

International Arbitration

Second Edition

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Austria

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Introduction

The most important statutory provisions of the Austrian arbitration law are contained in Secs 577-618 of the Austrian Civil Procedure Code (“ACCP”). In 2002 a Reform Commission prepared a first draft for a new Austrian arbitration law, based on the UNCITRAL Model Law on International Commercial Arbitration (“ML”). The new arbitration law (“SchiedsRÄG 2006”) entered into force on 1 July 2006. The new provisions apply to all arbitration agreements concluded and all arbitral proceedings commenced after 30 June 2006. It applies likewise to domestic and international arbitration.

The Austrian legislator recently adopted a significant amendment (“SchiedsRÄG 2013”) to the arbitration law. As of 1 January 2014, all annulment claims and proceedings in connection with the constitution of the arbitral tribunal are decided directly by the Austrian Supreme Court, which will act as first and final instance in such proceedings. This unique feature ensures swift and high-quality decisions and further fosters Austria’s position as a leading venue for international arbitrations.

There are no special courts dealing with arbitration matters in Austria; legal assistance is usually provided by the district court in whose district the arbitral tribunal has its seat. If the seat of the arbitral tribunal has not yet been determined or if it is not in Austria, the Commercial Court of Vienna shall have jurisdiction.

Austria has ratified both the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards 1958 (“NYC”, ratified on 2 May 1961; Austria has withdrawn the reciprocity reservation on 25 February 1988; no other reservations have been made) and the European Convention on International Commercial Arbitration 1961 in Geneva (ratified on 6 March 1964), and is a party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 1965 (“Washington Convention”, ratified on 25 May 1971).

The leading arbitration institution in Austria and Central and Eastern Europe is the Vienna International Arbitral Centre of the Austrian Federal Economic Chamber (“VIAC”). VIAC has a long-standing tradition, as it was created in 1975 and has since then administered more than 1,700 cases. The recent version of its arbitration rules are the Vienna Rules 2013; as of 1 January 2016 the new Vienna Mediation Rules entered into force. Purely domestic cases are administered by the arbitration institutions of the Regional Economic Chambers. In addition, ICC Austria operates in Austria, mainly as a seminar provider, advising its clients in all business matters including arbitration.

Arbitration agreement

In commercial matters, arbitration agreements may be concluded in the form of a separate agreement or as a clause within a contract. An arbitration agreement has to contain the following minimum content: (i) the parties must be definable; (ii) the arbitration agreement must refer to a defined legal relationship (whether contractual or not); and (iii) the will of parties to have their dispute (finally) solved by an arbitral tribunal to the exclusion of the jurisdiction of the state courts must be expressed in the arbitration agreement.

With respect to formal requirements, an arbitration agreement must be contained either in a written document signed by the parties or in an exchange of letters, telefax-letters, emails or other means of transmitting messages, which provide a record of the agreement. The form requirements are not met by an oral or tacit acceptance of a written offer containing an arbitration agreement (and *vice versa*). In case of incorporation of arbitration agreements by reference, the contract fulfilling the above-mentioned writing prerequisites must contain a reference to a document containing an arbitration agreement in a way that makes the arbitration agreement part of the contract (Sec 583 ACCP).

Any defect as to the form of the arbitration agreement has to be raised in the arbitral proceedings at the latest, when entering into argument on the substance of the dispute. Failing such objection, the formal defect is cured and a party may not rely on it, neither in the course of the arbitral proceedings nor in proceedings for setting aside the award.

With respect to (objective) arbitrability, Sec 582 ACCP provides that any claim involving an economic interest that lies within the jurisdiction of the courts of law can be the subject of an arbitration agreement. Claims not involving economic interest are only arbitrable if they are capable of party settlement. The following matters listed in the law are expressly excluded from being submitted to arbitration, irrespective of the nature of the claims: family law claims; and claims that are, even if only partially, based on contracts subject to the Landlord/Tenant Act, the Non-Profit Housing Act and the Austrian Condominium Act. In addition, disputes falling within the jurisdiction of administrative authorities (such as regulatory or supervisory authorities as well as the Austrian Constitutional or Administrative Court) are not objectively arbitrable. Anti-trust claims, competition law claims and corporate disputes are generally arbitrable.

The Austrian arbitration law does not contain an explicit provision dealing with the separability of arbitration agreements (unlike Art 16 ML). It was the legislator's view that there was no need for express language because the separability presumption is sufficiently acknowledged in legal literature and case law. In addition, it was felt that the separability doctrine somewhat oversimplifies the relationship between the arbitration agreement and the underlying contract. The Supreme Court has decided numerous cases by way of interpreting the parties' (presumed) intentions, coming to the same result (e.g. that the (alleged) invalidity *ab initio*, the unilateral rescission, termination or abrogation of a contract containing an arbitration agreement does not (automatically) affect the arbitration agreement).

According to the principle of competence-competence, i.e. the tribunal's power to decide on its own jurisdiction, the tribunal may either render such decision together with the decision on the merits in the final award or issue a separate arbitral award on jurisdiction (Sec 592). If the tribunal decides by way of separate award, the parties may challenge the jurisdictional decision, whether affirming or denying its jurisdiction, separately before the courts under the ordinary challenge proceedings for setting aside awards (see below the section on awards). If an award granting jurisdiction is challenged, the arbitral tribunal

may nonetheless continue the proceedings and issue further awards or the final award. As the tribunal's decision is subject to court review, arbitral tribunals only have a preliminary competence-competence. Such court review cannot be excluded in advance by the parties' agreement.

The arbitration law does not contain any explicit provisions regarding joinder and consolidation. However, the Vienna Rules 2013 incorporated in their recent amendment detailed rules regarding both issues in its Articles 14 and 15. Any party or third party itself may, at any stage of the proceedings, request the joinder of an additional party. It is the arbitral tribunal that decides about the joinder as well as the manner of such joinder and thereby enjoys wide discretion, provided that it has heard all parties and the third party to be joined. Third parties can be approved as a party with full party status, but also in other ways, as e.g. *amicus curiae*, and also only for a particular part of the proceedings. A consolidation of two or more proceedings is permitted if all parties agree to the consolidation or if the same arbitrators were nominated or appointed in the proceedings to be consolidated. In both scenarios the place of arbitration in all of the arbitration agreements on which the claims are based on must be the same. The decision on consolidation will be made by the Board of the VIAC after having heard the parties and the arbitrators already appointed. The Board shall consider all relevant circumstances in its decision, including the compatibility of the arbitration agreements and the respective stage of the proceedings.

Arbitration procedure

Arbitration proceedings are formally commenced and considered pending in the legal sense once the statement of claim is received by the respondent. Art 7 Vienna Rules contains a detailed list of requirements regarding the statement of claim in institutional proceedings that may serve as a guideline also for *ad hoc* proceedings (Sec 597 ACCP only contains a minimum in that respect), such as full name and contact details of parties, statement of facts and request for relief, amount in dispute, number of arbitrators, nomination of party-appointed arbitrators, particulars regarding the arbitration agreement and its content.

If the parties have not chosen the seat of the arbitral proceedings either directly or indirectly by referring to institutional rules (e.g. acc. to Art 25 (1) Vienna Rules the place of arbitration shall be Vienna unless otherwise agreed by the parties), the seat shall be determined by the arbitral tribunal having regard to the circumstances of the case (Sec 595 ACCP). The arbitral tribunal may, however, conduct oral hearings, take evidence, meet for consultations or make a decision at any other place it considers appropriate.

The parties are free to determine the procedural rules for the arbitration save for mandatory provisions of the law, either in the arbitration agreement or with reference to institutional rules such as the Vienna Rules or simply the UNCITRAL Rules. In the absence of such agreement, the arbitral tribunal may conduct the proceedings at its discretion, subject to mandatory provisions such as the right to be heard and the right to equal treatment: violations of these provisions may constitute grounds for setting aside the award (Sec 594 ACCP).

The parties are free to agree on the substantive law according to which the arbitral tribunal shall decide the dispute. In the absence of such agreement, the arbitral tribunal may directly choose the applicable law ("*voie direct* approach") without prior choosing conflict of law rules (Sec 603 ACCP). The parties may also expressly authorise the arbitral tribunal to decide "*ex aequo et bono*".

Under Austrian arbitration law, the arbitral tribunal has far-reaching powers concerning the taking of evidence: it is authorised to decide on the admissibility of the taking of evidence,

to conduct the taking of evidence and to freely evaluate the results thereof (Sec 599 ACCP). The parties are free to agree on the procedure of the taking of evidence (e.g.: by choosing the IBA Rules on Taking of Evidence) within the limits of the mandatory provisions of the law (e.g.: right to be heard, due process, public policy).

There are no provisions contained in the law regarding the method of examining witness or written witness statements. In principle, written witness statements are permitted, as is cross-examination. Arbitrators do not have the authority to question witnesses, parties and experts under oath. If the arbitrators require that the testimony be given under oath, they must request judicial assistance from the courts (Sec 602 ACCP). The arbitral tribunal may also conduct on-site inspections.

The parties may decide whether or not to appoint experts. If not agreed otherwise, the arbitral tribunal may appoint one or more experts to report on specific issues. The provisions on the challenge of an arbitrator and the challenge procedure apply likewise to an expert appointed by the arbitral tribunal (Sec 601 ACCP). Each party has the right to submit its own expert reports; such expert is not subject to the obligation of impartiality and independence.

An arbitral tribunal may request the disclosure of documents, but cannot enforce this request due to lack of coercive powers. Judicial assistance in this respect is limited, as there is no enforcement mechanism provided for such a situation in the law. A party's non-compliance with a request for the production of documents is subject to the free assessment of evidence by the arbitrators. However, a request directed against a third party is enforceable if the third party is obliged to submit a document according to civil law. A court is able to intervene in matters of disclosure at the request of the arbitrators and to enforce an order to produce certain documents with respect to third parties.

Arbitral proceedings (hearings) are held in private and are not open to the public. However, there is no general obligation under Austrian law to maintain confidentiality between the parties in the absence of an explicit agreement. The reference to the Vienna Rules is not sufficient because they deliberately do not contain a confidentiality obligation of the parties but only one regarding the arbitrators and the institution as well as its Board members and employees.

There are no special guidelines for parties' legal representatives. It is however left to the discretion of the tribunal to take any behaviour of parties' counsel into account in e.g. drawing adverse inferences or costs consequences.

Arbitrators

The parties are free to agree on an uneven number of arbitrators. In absence of such agreement the arbitral tribunal shall consist of three arbitrators (Sec 586 ACCP). If the parties have agreed on an even number of arbitrators, they must appoint a chairman. There are no special requirements for the person of an arbitrator under Austrian law, except that (s)he must be a natural person having full legal capacity. There are no restrictions on grounds of nationality. Additionally, an arbitrator need not be a qualified lawyer. The parties may, however, require an arbitrator to have certain skills or qualifications. If an arbitrator is appointed who does not meet these requirements (s)he may be challenged.

The parties are free to agree on the procedure for appointing the arbitrators. Failing such agreement and unless an appointing authority was agreed upon, the Supreme Court will step in and make any appointments in case of default or if the parties or co-arbitrators were unable to agree on a person (Sec 587 ACCP).

A potential arbitrator must – prior to his appointment – disclose any circumstances likely to give rise to doubts as to his/her impartiality or independence, or if (s)he does not possess the qualifications agreed upon by the parties. This duty to disclose extends throughout the entire proceedings.

An arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to his/her impartiality or independence; or the arbitrator lacks the skills and qualifications as agreed upon by the parties (Sec 588 ACCP). Here an objective standard is to be applied, taking all relevant facts into account (“reasonable third party test”). The Supreme Court considers the IBA Guidelines on Conflicts of Interest in International Arbitration a useful instrument for orientation, which do not however have the force of law. A party may challenge an arbitrator it has appointed or in whose appointment it has participated only for reasons of which it has not been aware at the time of the appointment.

The parties may agree on a challenge procedure and on an appointing authority deciding on the challenge (e.g. the VIAC Board). Absent an agreement, a party becoming aware of challenge grounds has to file a written application to the arbitral tribunal within four weeks of gaining knowledge of the constitution of the arbitral tribunal or of the challenge ground (Sec 589 ACCP). The challenge is then decided by the arbitral tribunal, including the challenged arbitrator. If such challenge is not successful, the challenging party may request the Supreme Court to (finally) decide on the challenge. While such challenge procedures are pending, the arbitral tribunal may continue the proceedings and even render an award. If the challenge is granted by the courts, the arbitral award may also be set aside.

In case of a successful challenge, the arbitrator’s mandate is terminated and a substitute arbitrator is to be appointed; there is no truncated tribunal. If the parties have not agreed otherwise, the appointment for the substitute arbitrator follows the same procedure as that of the original (challenged) arbitrator (Sec 591 ACCP).

Apart from a successful challenge, the arbitrator’s office is terminated if the parties jointly agree on such termination or if (s)he voluntarily resigns (Sec 590). In addition, if an arbitrator is unable to fulfil its obligations or does not do so within a reasonable period of time, any party may request the Supreme Court to finally decide on the termination of his/her office. Resignation without reasonable cause may entitle the parties to damages.

According to Sec 594 (4) ACCP, an arbitrator who does not fulfil his or her obligations (at all or not timely) is liable to the parties for all losses caused by his/her wrongful inactivity. Even though this provision does not constitute an ultimate limitation of liability, the Supreme Court held that this provision is intended to limit the general contractual liability of arbitrators and concluded that an arbitrator can only be held liable in cases where an award has been set aside based on the arbitrator’s behaviour.

The parties and arbitrators are free to determine the rules for liability of arbitrators either in the arbitrators’ agreement or by reference to institutional rules (Art 46 Vienna Rules provides that the liability of arbitrators is excluded to the extent legally permissible). According to Austrian law, the exclusion of liability for intent and – at least severe – gross negligence would be *contra bonos mores*.

There are no rules governing the use of Administrative Secretaries to arbitral tribunals in the arbitration law. According to the practice of VIAC, no separate fees are to be granted for Administrative Secretaries in arbitral proceedings under the Vienna Rules. It is clear that they may only be entrusted with administrative tasks and no decision-making power shall be delegated by the arbitral tribunal.

Interim relief

If the arbitral tribunal has its seat in Austria and has already been constituted and if not provided otherwise, the parties may either apply to domestic courts or to the arbitral tribunal for an interim measure. It is not incompatible with an arbitration agreement to request an interim measure from a state court (Sec 585 ACCP). The power of the courts to issue interim measures cannot be excluded. Prior to the constitution of an arbitral tribunal, only courts may issue interim measures in Austria; there is no emergency arbitrator provision (nor do the Vienna Rules foresee this). The competent court is the district court in whose territory the opposing party has its seat, domicile or habitual residence or where the enforcement action is to be carried out.

If interim measures are requested from the arbitral tribunals, the arbitration law contains detailed rules regarding the procedure. The law does not, however, provide a list or definition of types of provisional measures, but only states that the measure must be necessary in order to avoid the enforcement of the claim being frustrated or considerably impeded, or to avoid irreparable harm.

The arbitral tribunal may request any party to provide appropriate security in connection with such measure in order to prevent abusive requests. Only measures *inter partes* and not against third parties may be granted. The opposing party must be heard prior to granting such measures.

In Austria interim measures may not be enforced under the NYC due to arbitral tribunal's lack of coercive powers, but are enforced by domestic courts. Enforcement must be requested from the district court in whose district the opponent of the party at risk has its seat, domicile or habitual residence in Austria at the time the request is made or in whose territory the enforcement of the interim measure is carried out. The district court must enforce the requested interim measure unless it finds *ex officio* that one of the grounds for denying enforcement exists. If the requested measure provides for a means of protection unknown under Austrian law, the court may reformulate the measure ordered by the arbitral tribunal.

The granting of anti-suit injunctions by domestic courts in Austria is not possible within the European Union, due to the *West Tanker* decision of the ECJ. Outside the scope of the Brussels Ia Regulation and international treaties, the enforcement of foreign provisional measures is governed by Secs 79 *et seqq* Enforcement Act ("EO"). The strict requirements such as reciprocity and the need to grant the right to be heard, will often exclude the enforcement of foreign provisional measures in such cases.

Until now, no need for anti-arbitration injunctions in aid of (domestic) litigation has been seen as the law provides that if an action is brought before a court in a matter subject to an arbitration agreement, the court shall reject the action as inadmissible if the respondent has filed a timely objection (Sec 584 ACCP). This does not apply if the court finds that the arbitration agreement does not exist or is incapable of being performed. Where such proceedings are pending before the court, arbitral proceedings may nevertheless be commenced or continued, and an award may be issued. If an arbitration is already pending, the claim pertaining to such arbitration thus cannot be brought before a state court or another arbitral tribunal.

Arbitration award

According to Sec 606 ACCP, the arbitration award shall meet certain form requirements. Firstly, the award shall be in writing. Secondly, the award must be signed by the arbitrators

who have rendered it. 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 chairperson or another arbitrator records on the arbitral award the reason for any omitted signature. Thirdly, the award shall state the reasons upon which it is based. The parties, however, may waive the grounds, in particular if it is an award on agreed terms. Other necessary form requirements are the date on which the award was made, and the seat of the arbitral tribunal. The award shall be deemed to have been made on that day and at that place.

There is no time limit for the rendering of an award under Austrian procedural law. The average duration from the transfer of the files to the arbitral tribunal to the service of the award on the parties in VIAC proceedings is less than one year. The Vienna Rules, however, include a so-called “expedited procedure”. If the parties opt for expedited proceedings, the arbitral tribunal shall render a final award within six months of the transfer of the files, unless the proceedings are not prematurely terminated.

Sec 609 ACCP orders the arbitral tribunal to decide upon the obligation of the parties to reimburse the costs of the proceedings, provided the parties have not agreed otherwise. The obligation to reimburse may include any and all reasonable costs appropriate for bringing the action or defence. In the case the parties agree on the termination of the proceedings and communicate this to the arbitral tribunal, a decision on costs shall only be made if a party requests such a decision together with the said communication.

The arbitral tribunal shall, in exercise of its discretion to allocate costs, take into account the circumstances of the case, in particular the outcome of the proceedings. Thus the outcome with regard to the allocation of costs is dependent on the individual arbitral tribunal’s judgement as to how the different circumstances are accounted for. Sec 40 ACCP *et seq.*, which applies in Austrian state court proceedings, relies on the principle of “costs follow the event”. In case both parties do not fully succeed, the procedural costs shall be reimbursed *pro rata*. Arbitral tribunals sitting in Austria may, however, apply the said principle by analogy but with a much broader room for discretion.

Sec 609 (2) ACCP also empowers the arbitral tribunal to 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. 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.

The ACCP remains silent on whether an arbitral tribunal may order the successful party to pay interest. Regarding the principal claim this is a matter of Austrian substantive law and therefore regulated by the ACCP and/or the Austrian Entrepreneurial Code. Thus, interest is granted in almost all awards rendered under Austrian procedural law as applicable *lex arbitri*. A different approach is taken regarding interest on costs. The decision on procedural costs in state court proceedings is considered a matter of procedural law. Therefore, no interest is granted. This rule is applied by most arbitral tribunals by analogy.

Challenge of the arbitration award

The extent to which arbitration awards may be challenged is very limited. Basically, an award is final and binding. However, particular serious violations of material and procedural law are grounds for challenge at state courts. If a challenge is successful, the award will be set aside and, as a consequence, the arbitrators will have to hear and to decide the case again.

The grounds for challenge are exhaustively enumerated in Sec 611 (2) ACCP. They consist mainly of defects concerning the arbitral tribunal's jurisdiction or refer to violation of procedural minimum requirements. Basically, an arbitral award will not be scrutinised for the accuracy of its content (no "*revision au fond*"). The only exception from this rule applies when the award violates substantive public policy. Sec 611 ACCP does not specify what (kind of) arbitral award may be subject to challenge. Thus, partial and final awards, interim awards, awards on jurisdiction and awards on agreed terms may be challenged.

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 the arbitration law 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 Sec 530 (1) no 1 to 5 ACCP have been met (which provides that a case concluded by a judgment can be re-opened on application of a party if the judgment was based on certain criminal offences such as fraud, forgery of protected documents or the judgment was based on a criminal court decision which was later set aside);
7. the subject-matter of the dispute is not arbitrable under Austrian law; or
8. the arbitral award conflicts with the fundamental values of the Austrian legal system (*ordre public*).

The grounds for setting aside mentioned above under nos. 7 and 8 shall also be considered *ex officio*.

The action for setting aside shall be brought within three months from the day on which the claimant received the award or the additional award. If an award is challenged on the grounds for revision of a state court judgment (see above no 6) the time period for the action for setting aside shall be determined in accordance with the provisions on the action for revision. The Austrian Supreme Court is the first and only instance to decide on the challenge.

Where the requesting party has a legal interest therein, it may request a declaration on the existence or non-existence of an arbitral award (Sec 612 ACCP). If it is uncertain whether or not an arbitral award has already been rendered or if the document at hand is an arbitral award or an expert determination, the parties may file an action to the Austrian Supreme Court. No time limit applies to this action.

Another way to exercise control over an already rendered award is stipulated in Sec 610 ACCP. 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; and
3. to make an additional award as to claims asserted in the arbitral proceedings but not disposed of in the award.

The request for correction, explanation or for an additional award shall be delivered to the other party. Prior to making a decision upon such a request, the other party shall be heard.

The arbitral tribunal shall decide upon the correction or explanation of the award within four weeks and upon an additional award within eight weeks. The arbitral tribunal may also correct the award on its own initiative within four weeks from the date of the award.

The explanation or correction shall form part of the arbitral award.

In 2015, three actions to set aside an arbitration award were filed at the Austrian Supreme Court; in 2014 it had been five actions; while in 2013 six actions had been submitted. In general, it can be stated that the number of challenges is very low. The overwhelming majority of challenges (at least 75%) remain unsuccessful.

Enforcement of the arbitration award

If the seat of arbitration is outside Austria, the award is a foreign arbitral award and thus subject to recognition and enforcement. The following multi-lateral conventions which are applied are the New York Convention 1958 and the European Convention of 1961 (*cf.* Introduction for details).

Austria has also concluded numerous bilateral state treaties which expressly regulate the recognition and enforcement of foreign arbitral awards, the most important ones with the following territories: Belgium, British Columbia, Germany, Liechtenstein, Russia, Slovenia and Switzerland.

The district court where the opposing party has its seat or domicile where the particular enforcement is to be conducted is competent for the declaration of enforceability and the enforcement authorisation itself.

The recognition and declaration of enforceability of foreign arbitral awards shall be made in accordance with the provisions of the Austrian Enforcement Act, 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 Sec 583 ACCP and under the law applicable to the arbitration agreement. The production of the original or a certified copy of the arbitration agreement in accordance with Art IV para (1) (b) NYC shall only be required if so requested by the court.

In a decision of 1993, the Supreme Court held that the setting aside of an award for public policy reasons in the country of origin is no ground for the refusal of the enforcement of such award in Austria, in accordance with Art IX (2) European Convention which limits the application of the terms of Art V (1) e NYC to the grounds listed in Art IX (1) European Convention (XX YB Com Arb 1051). Generally, the Supreme Court has stated that in enforcement proceedings, (Austrian) state courts have to autonomously check any grounds for refusal of enforcement, irrespective of setting-aside proceedings being initiated in the country of origin.

Investment arbitration

Austria is a signatory to the Washington Convention (*cf.* Introduction). Austrian investors have made use of ICSID as a forum for dispute-settlement several times. On the other side, only one case has been registered with ICSID where Austria is the responding party. In these proceedings the claimant alleged that Austria had violated the Malta-Austria BIT by overly intensive investigations of the financial market supervisory authority and the public prosecutor's office.

Austria has also concluded many Bilateral Investment Treaties and currently there are 60 BITs in force. These BITs usually follow the pattern of the Austrian Model BIT of 2010. It includes the ICSID and *ad hoc* arbitration under the UNCITRAL Arbitration Rules. Under the auspices of these BITs, no claim against Austria has been filed until today.

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Manfred Heider was appointed Secretary General of VIAC in 2001. He graduated from the University of Vienna Law School (*Dr. iur.* 1975) and studied Economics at the Vienna University of Economics. He was admitted to the Austrian Bar in 1980. He joined the Vienna Stock and Commodity Exchange and participated in numerous proceedings at the exchange's Arbitration Court. After having served as a member of the exchange's board, he entered into private practice in 1998 as a partner in a Vienna law firm with a focus on M&A. He was a lecturer on law at the Universities of Vienna and Krems. He has published articles on securities regulation, capital markets and international arbitration.

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Alice Fremuth-Wolf has been Deputy Secretary General of VIAC since January 2012. Having studied law at Vienna University (*Mag. iur.* 1995, *Dr. iur.* 2002), Utrecht University (1994) and the London School of Economics and Political Science (LL.M. 1998), she served as assistant professor at the Department of Civil Procedure Law at the Law Faculty of Vienna University. Before opening her own practice in 2004, she worked with major Austrian law firms and acted as party representative and arbitrator in international commercial arbitration cases. Alice Fremuth-Wolf has authored articles and books on arbitration and also serves as a lecturer for arbitration at the Law Faculty of Vienna University, where she was coach of the Vienna team for the Willem C. Vis International Commercial Arbitration Moot from 2004-2009. She is also a qualified mediator and a co-organiser of the CDRC IBA-VIAC-Elsa Consensual Dispute Resolution Competition in Vienna.

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