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# **Litigation & Dispute Resolution**

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# Austria



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## 1 Litigation – Preliminaries

**1.1 What type of legal system does your jurisdiction have? Are there any rules that govern civil procedure in your jurisdiction?**

Austria is a civil law jurisdiction. The civil procedure rules are set out in the Austrian Code of Civil Procedure (“Zivilprozessordnung – ZPO”) and Austrian Act on Jurisdiction (“Jurisdiktionsnorm – JN”). The latter, *inter alia*, governs the jurisdiction among the district and regional courts. The Non-Contentious Proceedings Act (“Außerstreitgesetz – AußStrG”) governs certain civil law matters (e.g. certain succession law disputes or disputes in family matters). The Austrian Enforcement Code (“Exekutionsordnung – EO”) determines the enforcement of judgments, further issuance and enforcement of interim measures. As Austria is an EU Member State, EU regulations also govern various aspects of international civil procedure (e.g. Brussels 1a Regulation on jurisdiction, recognition and enforcement of judgments *et al.*).

**1.2 How is the civil court system in your jurisdiction structured? What are the various levels of appeal and are there any specialist courts?**

The Austrian court system foresees three instances. The courts of first instance in Austria are the district courts (“Bezirksgerichte”) and the regional courts (“Landesgerichte”). District courts have jurisdiction in civil law matters where the amount in dispute does not exceed EUR 15,000, as well as certain family law and tenancy disputes, irrespective of the amount in dispute. In all civil law matters (except the above-mentioned) where the value of the claim exceeds EUR 15,000, the regional courts have first instance jurisdiction. For certain areas of law (e.g. corporate, employment and social law), specific courts are set up in Vienna. In the regions, the district and regional courts deal with all these cases.

The regional courts decide on appeals against decisions of the district courts, and the higher regional courts (“Oberlandesgericht”) decide on appeals against decisions of the regional courts. The Supreme Court (“Oberster Gerichtshof”) is the third and highest instance in Austrian civil proceedings. Not all cases can be referred to the Supreme Court.

The Supreme Court rules in the first and last instance on applications to set aside arbitral awards and on certain other matters relating to arbitration proceedings (e.g. the partiality of arbitrators).

**1.3 What are the main stages in civil proceedings in your jurisdiction? What is their underlying timeframe (please include a brief description of any expedited trial procedures)?**

The first step in Austrian civil proceedings is the filing of a claim with the competent court. Thereafter, the defendant has four weeks to file a statement of defence; in employment matters and cases before the district courts, the court schedules a preparatory hearing following the filing of the claim.

The preparatory hearing is the first hearing of the parties before the court, where the court tries to reach a settlement and discusses the further course of the proceeding. At the subsequent hearings, the court takes up the evidence and thereafter closes the hearing. The trial at first instance typically ends with a written judgment. Judgments orally pronounced right at the end of the hearing are possible, but rare.

For purely pecuniary claims of less than EUR 75,000, there is an accelerated process. The court issues a payment order based on the claim alone, without hearing the defendant. The defendant then has the opportunity to lodge an objection within four weeks. If the defendant does not object, the order becomes enforceable. Applicable EU regulations provide for similar accelerated procedures (e.g. European Payment Order, European Small Claims procedure, etc.).

According to the latest available statistics (<https://www.justiz.gv.at/justiz/daten-und-fakten/verfahrensdauer.1e7.de.html>), the average duration of district court proceedings is 9.4 months, while the average duration of regional court proceedings is 17.3 months.

**1.4 What is your jurisdiction’s local judiciary’s approach to exclusive jurisdiction clauses?**

The parties to a dispute may elect a different forum for the dispute and (subject to exceptions) use alternative dispute resolution mechanisms, such as arbitration and mediation. Both the above-mentioned Act on Jurisdiction and the Brussels 1a Regulation (for EU transnational disputes) allow the parties to

agree on jurisdiction, including exclusive jurisdiction clauses. In the event of a dispute, the claimant must be able to prove the existence of such agreement in written.

The legislator has, nevertheless, set limits to the freedom of the parties to choose the place of jurisdiction. For example, it cannot be agreed that the regional court has jurisdiction over disputes for which the district court actually has jurisdiction. In addition, specific places of jurisdiction are mandatory. Consumers enjoy additional protection. They can only validly agree to a choice of forum clause if the dispute has already occurred, or the potential forum is within the place of the consumer's domicile. Further, the Brussels 1a Regulation provides for similar restrictions for claims by and against consumers.

#### 1.5 What are the costs of civil court proceedings in your jurisdiction? Who bears these costs? Are there any rules on costs budgeting?

The costs of civil proceedings are generally made up of court fees, as well as lawyers', witnesses', experts' and interpreters' fees.

Initially, each party has to bear its own costs of conducting the court proceedings. Ultimately, the victorious party is entitled to recover its costs to the extent of its winning percentage ("loser-pays-costs principle"). The compensation is calculated based on the statutory Lawyers Tariff ("Rechtsanwaltstarifgesetz"), and typically falls short of the fees, which the party actually incurs based on an hourly fee arrangement.

If there is no fee agreement, the lawyer's remuneration is based on the aforementioned Lawyers Tariff, based on the amount in dispute and the complexity of the procedural act performed.

#### 1.6 Are there any particular rules about funding litigation in your jurisdiction? Are claimants and defendants permitted to enter into contingency fee arrangements and conditional fee arrangements?

Contingency agreements that guarantee the lawyer a share of the value in dispute in the event of victory are not permitted in Austria. However, it is permitted to enter into conditional fee agreements so that, for example, a higher hourly rate is paid in the event of victory. In this case, a minimum fee must also be agreed for the event of failure.

#### 1.7 Are there any constraints to assigning a claim or cause of action in your jurisdiction? Is it permissible for a non-party to litigation proceedings to finance those proceedings?

The contractual assignment of only the right to litigate on behalf of another person is not permitted. In Austria, the whole claim may be assigned to someone else subject to (valid) contractual restrictions on assignment.

The parties to a dispute are free to engage a third-party funder to finance the proceedings. A funder will not be able to act directly in the case, but will usually be consulted on strategic decisions based on the funding arrangement. It remains to be seen whether more stringent rules on third-party funding will be introduced in the course of implementing the EU directive on class actions.

#### 1.8 Can a party obtain security for/a guarantee over its legal costs?

If the claimant is neither an Austrian nor an EU citizen, the defendant can demand security for costs, unless: the claimant

is domiciled in Austria; the claimant has sufficient funds in Austria to cover any future duty to compensate the defendant; or an international treaty provides otherwise.

## 2 Before Commencing Proceedings

### 2.1 Is there any particular formality with which you must comply before you initiate proceedings?

No specific formal steps need to be taken before commencing civil proceedings, other than filing the claim with the court. However, for claims exceeding a monetary value of EUR 5,000 and before any court higher than a district court, the parties need to be represented by attorneys-at-law, and the claim must either be filed by the lawyer (common practice) or bear the lawyer's signature. Further, it is recommended to serve a demand letter before filing the claim. Otherwise, if the defendant recognises the claim, the claimant will not be compensated for the costs of filing the claim.

### 2.2 What limitation periods apply to different classes of claim for the bringing of proceedings before your civil courts? How are they calculated? Are time limits treated as a substantive or procedural law issue?

Austrian civil law distinguishes between a general, long (30 years) and a special, short (three years) limitation period. The limitation of a right due to non-utilisation begins with the creation of the right. Numerous commercial civil claims are subject to the three-year limitation period. Likewise, a claim for damages is subject to the three-year limitation period, starting from the moment when the damaged party learned about the damage and the responsible party. There are ample exceptions to the general rule, e.g. claims against (former) directors of a stock corporation or a limited liability company are subject to a five years' limitation period. Further, a claim against a (former) employee for damages may get time-barred already after six months. These time limits are treated as substantive law.

## 3 Commencing Proceedings

### 3.1 How are civil proceedings commenced (issued and served) in your jurisdiction? What various means of service are there? What is the deemed date of service? How is service effected outside your jurisdiction? Is there a preferred method of service of foreign proceedings in your jurisdiction?

The initiation of civil proceedings is the lodging of a claim. This is followed by a preliminary examination of the court's jurisdiction and the forwarding of the claim to the defendant.

The Austrian Delivery of Documents Act ("Zustellgesetz") governs the delivery of court documents. If it cannot be served, the document is deposited at the post office for two weeks and the addressee must be informed of this. The document is deemed to have been delivered on the first possible collection date. This presumption may be rebutted.

If a party is represented by a lawyer, service shall be effected through the lawyer by means of electronic legal communication ("Elektronischer Rechtsverkehr").

Regulation (EC) No 2020/1784 applies to the service of judicial documents in another EU Member State and greatly facilitates the service of process within the EU. The regulation led to a significant acceleration of service of process, because the courts may directly serve documents in other EU Member



States via the postal services without involving any authority in the Member State of the destination.

In other cases of international service of process, whether simplified methods of service of process are available depends on existing bilateral treaties among the countries concerned. They typically involve the assistance of the judiciary in the country of destination. In the absence of any treaty, service of process must be effected via the international diplomatic channels, which can take several months.

### 3.2 Are any pre-action interim remedies available in your jurisdiction? How do you apply for them? What are the main criteria for obtaining these?

Interim injunctions are available before commencing civil proceedings. Under certain conditions, injunctions can be used to secure monetary claims, the right to a particular service or a right or legal relationship. A reasonably strong *prima facie* case and the risk of irreversible harm, if the injunction is not granted, are the main conditions for an injunction.

### 3.3 What are the main elements of the claimant's pleadings?

The ZPO (Section 226 ZPO) sets forth the required elements of a claim. Claims must contain a specific relief sought, the facts on which the claim is based and a statement of reasons as to why the court seised has jurisdiction. If a claim is inconclusive, the court must order the claim to be amended.

### 3.4 Can the pleadings be amended? If so, are there any restrictions?

Additional factual arguments are possible as long as they do not lead to a change of the claim. The legal arguments can also be amended, as Austrian law does not require the claimant to make a legal assessment of the facts.

The claimant may amend the claim as long as it has not been served on the defendant. After the claim has been served on the defendant, the claimant can only amend the claim if the defendant or the court agrees to the amendment. This is possible until the end of the first instance proceedings. The courts shall allow an amendment of a claim if it helps to avoid another dispute and does not excessively protract the proceedings. In the absence of the agreement of the defendant, the court may only approve an amendment which does not trigger the jurisdiction of another court.

### 3.5 Can the pleadings be withdrawn? If so, at what stage and are there any consequences?

Regarding the withdrawal of a claim, two variants have to be distinguished. First, the claim can be withdrawn without abandoning the claim. This is only possible if the claim has not yet been served on the defendant or if the defendant agrees to the withdrawal without waiving the claim. After the claim has been served on the defendant and the defendant does not agree to the withdrawal without waiver, the claimant can only withdraw the claim with waiver.

This is to be distinguished from the variant in which the action is withdrawn with a waiver of the claim. This is possible until the end of the hearing at first instance and does not require the defendant's consent.

## 4 Defending a Claim

### 4.1 What are the main elements of a statement of defence? Can the defendant bring a counterclaim(s) or defence of set-off?

The content of the statement of defence is also regulated by the ZPO (Section 239 ZPO). Accordingly, a statement of defence must contain a specific claim for relief, a statement of the reasons why the facts alleged in the statement of claim are incorrect and, if the defendant contests the jurisdiction of the court, an objection to such jurisdiction.

The defendant may file a counterclaim ("Widerklage"), if the substance of the counterclaim is related to the claim, or the claim and counterclaim are subject to a set-off (e.g. two reciprocal money claims). A counterclaim is an independent claim by which the plaintiff seeks a court decision on such a claim. In international cases, the conditions for filing a counterclaim are governed by the Brussels 1a Regulation (Art 8 no. 3).

A set-off defence ("Aufrechnungseinrede") does not require the court to have jurisdiction over the basis of the set-off claim. However, in this case the court only deals with the counterclaim if the claim is justified, and only to the extent that it does not exceed the claim.

### 4.2 What is the time limit within which the statement of defence has to be served?

A written statement of defence is only foreseen in proceedings before the regional court. In this case, the defendant has four weeks to submit a defence.

In proceedings before the district court and in employment and social law proceedings, no written statement of defence is foreseen. In contrast, the parties may file submissions prior to the preparatory hearing, or defend their case orally in the hearing.

### 4.3 Is there a mechanism in your civil justice system whereby a defendant can pass on or share liability by bringing an action against a third party?

The ZPO does not provide for any means to "join" additional claimants or defendants into pending proceedings. In contrast, the role of the claimant(s) and defendant(s) are attributed in the initial claim filed with the court. If the claimant wants to sue an additional defendant after filing the claim, it needs to file a second claim. Subject to further conditions and the discretion of the court, the claims may be joined.

### 4.4 What happens if the defendant does not defend the claim?

The court can issue a default judgment ("Versäumnungsurteil") if the defendant does not enter a defence in the proceedings, or (if applicable) does not file the written statement of defence in a timely manner and the claimant requests the issuance of a default judgment.

### 4.5 Can the defendant dispute the court's jurisdiction?

Before pleading on the substance of the case, the defendant may challenge the jurisdiction of the court by way of a plea of lack

of jurisdiction (“Unzuständigkeitseinrede”). In all cases, where a written statement of defence needs to be filed, the objection must be raised there. If the defendant fails to raise the objection on time, the court’s jurisdiction cannot be challenged any more (subject to limited exceptions).

## 5 Joinder & Consolidation

**5.1 Is there a mechanism in your civil justice system whereby a third party can be joined into ongoing proceedings in appropriate circumstances? If so, what are those circumstances?**

Austrian procedural law allows third parties to intervene in the proceedings (“Nebenintervenient” or “Streitgenosse”) in support of either the claimant or defendant. The intervener may join upon his initiative, or a party to the proceedings may serve a third party with a third-party notice (“Streitverkündung”) if it considers that the third party has a legal interest in the outcome of the proceedings. However, the third party is not obliged to intervene. If the third party does not intervene, it cannot challenge adverse findings of fact in the judgment. A typical use case of intervention occurs if the defendant has a potential recourse claim against a third party, depending on the outcome of the litigation. The defendant will want to ensure that the third party cannot later make the argument that certain objections should have been raised, which would have led to a successful defence of the case.

**5.2 Does your civil justice system allow for the consolidation of two sets of proceedings in appropriate circumstances? If so, what are those circumstances?**

Multiple cases may be consolidated if they are between the same parties before the same court. It is up to the discretion of the judge whether to consolidate proceedings. In practice, judges occasionally consolidate cases when they are presiding over all of them anyway, and it is efficient to take up the evidence for all cases together. In contrast, consolidation of cases, where different judges are competent for each case, is rare.

**5.3 Do you have split trials/bifurcation of proceedings?**

The court may also decide to split the case. The claims in the same statement of claim will then be dealt with in separate hearings or the proceedings will be limited to certain issues. In particular, the court may decide, first, on whether a claim is well-founded in substance, while postponing the assessment on the quantum for a subsequent stage. In this case, the court may issue an interlocutory judgment (“Zwischenurteil”). Or, the court may decide to issue a partial judgment (“Teilurteil”) on a quantitative part of the claim. These judgments can be appealed separately.

## 6 Duties & Powers of the Courts

**6.1 Is there any particular case allocation system before the civil courts in your jurisdiction? How are cases allocated?**

In Austria, the principle of fixed allocation of cases applies (“Prinzip der festen Geschäftsverteilung”). This is to ensure that the selection of judges cannot be influenced by the parties.

The allocation of cases is always fixed one year in advance. The allocation of cases can only be deviated from in very exceptional cases. However, this requires the approval of the competent staff senate of the court concerned. Reasons that may justify such a change are, for example, a heavy workload or the judge’s inability to deal with the case for an extended period of time.

**6.2 Do the courts in your jurisdiction have any particular case management powers? What interim applications can the parties make? What are the cost consequences?**

The judge opens, conducts and closes the oral hearing. The judge is obliged to ensure that the basis for the decision is fully obtained and discussed by questioning and instructing the parties, ordering improvements, ordering the submission of documents, taking evidence in court, etc.

Parties may file various interim applications, for example: to hear (expert) evidence; to adjourn the case; and to extend time limits.

For costs, see question 9.3.

**6.3 In what circumstances (if any) do the civil courts in your jurisdiction allow hearings or trials to be conducted fully or partially remotely by telephone or video conferencing, and what protocols apply? For example, does the court – and/or may parties – record and/or live-stream the hearings and may transcriptions be taken? May participants attend hearings remotely when they are physically located outside of the jurisdiction? Are electronic or hard-copy bundles used for remote hearings?**

Section 132a of the ZPO allows civil courts to hold hearings by way of video conference if the parties agree and it appears necessary for reasons of procedural economy. Witnesses can be heard, expert opinions can be provided and settlements can be concluded in such video hearings. The video hearings are not recorded or live-streamed as such. In contrast, the judge produces a shortened transcript (no verbatim transcript) himself using a Dictaphone in the same way as in “normal” court hearings. Participants, e.g. the attorneys and witnesses, join the hearing remotely (via Zoom). Although not a requirement to schedule a remote hearing, in practice more and more cases are managed digitally.

**6.4 What sanctions are the courts in your jurisdiction empowered to impose on a party that disobeys the court’s orders or directions?**

It is the duty of the court to maintain order in the courtroom. To do this, it can impose fines or ban parties from the courtroom. The court cannot ban the lawyers, but inform the Bar chamber of a lawyer, who disregards the authority of the court.

**6.5 Do the courts in your jurisdiction have the power to strike out part of a statement of case or dismiss a case entirely? If so, at what stage and in what circumstances?**

As stated above, a claim must be conclusive and substantiated. If this is not the case, the court will discuss this deficiency with the parties and give them the opportunity to correct the pleading. If the party does not correct the claim within the prescribed time limit, the court must dismiss the claim. The court cannot amend a

statement of claim itself. Only when rendering judgment may the court partly or entirely dismiss the claim. Further, the court has the power to amend the relief sought when issuing judgment to the extent legally necessary or to ensure enforceability (provided that it does not award more than the claimant requested).

#### 6.6 Can the civil courts in your jurisdiction enter summary judgment?

Austrian law does not allow for summary judgments.

#### 6.7 Do the courts in your jurisdiction have any powers to discontinue or stay the proceedings? If so, in what circumstances?

Civil courts cannot discontinue proceedings once they have been initiated. However, the parties are free to suspend the proceedings (e.g. for settlement negotiations). The court may also order a stay of proceedings in certain circumstances (e.g. if the outcome of the proceedings depends on other proceedings). In some instances, proceedings are stayed by operation of law, e.g. if a party becomes insolvent.

## 7 Disclosure

#### 7.1 What are the basic rules of disclosure in civil proceedings in your jurisdiction? Is it possible to obtain disclosure pre-action? Are there any classes of documents that do not require disclosure? Are there any special rules concerning the disclosure of electronic documents or acceptable practices for conducting e-disclosure, such as predictive coding?

There is no general pre-trial taking of evidence. Under certain conditions, evidence may be taken before a case is filed if the evidence might otherwise be lost or if it is necessary to establish the current state of affairs and the applicant can show a legal interest. However, this preliminary evidence taking mainly relates to the determination of defects on buildings or machines and does not play a strong role with respect to documents.

Historically, Austrian civil procedural law is driven by the principle that each party must prove its own case and cannot expect the opponent to produce any other evidence than it is ready to disclose. The court may order the opposing party or a third party to produce certain documents. The ordered party cannot oppose this if he or she refers to the document itself, if certain civil law provisions oblige the party to hand it over, or if the document qualifies as a joint document. The practical relevance of these rules is limited, because the applicant needs to describe the requested documents fairly precisely; therefore, it is not possible to obtain unknown documents. However, the law is evolving due to EU law. For example, in cartel damage cases the law provides for some additional means to apply for disclosure of evidence to assist claimants in making their case.

Attorney-client privileged information and documents are generally not subject to disclosure. There are no specific rules governing the disclosure of electronic documents.

#### 7.2 What are the rules on privilege in civil proceedings in your jurisdiction?

Certain persons (family members) and professionals subject to statutory secrecy obligations (e.g. attorneys, auditors) are not

obliged under Austrian law to testify as witnesses or to submit confidential documents. The lawyer's employees are also bound by the attorney–client privilege.

#### 7.3 What are the rules in your jurisdiction with respect to disclosure by third parties?

See the answer to question 7.1 above.

#### 7.4 What is the court's role in disclosure in civil proceedings in your jurisdiction?

It is for the court to decide on applications for disclosure of certain documents. The court may also order the parties to provide further evidence. Failure to do so will adversely affect the court's conclusions.

#### 7.5 Are there any restrictions on the use of documents obtained by disclosure in your jurisdiction?

If a document could reveal business or trade secrets, and if requested by a party, the court may order that the document be produced in redacted form. The court may also order that the document will only be shown to a court expert for review and assessment, who must not disclose it to the court and the parties.

## 8 Evidence

#### 8.1 What are the basic rules of evidence in your jurisdiction?

Each party bears the burden of proof for its own submissions. This applies both to the facts on which it relies and to the legal arguments. The tribunal shall assess the facts and legal arguments presented by the parties on the basis of a free evaluation of the evidence.

#### 8.2 What types of evidence are admissible, and which ones are not? What about expert evidence in particular?

All sources of knowledge can generally be considered as evidence. The ZPO explicitly mentions the classic types of evidence, such as documents, witnesses, experts, inspection and examination of the parties.

#### 8.3 Are there any particular rules regarding the calling of witnesses of fact, and the making of witness statements or depositions?

Both the court and the parties may call witnesses. If they reside in Austria, they are obliged to obey the order summoning them. Witnesses abroad cannot be forced to travel to the court. Witnesses are first questioned by the court about their duty to tell the truth and the possible criminal consequences of breaching this duty. The court then asks its questions, followed by the parties. Written testimony is not admissible before the Austrian courts, only the oral testimony in direct presence of the judge. Lawyers may contact and communicate with witnesses, but are not allowed to influence them.

#### 8.4 Are there any particular rules regarding instructing expert witnesses, preparing expert reports and giving expert evidence in court? Are there any particular rules regarding concurrent expert evidence? Does the expert owe his/her duties to the client or to the court?

The parties are free to instruct experts. However, if the court considers an expert necessary, it would appoint a court expert itself. The opinion of the court expert carries more weight than that of the “private” expert appointed by the parties. The questions put to the expert are formulated by the court and the parties. Once the expert’s report has been completed, the parties have the opportunity to ask the expert questions about the report. Overall, the court expert has a strong role in Austrian court proceedings. The fact that a court expert’s finding is inconsistent with the findings of a private expert is – taken alone – no ground for challenge.

## 9 Judgments & Orders

#### 9.1 What different types of judgments and orders are the civil courts in your jurisdiction empowered to issue and in what circumstances?

Austrian civil courts issue decisions in the form of either a judgment or an order. Unlike a judgment, an order in civil proceedings does not decide on the merits of the case, but only on certain procedural issues.

There are several types of judgments. The type of judgment usually depends on the claim. There are, for example, performance judgments, declaratory judgments and judgments aimed at modifying or terminating a legal relationship. In addition, the court may divide the subject matter of the proceedings qualitatively (interlocutory judgment “Zwischenurteil”) or quantitatively (partial judgment “Teilurteil”), or it may decide the entire matter in dispute immediately by means of a final judgment.

#### 9.2 Are the civil courts in your jurisdiction empowered to issue binding declarations as to (i) parties’ contractual or other civil law rights or obligations, (ii) the proper interpretation of wording in contracts, statutes or other documents, (iii) the existence of facts, or (iv) a principle of law? If so, when may such relief be sought and what factors are relevant to whether such relief is granted? In particular, may such relief be granted where the party seeking the declaration has no subsisting cause of action, and/or no party has suffered loss, and/or there has been no breach of contract/duty?

(i) Austrian courts may decide on the existence or non-existence of a right by means of a declaratory judgment. (ii) The question of the correct interpretation of wording in contracts, articles of association or other documents cannot be the subject of an action for a declaratory judgment and therefore cannot be the subject of a declaratory judgment. (iii) A declaratory judgment cannot be used to decide the existence of facts, the legal classification of facts, or (iv) legal principles.

A prerequisite for the admissibility of an action for declaratory relief is a legal interest in the declaratory relief. In addition, an action for a declaratory judgment can only be brought if the plaintiff cannot (yet) enforce a claim for performance. Actions for performance have priority over actions for declaratory relief.

It is also possible to file an interlocutory application for a declaratory judgment. This is possible if it concerns a question that is a prerequisite for the decision on the asserted claim and if the answer to this question is of importance beyond the current dispute. In this case, the court may decide the question alone by way of a partial judgment or include the answer to the question in the final judgment.

Certain qualified bodies, e.g. consumer protection bodies or the chamber of labour are by operation of law entitled to sue companies for cease and desist (“Unterlassungsklage”), e.g. if a company is using non-transparent or unlawful general terms and conditions in its contractual relationships with consumers. Consequently, the defendant company can be required to abstain from using certain contractual clauses, which the courts have found to be unlawful.

#### 9.3 What powers do your local courts have to make rulings on damages/interests/costs of the litigation?

The court can never award more than is requested. Therefore, damages, including interest, can only be awarded if requested. Punitive damages must not be awarded, only the damage actually suffered. The costs of litigation shall be borne by the losing party to the extent that it loses the case. Lawyers’ fees are determined in accordance with the Austrian Lawyers’ Fees Act (“Rechtsanwaltstarifgesetz”). Courts may, upon application, award interest in order to compensate the successful claimant for delayed payment. The interest rate for entrepreneurial claims among business people is 9.2% per year above the Austrian base rate, otherwise the general interest rate is 4% per year.

#### 9.4 How can a domestic/foreign judgment be recognised and enforced?

Judgments of Austrian civil courts are enforceable in Austria as soon as they have become final. Judgments from other EU Member States are recognised and enforced in Austria (Brussels 1a Regulation, Council Regulation 1215/2012). No exequatur procedure is required.

Judgments from other countries that are not EU Member States are recognised and enforced in Austria if the judgment is enforceable under the law of the country in which it was issued, and reciprocity is guaranteed by legal provisions or international treaties between Austria and the foreign country. The applicant must apply for the judgment to be recognised and enforceable in Austria.

#### 9.5 What are the rules of appeal against a judgment of a civil court of your jurisdiction?

Appeals against decisions of a district court are dealt with by the competent regional court. Appeals against decisions of a regional court are decided by the respective higher regional court.

Where the amount in dispute does not exceed EUR 5,000, no appeal may be lodged against decisions of the courts of appeal. An appeal to the Supreme Court as the third and final instance is only admissible if the amount in dispute is more than EUR 30,000, or more than EUR 5,000 and the court of appeal declares the appeal admissible. In addition, the point of law to be settled must be of considerable importance for the preservation of legal unity, legal certainty or the development of the law.



## 10 Settlement

### 10.1 Are there any formal mechanisms in your jurisdiction by which parties are encouraged to settle claims or which facilitate the settlement process?

At the preparatory hearing, the court inquires about the parties' willingness to settle and assists them in reaching a settlement. This is provided for by law (§ 258 para. 1 no. 4 ZPO). A settlement made in the preparatory hearing reduces the court fees to be paid.

## 11 Alternative Dispute Resolution

### 11.1 What methods of alternative dispute resolution are available and frequently used in your jurisdiction? Arbitration/Mediation/Expert Determination/Tribunals (or other specialist courts)/Ombudsman? (Please provide a brief overview of each available method.)

Arbitration can be established by way of a valid arbitration agreement. Arbitrators appointed by the parties decide by way of an enforceable award.

The parties may, on a voluntary basis, enter into mediation. A trained mediator assists the parties in resolving their dispute.

It is also possible to obtain an expert determination of the factual and legal situation. However, this is not enforceable. An enforceable title can only be obtained through court or arbitration proceedings.

Generally (e.g. <https://www.verbraucherschlichtung.at>), or in certain areas of business (e.g. banking, telecommunication), dispute boards have been put in place in order to facilitate the amicable resolution of disputes between consumers and the respective business. These processes are voluntary and outside the Austrian judiciary. The parties may refer their case to the court at any time.

### 11.2 What are the laws or rules governing the different methods of alternative dispute resolution?

Sections 577–618 of the ZPO contain provisions that apply to all arbitral tribunals in Austria. Further, the Vienna International Arbitral Centre ("VIAC") has set up an international arbitral institution, which has become widely known, particularly regarding disputes in Central and Eastern Europe.

Mediation is governed by the Austrian Civil Law Mediation Act, the EU Mediation Act and the Vienna Mediation Rules of the VIAC.

Further, the Austrian Act on Alternative Dispute Resolution ("*Alternative-Streitbeilegung-Gesetz – AStG*") provides for general rules for the various dispute boards set up in order to facilitate the amicable settlement of disputes prior to any court procedure.

### 11.3 Are there any areas of law in your jurisdiction that cannot use Arbitration/Mediation/Expert Determination/Tribunals/Ombudsman as a means of alternative dispute resolution?

Pursuant to Section 582(2) of the ZPO, family law matters and matters falling within the scope of the Austrian Tenancy Act ("*Mietrechtsgesetz*"), the Austrian Condominium Act

("Wohnungseigentumsgesetz") or the Austrian Non-Profit Housing Act ("*Wohnungsgemeinnützigkeitsgesetz*") cannot be the subject of arbitral proceedings. Arbitration agreements in employment matters and disputes involving consumers are subject to strict limitations. Otherwise, all matters on which the parties are able to reach a legally valid settlement may be submitted to arbitration.

Likewise, the parties may use mediation for any dispute, where the parties are entitled to agree on a settlement.

In contrast, the competencies of the various dispute boards provided for by way of the AStG (see above) are linked to the respective businesses for which these boards have been set up. The *Schlichtung für Verbrauchergeschäfte* provides a residual competency for any other disputes between consumers and a company.

### 11.4 Can local courts provide any assistance to parties that wish to invoke the available methods of alternative dispute resolution? For example, will a court – pre or post the constitution of an arbitral tribunal – issue interim or provisional measures of protection (i.e. holding orders pending the final outcome) in support of arbitration proceedings, force parties to arbitrate when they have so agreed, or order parties to mediate or seek expert determination? Is there anything that is particular to your jurisdiction in this context?

The Austrian courts respect the (valid) arbitration clause and deny jurisdiction for the substantial dispute. Still, Austrian courts may, under certain conditions, intervene in support of arbitral proceedings. These avenues are governed by the provisions of Sections 577–618 of the ZPO. Austrian courts can provide legal assistance in matters that the arbitral tribunal is not authorised to deal with. Further, the parties to arbitration proceedings frequently refer to the judiciary in order to obtain protection by way of interim injunctions, while the Austrian civil procedural rules on arbitration also confer to arbitral tribunals the competence to issue interim injunctions.

The ZPO also provides for grounds for setting aside an arbitral award (§ 611 (2) of the ZPO). These must be asserted by means of an appeal to the Supreme Court.

The parties cannot be forced to mediate a dispute. Still, it is noteworthy that in several instances Austrian courts take the initiative and propose mediation to the parties in matters they consider potentially appropriate for mediation. Parties are often reluctant to reject a proposal made by the judge dealing with their dispute, which facilitates a mediation attempt.

### 11.5 How binding are the available methods of alternative dispute resolution in nature? For example, are there any rights of appeal from arbitration awards and expert determination decisions, are there any sanctions for refusing to mediate, and do settlement agreements reached at mediation need to be sanctioned by the court? Is there anything that is particular to your jurisdiction in this context?

As mentioned in question 11.1, an arbitral award is binding and enforceable. However, the results of the other methods of alternative dispute resolution are not.

There are no legal sanctions for a party who does not wish to participate in an alternative dispute resolution method.

**11.6 What are the major alternative dispute resolution institutions in your jurisdiction?**

The main international arbitration institution in Austria is the VIAC. Furthermore, China International Economic and Trade Arbitration Commission (“CIETAC”) and the Permanent Court of Arbitration (“PCA”) also have offices in Austria.

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