunal, or by an arbitral tribunal due to the jurisdiction of a court or of another arbitral tribunal, or when an arbitral award is set aside in setting aside proceedings due to lack of jurisdiction of the arbitral tribunal, the proceedings are deemed to have been properly continued if the action is immediately brought before the court or arbitral tribunal.
- (5) A party that invoked the existence of an arbitration agreement at an earlier stage in the proceedings may not, at a later stage, claim that such agreement does not exist unless the relevant circumstances have changed since.

ARBITRATION AGREEMENT AND INTERIM MEASURES BY COURT

Section 585

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

THIRD TITLE: CONSTITUTION OF THE ARBITRAL TRIBUNAL

COMPOSITION OF THE ARBITRAL TRIBUNAL

Section 586

- (1) The parties are free to agree on the number of arbitrators. If the parties have, however, agreed on an even number of arbitrators, then these shall appoint a further person as chairman.
- (2) Unless otherwise agreed by the parties, the number of arbitrators shall be three.

APPOINTMENT OF ARBITRATORS

Section 587

- (1) The parties are free to agree on the procedure for appointing the arbitrator or arbitrators.
- (2) Failing such agreement on the appointment procedure, the following shall apply:
 1. In arbitral proceedings with a sole arbitrator, if the parties are unable to agree on the arbitrator within four weeks of receipt of a request to do so from the other party, the arbitrator shall, upon request by either party, be appointed by the court.
 2. In arbitral proceedings 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. If more than three arbitrators have been provided for, each party shall appoint the same number of arbitrators. The arbitrators thus appointed shall appoint a further 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 do not receive notification by the arbitrators regarding the arbitrator to be appointed by them within four weeks of their appointment, the arbitrator shall, upon request by either party, be appointed by the court.
 5. A party is bound by its appointment of an arbitrator as soon as the other party has received written notice of the appointment.
- (3) Where the parties have agreed on the appointment procedure and
 1. a party fails to act as required under such procedure, or
 2. the parties or the arbitrators are unable to reach an agreement in accordance with such procedure, or
 3. a third party fails to perform any function entrusted to it under such procedure within three months of receipt of an according written notice,

either party may request from the court to make the necessary appointment, unless the agreed appointment procedure provides for other means for securing the appointment.

- (4) The written request for the appointment of an arbitrator shall also state which claim is being asserted and on which arbitration agreement the party is relying.
- (5) Where several parties that are under the obligation to jointly appoint one or more arbitrators have not been able to agree upon such appointment within four weeks of receipt of a written notice to do so, the arbitrator or the arbitrators shall, upon request by either party, be appointed by the

court, unless the agreed appointment procedure provides otherwise.

(6) The arbitrator or the arbitrators shall also be appointed by the court upon request by either party if within four weeks of receipt of a written notice from one party to the other party his or their appointment cannot be made for reasons which are not regulated in the preceding paragraphs, or if the appointment procedure for securing an appointment does not result in an appointment within a reasonable period of time.

(7) If the appointment is made prior to the decision in first instance and a party provides evidence thereof, the request 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 as are likely to secure the appointment of an independent and impartial arbitrator.

(9) A decision by which an arbitrator is appointed shall not be subject to appeal.

GROUNDS FOR CHALLENGE

Section 588

(1) When a person intends to assume the office of an arbitrator, he shall disclose any circumstances likely to give rise to doubts as to his impartiality or independence, or which are in conflict with the agreement of the parties. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any 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 possess the qualifications agreed upon by the parties. A party may challenge an arbitrator appointed by it, or in whose appointment it has participated, only for reasons of which it becomes aware after the appointment has been made, or after its participation in the appointment.

CHALLENGE PROCEDURE

Section 589

(1) The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of paragraph (3).

(2) Failing such agreement, a party who challenges an arbitrator shall, within four weeks after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in section 588 paragraph (2), submit a written statement of the grounds of the challenge to the arbitral tribunal. Unless the challenged arbitrator resigns from 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 a procedure agreed upon by the parties or under the procedure set forth in paragraph (2) is not successful, the challenging party may, within four weeks after having received the decision rejecting the challenge, request from the court to decide on the challenge. The court's decision shall not be subject to appeal. While such request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

EARLY TERMINATION OF AN ARBITRATOR'S MANDATE

Section 590

(1) The mandate of an arbitrator terminates when the parties agree so or when he resigns. Subject to the provisions of paragraph (2), the parties may agree on a procedure for the termination of the arbitrator's mandate.

(2) Either party may request from the court to decide on the termination of the mandate when an arbitrator either becomes unable to perform his functions or fails to act within a reasonable time period and

1. the arbitrator does not resign,
2. the parties cannot agree on the termination of the mandate, or
3. the procedure agreed upon by the parties does not lead to the termination of the arbitrator's mandate.

Such decision shall not be subject to appeal.

(3) If an arbitrator resigns in accordance with paragraph (1) or section 589 paragraph (2), or if a party agrees to the termination of the arbitrator's mandate, this does not imply acceptance of the validity of any ground referred to in paragraph (2) or section 588 paragraph (2).

APPOINTMENT OF A SUBSTITUTE ARBITRATOR

Section 591

(1) Where an arbitrator's mandate terminates early, a substitute arbitrator shall be appointed. Such appointment shall be made in accordance with the rules that were applicable to the appointment of the arbitrator who is being replaced.

(2) Unless otherwise agreed by the parties, the arbitral tribunal may continue the proceedings on the basis of the results of the proceedings up to that point, in particular the existing minutes of the hearings as well as any other records.

FOURTH TITLE: JURISDICTION OF THE ARBITRAL TRIBUNAL

COMPETENCE OF THE ARBITRAL TRIBUNAL TO RULE ON ITS OWN JURISDICTION

Section 592

- (1) The arbitral tribunal shall rule on its own jurisdiction. The decision may be made together with the decision on the merits or by separate arbitral award.
- (2) A plea that the arbitral tribunal does not have jurisdiction shall be raised no later than the first pleading on the substance of the dispute. A party is not precluded from raising such 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 made the subject of a request for relief. A later plea is barred in both cases; if the arbitral tribunal, however, considers the delay sufficiently excused, the plea may subsequently be raised.
- (3) Even while an action for the setting aside of an arbitral award with which the arbitral tribunal accepted its jurisdiction is still pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

ORDERING OF INTERIM OR PROTECTIVE MEASURES

Section 593

- (1) Unless otherwise agreed by the parties, the arbitral tribunal may, upon request of a party and after hearing the other party, order against the other party such interim or protective measures it deems necessary in respect of the subject-matter in dispute if the enforcement of the claim were otherwise frustrated or significantly impeded, or there were a risk of irreparable harm. The arbitral tribunal may request any party to provide appropriate security in connection with such measure.
- (2) Measures referred to in paragraph (1) shall be in writing; a signed exemplar of the order shall be served upon each party. In arbitral proceedings with more than one arbitrator the signature of the chairman or, if he is prevented from signing, the signature of another arbitrator shall suffice, provided that the chairman or another arbitrator records on the order the reason for any omitted signature. Section 606 paragraphs (2), (3), (5) and (6) shall apply accordingly.
- (3) Upon request of a party the District Court ("*Bezirksgericht*") in whose district the opponent of the party at risk has its seat, domicile or habitual residence within Austria at the time of the first filing of the request, otherwise the District Court ("*Bezirksgericht*") in whose district the enforcement of the interim or protective measure shall be carried out, shall enforce such measure. Where the measure provides for a means of protection unknown to Austrian law, the court may, upon request and after hearing the other party, enforce such measure of protection under Austrian law which comes closest to the measure ordered by the arbitral tribunal. In this case the court may also, upon request, reformulate the measure ordered by the arbitral tribunal in order to safeguard the realization of its purpose.

- (4) The court shall refuse to enforce a measure under paragraph (1) if
1. the seat of the arbitral tribunal is within Austria and the measure suffers from a defect which would constitute grounds for setting aside an arbitral award made in Austria pursuant to sections 611 paragraph (2), 617 paragraphs (6) and (7) or section 618;
 2. the seat of the arbitral tribunal is not within Austria and the measure suffers from a defect which would constitute grounds for refusal of recognition or enforcement of a foreign arbitral award;
 3. the enforcement of the measure would be incompatible with an Austrian court measure which was either requested or issued previously, or with a foreign court measure which was issued previously and must be recognized;
 4. the measure provides for a means of protection unknown to Austrian law and no appropriate means of protection as provided by Austrian law has been requested.
- (5) The court may hear the other party prior to ruling on the enforcement of the measure under paragraph (1). If the other party has not been heard prior to the ruling, it may file an objection against the granting of the enforcement ("*Widerspruch*") within the meaning of section 397 Enforcement Act ("*Exekutionsordnung*"). In both cases the other party may only rely on grounds for refusing the enforcement as set out in paragraph (4). In these proceedings the court has no jurisdiction to rule on claims for damages pursuant to section 394 Enforcement Act ("*Exekutionsordnung*").
- (6) The court shall, upon request, set aside the enforcement if
1. the term of the measure as set by the arbitral tribunal has expired;
 2. the arbitral tribunal has limited the scope of or set aside the measure;
 3. one of the cases set out in section 399 paragraph (1) numbers 1 to 4 Enforcement Act ("*Exekutionsordnung*") exists, unless such a circumstance was unsuccessfully raised with the arbitral tribunal and no obstacles to recognizing (paragraph 4) the decision of the arbitral tribunal exist in this regard;
 4. security pursuant to paragraph (1) has been provided that the enforcement is superfluous.

FIFTH TITLE: CONDUCT OF THE ARBITRAL PROCEEDINGS

GENERAL PROVISIONS

Section 594

- (1) Subject to the mandatory provisions of this Chapter, the parties are free to agree on the rules of procedure. In doing so they may also refer to arbitration rules. Failing such agreement, the arbitral tribunal shall proceed in accordance with the provisions of this Title, and in other respects in such manner as it considers appropriate.
- (2) The parties shall be treated fairly. Each party shall be granted the right to be heard.
- (3) The parties may be represented or advised by persons of their choosing. This right cannot be excluded or limited.
- (4) An arbitrator who does not fulfil his obligation resulting from the acceptance of his appointment at all or in a timely manner, shall be liable to the parties for all damages caused by his wrongful refusal or delay.

SEAT OF THE ARBITRAL TRIBUNAL

Section 595

- (1) The parties are free to agree on the seat of the arbitral tribunal. They may also leave the determination of the seat of the arbitral tribunal to an arbitral institution. Failing such agreement, the seat shall be determined by the arbitral tribunal having due regard to the circumstances of the case, including the convenience of such place for the parties.
- (2) Notwithstanding the provisions of paragraph (1), the arbitral tribunal may, unless otherwise agreed by the parties, convene at any place it considers appropriate for conducting proceedings, especially for deliberation among its members, making decisions, conducting oral hearings and taking evidence.

LANGUAGE OF PROCEEDINGS

Section 596

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

STATEMENTS OF CLAIM AND DEFENSE

Section 597

- (1) Within the time period agreed by the parties or determined by the arbitral tribunal, the claimant shall state the relief and remedy sought and the facts supporting his claim and the respondent shall respond thereto. The parties may submit with their statements all documents they consider to be relevant, or may indicate the documents or other evidence they intend to submit.
- (2) Unless otherwise agreed by the parties, either party may amend or supplement its claim or pleadings during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment due to delay.

ORAL HEARINGS AND WRITTEN PROCEEDINGS

Section 598

Unless the parties have agreed otherwise, the arbitral tribunal shall decide whether to hold oral hearings or whether the proceedings shall be conducted in writing. Where the parties have not excluded an oral hearing, the arbitral tribunal shall hold such hearing at an appropriate stage of the proceedings if so requested by a party.

PROCEEDINGS AND TAKING OF EVIDENCE

Section 599

- (1) The arbitral tribunal is authorised to rule upon the admissibility of the taking of evidence, to carry out such taking of evidence and to freely evaluate the result thereof.
- (2) The parties shall be given sufficient advance notice of every hearing and of every meeting of the arbitral tribunal for the purposes of the taking of evidence.
- (3) All written submissions, documents and other communications which are submitted to the arbitral tribunal by one party shall be communicated to the other party. Expert opinions and other evidence on which the arbitral tribunal may rely in its decision shall be communicated to both parties.

DEFAULT OF A PROCEDURAL ACT

Section 600

- (1) Where the claimant fails to submit the statement of claim in accordance with section 597 paragraph (1), the arbitral tribunal shall terminate the proceedings.
- (2) Where the respondent fails to respond in accordance with section 597 paragraph (1) within the agreed or stipulated time period, the arbitral tribunal shall, unless otherwise agreed by the parties, continue the proceedings without treating such failure in itself as an admission of the claimant's allegations. The same shall apply where a party is in default with any other procedural act. The arbitral tribunal may continue the proceedings and may render a decision based on the evidence before it. Where, in the arbitral tribunal's opinion, the default is sufficiently excused, the omitted procedural act may subsequently be carried out.

EXPERT APPOINTED BY ARBITRAL TRIBUNAL

Section 601

- (1) Unless otherwise agreed by the parties, the arbitral tribunal may
 1. appoint one or more experts to report on specific issues to be determined by the arbitral tribunal;
 2. require the parties to provide the expert with any relevant information, or to provide with, or to provide access to, any relevant documents or objects for his inspection.
- (2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after submission of his report, attend an oral hearing. At this hearing the parties may put questions to him and may present their own expert witnesses in order to testify on the points at issue.
- (3) Sections 588 and 589 paragraphs (1) and (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 submit reports of its own experts. Paragraph (2) shall apply accordingly.

JUDICIAL ASSISTANCE

Section 602

The arbitral tribunal, arbitrators who have been authorised accordingly by the arbitral tribunal, or a party with the approval of the arbitral tribunal, may request from the court to conduct judicial acts for which the arbitral tribunal has no authority. The judicial assistance may also consist of the court requesting a foreign court or administrative authority to conduct such acts. Section 37 paragraphs (2) to (5) and sections 38, 39 and 40 Judicature Act (“*Jurisdiktionsnorm*”) apply accordingly, subject to the proviso that the arbitral tribunal and the parties to the arbitral proceedings shall have the right to appeal pursuant to section 40 Judicature Act (“*Jurisdiktionsnorm*”). The arbitral tribunal, or an arbitrator who has been authorised accordingly by the arbitral tribunal, and the parties may participate in the taking of evidence by the court and may put questions. Section 289 shall apply accordingly.

SIXTH TITLE: MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

APPLICABLE SUBSTANTIVE LAW

Section 603

- (1) The arbitral tribunal shall decide the dispute in accordance with such statutory provisions or rules of law as agreed upon by the parties. Any agreement as to the law or the legal system of a given state shall be construed, unless the parties have expressly agreed otherwise, as directly referring to the substantive law of that state and not to its conflict of laws rules.
- (2) Failing any designation by the parties of the applicable statutory provisions or rules of law, the arbitral tribunal shall apply the statutory provisions it considers appropriate.
- (3) The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so.

DECISION MAKING BY PANEL OF ARBITRATORS

Section 604

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

1. In arbitral 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 authorized by the parties or by all members of the arbitral tribunal.
2. Where one or more arbitrators do not participate in a vote without justified reason, the other arbitrators may decide without them. In this case, also, the necessary majority of votes shall be calculated by the total of all participating and not participating arbitrators. In the case where a vote is taken on an arbitral award, the parties shall be informed on the intention to proceed in this manner in advance. With regard to other decisions, the parties shall be informed of the failure to participate in the vote after such vote.

SETTLEMENT

Section 605

If, during arbitral proceedings, the parties settle the dispute and if the parties are capable of concluding a settlement on the subject-matter in dispute, they may request

1. the arbitral tribunal to record the settlement, provided that the contents of the settlement do not violate the fundamental values of the Austrian legal system (*ordre public*); it shall be sufficient if the record of the settlement is signed by the parties and the chairman;
2. the arbitral tribunal to record the settlement in the form of an arbitral award on agreed terms, provided that the contents of the settlement do not violate the fundamental values of the Austrian legal system (*ordre public*). Such award shall be made in accordance with section 606. It shall have the same effect as any other award on the merits.

ARBITRAL AWARD

Section 606

- (1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. Unless otherwise agreed by the parties, in arbitral 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 records on the arbitral award the reason for any omitted signature.
- (2) Unless the parties have agreed otherwise, the award shall state the reasons upon which it is based.
- (3) The award shall state the date on which it was made and the seat of the arbitral tribunal determined in accordance with section 595 paragraph (1). The award shall be deemed to have been made on that day and at that place.
- (4) An exemplar of the award signed by the arbitrators in accordance with paragraph (1) shall be delivered to each party.
- (5) The award and the documentation regarding its service are joint documents of the parties and the arbitrators. The arbitral tribunal shall discuss with the parties a possible safekeeping of the award and the documentation regarding its service.
- (6) The chairman or, in the case he is prevented from doing so, another arbitrator shall, upon request of a party, confirm the *res judicata* effect and the enforceability of the award on an exemplar of the award.
- (7) The underlying arbitration agreement does not cease to be effective by the making of the award.

EFFECT OF THE ARBITRAL AWARD

Section 607

The award has, between the parties, the effect of a final and binding court judgment.

TERMINATION OF ARBITRAL PROCEEDINGS

Section 608

- (1) The arbitral proceedings are terminated by the award on the merits, by an arbitral settlement, or by an order of the arbitral tribunal in accordance with paragraph (2).
- (2) The arbitral tribunal shall terminate the arbitral proceedings when:
 1. the claimant fails to submit his statement of claim in accordance with section 597 paragraph (1);
 2. the claimant withdraws his statement of claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest of the respondent in obtaining final disposition 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 where the parties hitherto acting in the proceedings fail to continue the proceedings despite written notification of the arbitral tribunal, in which it refers to the possibility of termination of proceedings.

(3) Subject to section 606 paragraphs (4) to (6), section 609 paragraph (5) and section 610, as well as to the obligation to set aside an interim or protective measure, the mandate of the arbitral tribunal terminates upon the termination of the arbitral proceedings.

DECISION ON COSTS

Section 609

(1) Where the arbitral proceedings are terminated, the arbitral tribunal shall decide upon the obligation to reimburse the costs of the proceedings, provided the parties have not agreed otherwise. The arbitral tribunal shall, in exercise of its discretion, take into account the circumstances of the case, in particular the outcome of the proceedings. The obligation to reimburse may include any and all reasonable costs appropriate for bringing the action or defense. In the case referred to in section 608 paragraph (2) number 3, such a decision shall only be made if a party requests such a decision together with communicating the agreement to terminate the proceedings.

(2) Upon request of the respondent, the arbitral tribunal may also decide upon the obligation of the claimant to reimburse the costs of the proceedings, if it has found that it lacks jurisdiction on the grounds that there is no arbitration agreement.

(3) Together with the decision upon the obligation to reimburse the costs of the proceedings, the arbitral tribunal shall, as far as this is already possible and the costs are not set off against each other, determine the amount of costs to be reimbursed.

(4) In any case, the decision upon the obligation to reimburse the costs of the proceedings and the determination of the amount shall be made in the form of an arbitral award under section 606.

(5) If the decision on the obligation to reimburse the costs of the proceedings or the amount to be reimbursed was not made, or was only possible to be made after the termination of the arbitral proceedings, such decision shall be made in a separate arbitral award.

CORRECTION, EXPLANATION OF THE AWARD AND ADDITIONAL AWARD

Section 610

(1) Within four weeks of receipt of the award, unless another time period has been agreed by the parties, each party may request the arbitral tribunal,

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

(2) The request under paragraph (1) shall be delivered to the other party. Prior to making a decision upon such a request, the other party shall be heard.

(3) The arbitral tribunal shall decide upon the correction or explanation of the award within four weeks and upon an additional award within eight weeks.

(4) The arbitral tribunal may also correct the award in accordance with paragraph (1) number 1 on its own initiative within four weeks from the date of the award.

(5) Section 606 shall apply to the correction, explanation of the award or to an additional award. The explanation or correction shall form part of the arbitral award.

SEVENTH TITLE: RECOURSE AGAINST THE ARBITRAL AWARD

ACTION FOR SETTING ASIDE AN ARBITRAL AWARD

Section 611

(1) Recourse to a court against an arbitral award may be made only by means of an action for setting aside. This shall also apply to arbitral awards by which the arbitral tribunal has ruled on its own jurisdiction.

(2) An arbitral award shall be set aside if:

1. a valid arbitration agreement does not exist, or the arbitral tribunal has denied its jurisdiction despite the existence of a valid arbitration agreement, or a party was under an incapacity to conclude a valid arbitration agreement under the law governing its personal status;
2. a party was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was for other reasons unable to present its case;
3. the award deals with a dispute not covered by the arbitration agreement, or contains decisions on matters beyond the scope of the arbitration agreement or the plea of the parties for legal protection; if the default concerns only a part of the award that can be separated, only that part of the award shall be set aside;
4. the composition or constitution of the arbitral tribunal was not in accordance with a provision of this Chapter or with an admissible agreement of the parties;
5. the arbitral proceedings were conducted in a manner that conflicts with the fundamental values of the Austrian legal system (*ordre public*);
6. the requirements according to which a court judgment can be appealed by an action for revision under section 530 paragraph (1) numbers 1 to 5 have been met;
7. the subject-matter of the dispute is not arbitrable under Austrian law;
8. the arbitral award conflicts with the fundamental values of the Austrian legal system (*ordre public*).

(3) The grounds for setting aside stipulated in paragraph (2) numbers 7 and 8 shall also be considered *ex officio*.

(4) The action for setting aside shall be brought within three months. The time period shall begin on the day on which the claimant received the award or the additional award. A request made in accordance with section 610 paragraph (1) numbers 1 or 2 does not extend this time period. In the case of paragraph (2) number 6, the time period for the action for setting aside shall be determined in accordance with the provisions on the action for revision.

(5) The setting aside of an arbitral award does not affect the validity of the underlying arbitration agreement. Where an arbitral award on the same subject-matter has been finally set aside twice and if a further arbitral award regarding that subject-matter is to be set aside, the court shall, upon request of a party, concurrently declare the arbitration agreement to be invalid with respect to that subject-matter.

DECLARATION OF EXISTENCE OR NON-EXISTENCE OF AN ARBITRAL AWARD

Section 612

Where the requesting party has a legal interest therein, it may request a declaration on the existence or non-existence of an arbitral award.

CONSIDERATION OF GROUNDS OF SETTING ASIDE IN OTHER PROCEEDINGS

Section 613

Should a court or an administrative authority find in other proceedings, for instance in enforcement proceedings, that grounds for setting aside in accordance with section 611 paragraph (2) numbers 7 and 8 exist, then the arbitral award shall not be relevant in those proceedings.

EIGHTH TITLE: RECOGNITION AND DECLARATION OF ENFORCEABILITY OF FOREIGN ARBITRAL AWARDS

RECOGNITION AND DECLARATION OF ENFORCEABILITY OF FOREIGN ARBITRAL AWARDS

Section 614

(1) The recognition and declaration of enforceability of foreign arbitral awards shall be made in accordance with the provisions of the Enforcement Act (*“Exekutionsordnung”*), unless otherwise provided for in international law or in legal instruments of the European Union. The form requirements for the arbitration agreement shall be deemed to be fulfilled, if the arbitration agreement complies both, with the form requirements under section 583 and under the law applicable to the arbitration agreement.

(2) The production of the original or a certified copy of the arbitration agreement in accordance with article IV paragraph (1) (b) of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards shall only be required upon demand by the court.

NINTH TITLE: COURT PROCEEDINGS

JURISDICTION

Section 615

For the action for setting aside an arbitral award and for the action for declaration of existence or non-existence of an arbitral award, as well as for proceedings under the Third Title, the Supreme Court (Oberster Gerichtshof) shall have jurisdiction.

PROCEEDINGS

Section 616

- (1) The proceedings regarding the action for setting aside an arbitral award and the action for declaration of the existence or non-existence of an arbitral award shall be governed by the provisions of this Law on the proceedings before the Courts of First Instance. The proceedings in matters under the Third Title shall be governed by the general provisions of the Act on Non-Contentious Jurisdiction (Außerstreitgesetz).
- (2) Upon request of a party the public may also be excluded where a legitimate interest in doing so can be shown.

TENTH TITLE: SPECIAL PROVISIONS

CONSUMERS

Section 617

- (1) Arbitration agreements between an entrepreneur and a consumer may only be validly concluded for disputes that have already arisen.
- (2) Arbitration agreements to which a consumer is a party must be contained in a document signed personally by him. This document must not contain any agreements other than those relating to the arbitral proceedings.
- (3) In arbitration agreements between an entrepreneur and a consumer, the consumer shall, prior to concluding the arbitration agreement, receive written legal advice on the relevant differences between arbitral and court proceedings.
- (4) In arbitration agreements between entrepreneurs and consumers, the seat of the arbitral tribunal must be stipulated. The arbitral tribunal may only convene at a different place for an oral hearing or for the taking of evidence, if the consumer has approved thereof, or if considerable difficulties hinder the taking of evidence at the seat of the arbitral tribunal.
- (5) Where the arbitration agreement was concluded between an entrepreneur and a consumer and where, either at the time of concluding the arbitration agreement or at the time when the action has become pending, the consumer did not have his domicile, habitual residence or place of work in the country where the arbitral tribunal has its seat, the arbitration agreement shall only be binding if the consumer invokes it.

(6) An arbitral award shall also be set aside if, in arbitral proceedings in which a consumer is involved,

1. mandatory provisions of law were violated, the application of which could not have been waived by choice of law by the parties, even in a case with an international element, or
2. the prerequisites are met under which a court judgment may be appealed under section 530 paragraph (1) numbers 6 and 7 by means of an action for revision; in this case, the time period for the action for setting aside shall be determined in accordance with the provisions on the action for revision.

(7) Where the arbitral proceedings were conducted between an entrepreneur and a consumer, the arbitral award shall also be set aside if the consumer did not receive written legal advice as stipulated in paragraph (3).

(8) For an action for setting aside an arbitral award, and for an action for declaration of the existence or non-existence of an arbitral award, as well as for proceedings under the Third Title in arbitration proceedings to which a consumer is party, the Regional Court (Landesgericht) having jurisdiction in civil law matters that is specified in the arbitration agreement, or the jurisdiction of which was agreed in accordance with Section 104 Austrian Judicature Act (Jurisdiktionsnorm), or failing such specification or agreement, the Regional Court (Landesgericht) in whose district the arbitral tribunal has its seat, shall have jurisdiction in first instance, regardless of the amount in dispute. Where the seat of the arbitral tribunal has not yet been determined, or in case of Section 612, if it is not in Austria, the Commercial Court Vienna (Handelsgericht Wien) shall have jurisdiction.

(9) Where the dispute underlying the arbitral award is a commercial matter within the meaning of Section 51 Judicature Act (Jurisdiktionsnorm), the Regional Court (Landesgericht) shall decide in exercise of its jurisdiction in commercial matters, in Vienna the Commercial Court Vienna (Handelsgericht Wien).

(10) The proceedings regarding an action for setting aside an arbitral award and an action for a declaration of the existence or non-existence of an arbitral award shall be governed by the provisions of this Law. The proceedings in matters under the Third Title shall be governed by the general provisions of the Act on Non-Contentious Jurisdiction (Außerstreitgesetz).

(11) Upon request of a party the public may also be excluded where a legitimate interest in doing so can be shown.

LABOUR LAW MATTERS

Section 618

Section 617 paragraphs (2) to (8) and paragraphs (10) and (11) apply accordingly to arbitral proceedings in labour law matters in accordance with Section 50 paragraph (1) Labour and Social Courts Act (Arbeits- und Sozialgerichtsgesetz); instead of the Regional Court (Landesgericht) having jurisdiction in civil law matters, the Regional Court (Landesgericht) shall decide in its function as Labour and Social Court, and in Vienna the Labour and Social Court Vienna. The proceedings regarding an action for setting aside an arbitral award and an action for a declaration of the existence or non-existence of an arbitral award shall be governed by the provisions of the Labour and Social Courts Act (Arbeits- und Sozialgerichtsgesetz). The Supreme Court (Oberste Gerichtshof) shall decide as a senate composed of according to Sections 10 et seq. Labour and Social Courts Act.



**International Arbitral Centre (VIAC)
of the Austrian Federal Economic Chamber**
Wiedner Hauptstrasse 63, 1045 Vienna, Austria

T +43 (0)5 90 900 4398
F +43 (0)5 90 900 216
E office@viac.eu

www.viac.eu
