

The International Comparative Legal Guide to:

Litigation & Dispute Resolution 2009

A practical insight to cross-border Litigation & Dispute Resolution



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I. LITIGATION

1 Preliminaries

1.1 What type of legal system has Austria got? Are there any rules that govern civil procedure in Austria?

In line with the civil law tradition, Austrian law is primarily statute law.

“Civil procedure” encompasses a variety of procedures conducted in civil courts and is governed by a number of laws: the Austrian Jurisdiction Act (“*Jurisdiktionsnorm*”, AJA) determines the organisation and jurisdiction of courts in contentious matters. The Austrian Code of Civil Procedure (“*Zivilprozessordnung*”, ACCP) applies to contentious proceedings in civil courts and - to some extent - to national and international arbitration. The Austrian Enforcement Code (“*Exekutionsordnung*”, AEC) regulates the enforcement of judgments, arbitral awards and preliminary remedies.

On an international level, Austria is *inter alia* a party to the European Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (“Brussels Convention”), the Lugano Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters, and other international treaties, such as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“New York Convention”), and the European Convention on International Commercial Arbitration.

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

In Austria, there are two different sequences of courts, each of which encompasses up to three stages. In the first instance, civil proceedings can be conducted either in the district courts (“*Bezirksgerichte*”) or the regional courts (“*Landesgerichte*”).

District courts have monetary jurisdiction in cases involving an amount in dispute of up to EUR 10,000 and subject-matter jurisdiction in most disputes relating to family law or landlord/tenant disputes. Appeals on points of fact and law lie to the regional courts. In cases concerning legal issues of fundamental importance, a further appeal may be taken to the Supreme Court (“*Oberster Gerichtshof*”).

Regional courts have monetary jurisdiction in cases involving an amount in dispute of over EUR 10,000 and subject-matter

jurisdiction in disputes pursuant to the Austrian Nuclear Liability Act, Public Liability Act, Data Protection Act, and in most competition or IP matters.

Appeals on points of fact and law lie to the Higher Regional Courts (“*Oberlandesgerichte*”). In cases concerning legal issues of fundamental importance, a further appeal may be taken to the Supreme Court.

In some provinces, specialised courts for commercial or labour law matters exist.

1.3 What are the main stages in civil proceedings in Austria? What is their underlying timeframe?

A civil law suit is initiated by a statement of claim (“*Klage*”) filed with the court. The statement of claim is served on the defendant together with an order to file a brief in response thereto (“*Klagebeantwortung*”) if the claim is disputed.

If the defendant responds within the given time period, the court will summon the parties to a preparatory hearing, which has the purpose of determining whether or not the dispute is amenable to a settlement or - if that is not the case - to determine the programme of the proceedings (see question 6.2 below). The law suit as such may consist of several hearings spread over several months or years. The average duration of first instance proceedings is less than a year - complex proceedings may take substantially longer. Appeal proceedings take six to nine months on average.

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

Generally, the parties are free to submit to the jurisdiction of a court of their choice (national and international) by explicit mutual agreement (section 104 AJA). Jurisdiction clauses as to the venue jurisdiction of a court are generally admissible unless expressly prohibited by law (e.g. with regard to legal disputes arising out of the relationship between incorporated companies and their shareholders). If a valid jurisdiction clause refers a case exclusively to a court which may render a judgment enforceable in Austria, (other) Austrian courts will dismiss the case.

1.5 What are the costs of civil court proceedings in Austria? Who bears these costs?

Legal costs comprise court fees and, if required, fees for experts, interpreters, and witnesses, the costs of announcements. Under the Austrian Court Fees Act (“*Gerichtsbegührengesetz*”), the claimant or appellant has to pay the entire court fees in advance. The amount

is usually determined on a graduated scale in accordance with the amount in dispute (“*Streitwert*”).

In most proceedings, the court’s decision on the merits also contains a decision concerning the reimbursement of costs by the losing party. Attorneys’ costs are reimbursed only in the amount determined pursuant to the Austrian Attorneys’ Fees Act (“*Rechtsanwaltstarifgesetz*”) (see question 9.2 below).

1.6 Are there any particular rules about funding litigation in Austria? Are there any contingency/conditional fee arrangements? Are there rules on security for costs?

In the absence of a separate agreement, the attorneys’ fees are governed by the Austrian Attorneys’ Fees Act, which also forms the basis of the courts’ decisions on cost reimbursement between the parties. Other (more common) methods of determining attorneys’ fees include agreements on hourly rates or contingency fees, which are permissible as long as the latter are not calculated as a percentage of the amount awarded by the court (*pactum de quota litis*). Lump-sum fee arrangements are also admissible in Austria, but rarely used for litigious matters.

Provided that the conduct of a civil law suit is not patently frivolous and does not entirely lack any chance of success, legal aid (“*Verfahrenshilfe*”) is granted to parties with insufficient financial means who cannot afford to litigate without compromising their livelihood. In such cases, the court will grant a respite or even waive the costs. Oftentimes an attorney is provided free of charge.

According to section 57(1) ACCP, foreigners filing a complaint before Austrian courts are required to make a security deposit for legal costs upon defendant’s request and unless an international agreement provides otherwise. There is no legal obligation to provide security for costs if the claimant habitually takes residence in Austria, if a cost decision by an Austrian court is subject to enforcement in the claimant’s state of residency, or if the claimant disposes of sufficient immovable assets in Austria. In accordance with the principle of non-discrimination, section 57(1) ACCP does not apply to EU citizens in cases where a complaint is related to the exercise of the fundamental freedoms granted by the EC Treaty.

2 Before Commencing Proceedings

2.1 Are there any pre-action procedures in place in Austria? What is their scope?

Generally, there are no pre-action procedures to be complied with.

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?

The limitation periods relevant for the bringing of proceedings before Austrian courts are determined by applicable substantive law. They generally commence at the point in time when a right could have been first exercised. There are various limitation periods in Austria, the most relevant being three years. It applies to monetary claims, including claims for damages. The statute of limitations is not observed *ex officio*, but must be pleaded. It cannot be waived in advance.

3 Commencing Proceedings

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

Civil proceedings are commenced by filing a statement of claim (“*Klage*”) with the court. The statement of claim is considered officially lodged upon receipt by the competent court.

There are various means of service available to Austrian courts, depending on the documents to be served. Within Austria, service is usually effected by registered mail. The deemed date of service is the date on which the document is physically delivered to the recipient. Deposit is admissible under certain conditions, the deemed date of service being the day on which the deposited document was first available for pickup.

The requirements for the service of documents abroad differ depending on the respective addressee: Service to international organisations or foreigners enjoying immunities under public international law is to be effected with the mandatory assistance of the Austrian Ministry for Foreign Affairs or another competent Austrian Ministry. In all other cases, service abroad is effected in accordance with existing state treaties, in particular the 1954 Hague Convention on Civil Procedure. In the European context, the EU Service Regulation (Council Regulation (EC) No 1348/2000) is of particular relevance.

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

In principle, no discovery or other pre-trial exchange of documents or other forms of evidence exists under Austrian civil procedure law. However, the court may grant an application for the taking of certain measures for the safeguarding of evidence (sections 384 to 389 ACCP) both prior or after a statement of claim has been filed, as long as a legal interest of the requesting party is established: e.g. in cases where the future availability of the evidence is uncertain (life-threatening sickness of a witness) or where it is necessary to examine the current status of an object (impeding repair after damage).

In order to prevent irretrievable damage to the claimant, courts may issue preliminary injunctions before or during litigation. Possible measures include freezing orders on bank accounts or the attachment of the defendant’s assets. Courts may order third parties not to pay accounts receivable to the defendant.

3.3 What are the main elements of the claimant’s pleadings?

Under the ACCP, the statement of claim shall:

- specify the relief sought;
- state the facts on which the claim is based; and
- present the evidence supporting the claim.

If the jurisdiction of the court is determined on the basis on the amount in dispute and if the claim is not one for money, the statement of claim must also specify the amount in dispute.

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

Amendments to the pleadings are admissible as long as the legal

prerequisites for bringing the claim (“*Prozessvoraussetzungen*”) remain unaffected. Pleadings may be amended from the moment of submission of the statement of claim up until the closing of first instance proceedings. Once the statement of claim has been served, however, the pleadings can only be amended with the consent of the other party. This rule serves the protection of the defendant who may already have prepared a defence against the claims contained in the claimant’s original writ.

4 Defending a Claim

4.1 What are the main elements of a statement of defence? Can the defendant bring counterclaims/claim or defence of set-off?

The statement of defence must fulfil the formal requirements of a legal brief. As regards the content, it must include a specified request (e.g. an objection as to the jurisdiction of the court seized or the dismissal of the case in whole or in part) and must further list all facts and evidence in support of the defence.

Under Austrian law, the defendant may choose between bringing a counterclaim (“*Widerklage*”) and submitting a plea for set-off (“*Aufrechnungseinrede*”):

- A counterclaim can be brought as a defence against the plaintiff’s main claim as long as first instance proceedings are pending. It seeks independent enforcement of a cross claim that is closely connected to the main claim.
- A plea for set-off seeks the court’s dismissal of the main claim based on the argument that it can be set-off against an existing cross claim.

The basic difference between the two defences is that a plea for set-off does not require that the court have jurisdiction over the defendant’s cross claim, while for a counterclaim the court must have jurisdiction for both the main claim and the cross claim. A plea for set-off does not trigger court fees, as it merely constitutes an objection against the main claim.

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

The time period within which the statement of defence has to be served is four weeks. If the defendant fails to submit a statement of defence in time, the other party can apply for a judgment by default.

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

If a civil law suit concerns a certain object or a right *in rem* which appertains to the defendant only on behalf of a third party, he may call upon the latter to submit a written statement of defence within four weeks time. Apart from this case, which is only of limited practical relevance, Austrian civil procedure law does not provide any mechanisms whereby a defendant can pass on liability to a third party.

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

If a defendant fails to submit a statement of defence, the other party can apply for a judgment by default.

4.5 Can the defendant dispute the court’s jurisdiction?

At district court level, the defendant can dispute the court’s venue and subject-matter jurisdiction by entering an according plea prior to making any submissions in defence (“*Streiteinlassung*”). At regional court level pleas disputing the court’s jurisdiction have to be submitted as part of the defendant’s written statement of defence.

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 civil procedure law permits third party intervention if the court’s prospective judgment directly/indirectly affects the third party’s legal position.

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?

In the interest of practicability and cost-effectiveness, Austrian courts are vested with the power to consolidate two or more proceedings which involve the same parties (section 187(1) ACCP). A decision on the consolidation of proceedings cannot be appealed and may be revoked by the court at any time. Despite their consolidation, a final judgment may be announced separately for each of the proceedings. The court may, however, also render a joint judgment.

5.3 Do you have split trials/bifurcation of proceedings?

Austrian courts are competent to split proceedings in order to separately hear claims originally brought forward in one single submission (section 188 ACCP).

6 Duties & Powers of the Courts

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

Article 87 of the Austrian Constitution provides that the allocation of cases falls within the exclusive competence of the courts. Thus, every court allocates the cases in accordance with criteria defined on a yearly basis by a senate of judges.

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

Proceedings are primarily controlled by the judge who schedules, opens, chairs and closes the oral hearings. The courts’ case management powers *inter alia* include the right to order the parties to submit briefs within a certain period of time or to produce certain documents. As to interim applications, the parties may file procedural motions (e.g. motions to postpone a hearing) or unanimously agree to stay the proceedings for a period of at least three months.

6.3 What sanctions are the courts in Austria empowered to impose on a party that disobeys the court's orders or directions?

Austrian courts have limited powers to impose sanctions on parties who fail to obey their orders. It is only in relation with the questioning of witnesses that Austrian civil procedure law provides sanctioning mechanisms (section 220 ACCP). If a duly called witness fails to attend an oral hearing, the court may impose an administrative penalty. Furthermore, if a witness refuses to give evidence, the court has the power to enforce a statement by imposing penalties (maximum amount EUR 100,000) or even imprisonment of up to six weeks (section 354 AEC).

Furthermore, section 381 ACCP vests the court with the power to freely weigh the circumstance that

- a party refuses to give testimony or to answer a particular question without stating the reasons therefore;
- a party fails to appear before the court; or
- a statement under oath diverts significantly from a previous unchartered statement in its consideration of the evidence in the given case.

6.4 Do the courts in Austria have the power to strike out part of a statement of case? If so, in what circumstances?

When considering the legal implications of a case, Austrian courts only deal with those parts of the claim which they consider relevant for their decision-making.

6.5 Can the civil courts in Austria enter summary judgments?

Under the ACCP, courts may render judgments by default if the defendant fails to submit a statement of defence within the given period of time or if the defendant fails to appear for the first hearing. The ACCP further provides for specific summary proceedings for pecuniary claims not exceeding EUR 30,000 ("*Mahnverfahren*"). As applications in such proceedings are electronically processed, the proceedings are accelerated and simplified. The court issues a payment order on the basis of the statement of claim filed by the claimant and without hearing the defendant. If the latter files an objection within four weeks, the order expires and the court has to initiate regular proceedings.

6.6 Do the courts in Austria have any powers to discontinue or stay the proceedings? If so, in what circumstances?

Under the ACCP, proceedings are stayed ("*Ruhen des Verfahrens*") following a respective agreement by the parties or as a result of the parties' failure to attend the first court hearing.

Proceedings are discontinued ("*Unterbrechung des Verfahrens*") either *ex lege* (e.g. death or insolvency of a party) or by court decision on application of a party.

7 Disclosure

7.1 What are the basic rules of disclosure in civil proceedings in Austria? Are there any classes of documents that do not require disclosure?

If a party credibly demonstrates that the opposing party is in possession of a specific evidentiary document, the court may order the latter to submit this document if and only if the party in possession:

- has expressly referred to the document in question as evidence for its own factual allegations during the proceedings;
- is under a legal obligation to hand over the respective documents to the other party requesting the document as evidence; or if
- the document in question was established in the legal interest of both parties, certifies a mutual legal relationship between them, or contains written statements which were made between them during negotiations of a legal act (section 304 ACCP).

For any other documents, there is only a limited obligation for disclosure. Court orders for the submission of documents are not enforceable.

7.2 What are the rules on privilege in civil proceedings in Austria?

Legal advice - whether from in house counsel or attorneys at law - does not fall under the provisions of section 304 ACCP (see questions 7.1 above and 7.3 below). It follows from the attorney's professional secrecy obligations that there is no obligation to produce documents except in cases where the attorney worked with both parties with regard to the disputed legal act.

As to the right of attorneys to refuse to give oral evidence, section 321 ACCP explicitly lists the fact that certain information was made available to the attorney in his/her professional capacity as a ground for refusal. No comparable privileges exist for in-house counsel.

7.3 What are the rules in Austria with respect to disclosure by third parties?

The court may order disclosure by third parties if:

- the third party is under a legal obligation to hand over a particular document to the party requesting the document as evidence; or
- the document in question was established in the legal interest of both the requesting and the third party, certifies a mutual legal relationship between them, or contains written statements which were made between them during the negotiation of a legal act (section 304 ACCP).

7.4 What is the court's role in disclosure in civil proceedings in Austria?

The taking of evidence in Austrian court proceedings follows a schedule drawn up jointly by the court and the parties and/or their representatives in a preparatory meeting. Document requests are generally very limited. However, a party may be ordered to submit documents to the court if *prima facie* evidence shows that the party is in possession of such documents (see question 7.1 above).

7.5 Are there any restrictions on the use of documents obtained by disclosure in Austria?

No, there are no such restrictions.

8 Evidence

8.1 What are the basic rules of evidence in Austria?

In Austria, evidence is taken during the course of the proceedings.

Each party is required to provide the appropriate evidence for all factual allegations raised and carries the burden of proof for all facts which lead to the application of rules favourable to it.

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

The ACCP distinguishes five different types of evidence:

- documentary evidence;
- witness testimony;
- expert testimony;
- judicial inspection; and
- testimony by the parties.

In principle, any source of information may be admitted as evidence and will be classified as one of the above types depending on the form it takes.

Witnesses and parties give oral evidence. Written witness statements are not permitted under the ACCP. Experts generally render their reports and opinions in writing, however, the court may also consider oral presentations sufficient. Written reports must be explained by the expert during the oral hearing if so requested by the parties (section 357(2) ACCP).

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

Witnesses of fact residing in Austria are obliged to appear before the court to give testimony. They are entitled to refuse to give evidence within the limits of section 321 ACCP (e.g. legal privilege, incrimination of close relatives), but there is no right to refuse to testify at all. If the witness wishes to make use of the possibility to refuse to give evidence, he or she must state the grounds for doing so (see also question 6.3 above).

The court summons and examines the witnesses to establish the facts alleged by the parties. It also inquires about the circumstances on which the witnesses' knowledge is based. The parties and their counsel participate in the examination. They may ask further questions with the aim of clarifying or completing the testimony, but there is no cross-examination.

In principle, witnesses must be examined by the court which will adjudge the case. However, under certain conditions, witnesses may be examined by another court by way of judicial assistance.

8.4 What is the court's role in the parties' provision of evidence in civil proceedings in Austria?

In standard proceedings, Austrian courts have the power to take any evidence they consider relevant with regard to the alleged facts. The court may instruct the parties to produce documentary evidence, order a local inspection, appoint an expert, or take evidence by examining the parties/witnesses. Documentary evidence may be presented only if at least one of the parties has referred to it. It must not be admitted if opposed by both parties. The same rule applies to the hearing of witnesses.

In all other cases, evidence is taken upon application of a party.

9 Judgments & Orders

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

Court decisions on the merits are judgments ("*Urteil*"). They are pronounced in the name of the Republic, ideally orally at the end of the last hearing. In practice, they are handed down in writing a couple of weeks/months after the last hearing. The courts have the power to make default and summary judgments (see questions 4.4 and 6.5 above).

All other decisions rendered during the proceedings (e.g. admitting or rejecting evidence) are orders ("*Beschluss*").

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

Court decisions on costs do not require a formal application by the parties, as long as they submit an itemised cost statement before the formal closing of the proceedings. The decision on costs forms part of the court's final decision and is open for complaint.

As a matter of principle, the winning party is entitled to full reimbursement of all costs accrued. If either party prevails/loses only in part, the court divides the costs on a pro-rata basis. The court may also decide to put the costs of a certain segment of the proceedings on the winning party, if it displayed unreasonable behaviour during the course of the proceedings which caused additional costs for its opponent. As far as a claim is substantiated by material law, damages and interests are granted in judgments passed in action for performance.

9.3 How can a domestic/foreign judgment be enforced?

In principle, domestic judgments are enforceable only once they have become final. They are enforced in accordance with the specific procedures laid down in the AEC. The recognition and enforcement of foreign judgments is governed by various multi-lateral conventions to which Austria is a party, most importantly the European ("*Brussels*") Convention and the Lugano Convention. A number of bilateral treaties ensure reciprocity with countries outside the EU and EFTA.

9.4 What are the rules of appeal against a judgment of a civil court of Austria?

The ACCP provides for an ordinary appeal against the judgment of a trial court ("*Berufung*"), and an appeal against the judgment of an appellate court ("*Revision*"). A specific appeal ("*Rekurs*") may be brought against a court order. Other requests for relief from court decisions are known as extraordinary remedies (actions for annulment, actions for the reopening of proceedings).

Generally, a timely appeal against a judgment suspends its legal validity (*res judicata*) and in most instances also its enforceability. An appeal against a court decision usually does not suspend the decision's enforcement. In the appeals proceedings, no new claims, defences and evidence may be introduced.

II. DISPUTE RESOLUTION

1 Preliminaries

- 1.1 What methods of dispute resolution are available and frequently used in Austria?
Arbitration/Mediation/Tribunals/Ombudsman? (Please provide a brief overview of each available method.)

In Austria, a considerable number of dispute resolution methods are provided for by statute: The ACCP provides for “*praetorian settlements*”, which involve the courts but do not lead to a court decision. Further extra-judicial methods provided for by statute include arbitration tribunals, conciliation boards in housing matters, mediation in civil law matters (especially family law), conciliation boards in telecommunications matters, and local authority mediation offices set up at the behest of the federal states. In addition, representatives of professional bodies, such as those of lawyers, notaries public, doctors of medicine and civil engineers, mediate in disputes between their members or in disputes between members and their client.

There are also a number of non statutory methods of dispute resolution, especially in consumer affairs. These include informal complaints departments of guilds and trade associations, conciliation boards in which the Austrian Association for Consumer Information participates, conciliation committees in chambers of commerce, and a conciliation office for medical liability matters. Austria also has a conciliation board for disputes relating to Austrian “.at” domains (ownership disputes, right to use a name or identification code, trademarks, intellectual property and competition). Finally, there is also an Internet Ombudsman who deals with complaints relating to forum shopping and provides conciliation services in disputes.

- 1.2 What are the laws or rules governing the different methods of dispute resolution?

Austrian arbitration legislation is not codified in a separate act but forms part of the Code of Civil Procedure (sections 577 to 618 ACCP). The respective provisions set out the general framework for arbitration proceedings without differentiating between purely domestic and international procedures, or between business disputes and other matters. There are specific rules regarding groups requiring special protection, such as consumers and employees.

The Civil Law Mediation Act (“*Zivilrechts-Mediations-Gesetz*”) sets out the rules on mediation in conflicts that fall under the jurisdiction of the ordinary civil courts. “Mediation” within the meaning of the Act refers to the services of a mediator who is a qualified expert and who applies recognised methods. The consensus reached with the use of the mediator’s techniques of communication cannot be enforced by a court of law.

- 1.3 Are there any areas of law in Austria that cannot use arbitration/mediation/tribunals/Ombudsman as a means of dispute resolution?

Section 582 ACCP classifies all pecuniary claims as generally arbitrable and expressly exempts claims relating to family law (“*Familienrecht*”), the Austrian Tenancy Act (“*Mietrechtsgesetz*”), the Austrian Non-Profit Housing Act (“*Wohnungsgemeinnützigkeits-gesetz*”), as well as to the Austrian Condominium Act (“*Wohnungseigentumsgesetz*”) from arbitration. Further provisions exempting certain claims from arbitration are to be found in

specialised legislation such as the Law on the Labour and Social Court (“*Arbeits- und Sozialgerichtsgesetz*”) or the Cartel Act (“*Kartellgesetz*”).

2 Dispute Resolution Institutions

- 2.1 What are the major dispute resolution institutions in Austria?

The Vienna International Arbitral Centre of the Austrian Federal Economic Chamber (VIAC) is Austria’s major arbitration institution. It provides a modern framework for the conduct of arbitration proceedings under the recently amended rules of arbitration and conciliation of the VIAC (“*Vienna Rules*”) which took effect in 2006.

- 2.2 Do any of the mentioned dispute resolution mechanisms provide binding and enforceable solutions?

Arbitral awards are binding and enforceable by Austrian courts in the same way as final binding decisions of state courts. As far as they are not determined by international law or legal acts of the European Union, the recognition and declaration of enforceability of foreign arbitral awards is also governed by the provisions of the Austrian Enforcement Code (section 614(1) ACCP). Settlements brought about with the assistance of local authority mediation offices set up at the behest of the regional authorities have the same effect as court settlements and are therefore also enforceable under the judicial executory process.

3 Trends & Developments

- 3.1 Are there any trends in the use of the different dispute resolution methods?

Following implementation of the new law on arbitration in 2006, increased interest in commercial arbitration could be noted. While a number of disputes continue to be resolved through the application of alternative dispute resolution methods, ADR, pre-arbitral referees or dispute resolution boards are generally not often used.

- 3.2 Please provide, in no more than 300 words, a summary of any current issues or proceedings affecting the use of those dispute resolution methods in Austria?

The Austrian Supreme Court recently underlined the endorsement and support the Austrian legal system grants to the institution of arbitration.

In its decision of 22 February 2007 (3 Ob 281/06d), the Austrian Supreme Court held that when the wording of an arbitration agreement allows for two equally justifiable interpretations, the interpretation favouring the validity of the arbitration agreement takes priority. This basic principle is also to be applied to the question of whether a certain dispute falls within the scope of an arbitration agreement or not.

With regard to the setting aside of arbitral awards, the Austrian Supreme Court elaborated on what is to be understood as a violation of the Austrian *ordre public*. With a view to the right to be heard the court held that such right would not be violated in case of an incomplete determination of the facts of the case, an inadequate discussion of legally relevant allegations as well as a rejection of a motion to take evidence.

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BINDER GRÖSSWANG

Binder Grösswang has ranked among Austria's leading law firms for almost 50 years during which it has built an excellent reputation for its sophisticated and business-oriented approach. Today the firm counts over 60 lawyers and is headed by 12 partners.

Acting independently within a strong international network, Binder Grösswang advises major domestic and international corporate, banking and industry clients and handles complex domestic and cross-border transactions. The firm maintains an energetic dispute resolution department which advises on all aspects of commercial disputes. Team members have been recognised for their outstanding analytical capabilities, their excellent negotiation skills, and their ability to find creative solutions. The lawyers take a proactive approach to protecting clients' interests across the full spectrum of available dispute resolution techniques.