

AUSTRIA AS A SEAT OF ARBITRATION: OVERVIEW AND PRACTICAL ASPECTS

WOLF THEISS

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Why is the seat of arbitration important?

- ❖ Seat is the juridical link to a legal order
- ❖ Application of a national arbitration law
- ❖ Jurisdiction for court control of the arbitral process
- ❖ Court support for the arbitral process

Practical Aspects of the selection of a seat

- ❖ Experience and attitude of courts
- ❖ Accessibility and infrastructure
- ❖ Speed of arbitration-related court proceedings
- ❖ Pool of available arbitrators
- ❖ Arbitration law (UNCITRAL Model Law)
- ❖ Ratification of international arbitration conventions

Austria as a seat of arbitration: overview

- ❖ UNCITRAL Model Law
- ❖ Traditional seat of arbitration
- ❖ Experienced and arbitration friendly courts
- ❖ Self-restraint of courts

Scope of court intervention

- ❖ courts may only act in matters specifically provided for in the arbitration law
- ❖ no pre-emptive declaration of invalidity of arbitration agreements

Priority of arbitration proceedings

- ❖ No initiation of court proceedings in a matter pending before an arbitral tribunal
- ❖ Arbitral proceedings may be initiated even if a matter is pending before the courts and the arbitration agreement has been invoked

Support for the arbitral process

- ❖ default appointments of arbitrators
- ❖ in case of an unsuccessful challenge of an arbitrator mandatory right to appeal to the Supreme Court

Interim Injunctions

- ❖ competence of arbitral tribunals to render interim injunctions to parties of the arbitration agreement
- ❖ unless excluded by the parties
- ❖ Mandatory parallel competence of the courts
- ❖ Enforcement of interim injunctions by the Austrian courts

Arbitration Agreement: minimum requirements

- ❖ Submission to Arbitration
- ❖ of a defined legal relationship
- ❖ Example: „All disputes arising out of or in connection with this agreement shall be settled by arbitration.“

Useful Additions

- ❖ Seat of arbitration
- ❖ Language
- ❖ Applicable law to the arbitration agreement
- ❖ Selection of an arbitral institution

Arbitration agreement: form requirements

- ❖ Agreement in writing
- ❖ Exchange of writings in any form allowing proof of agreement
- ❖ Incorporation by reference possible

Substantive validity of an arbitration agreement

❖ General tendency of the Supreme Court to uphold the validity of an arbitration agreement

“Should the parties not be able to settle the dispute amicably ... the Arbitration Court of the Federal Economic Chamber of Yugoslavia will decide. The further instance to resolve disputes is the competent international court”

Arbitrability

- ❖ Subject-matter capable of submission to arbitration (objective arbitrability)
- ❖ Capacity to enter into arbitration agreements (subjective arbitrability)
- ❖ All pecuniary claims and all matters capable of the conclusion of a settlement

Conduct of arbitral proceedings

- ❖ Broad procedural discretion
- ❖ Mandatory principles: fair treatment of the parties and observance of right to be heard

Setting Aside Proceedings

- ❖ Supreme Court is the single instance
- ❖ Duration: 6 to 10 months

Practically most relevant grounds for setting aside

- ❖ Inexistence or invalidity of arbitration agreement
- ❖ Matter beyond the scope of the arbitration agreement
- ❖ Right to be heard
- ❖ Procedural ordre public
- ❖ Matter not arbitrable
- ❖ Substantive ordre public

Thank you for your attention

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