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The Vienna Rules
A Commentary
on International
Arbitration
in Austria

Franz T. Schwarz
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Wolters Kluwer

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The Vienna Rules

A Commentary on International Arbitration in Austria

For our parents

Preface

This book examines the new Vienna Rules and the Austrian Arbitration Act that both came into effect on 1 July 2006 as the result of a major reform. It is devoted to two principles. First, it recognizes that no two international arbitrations are the same. Arbitration thrives, and is today the predominant method of transnational dispute resolution, because it meets the demands of international business for flexibility and efficacy. Arbitration will continue to succeed if it retains those properties, allowing for the adoption of procedures that are customized to satisfy the commercial prerogatives of the individual case. This book seeks to provide its readers with a general framework, and specific instruments, to negotiate that process.

Second, this book recognizes that in today's world, a discussion of national arbitration law is incomplete without recourse to international practice and procedures. Transnational dispute resolution must be mindful of, and respect, the often different cultural and legal backgrounds and expectations of the parties, their counsel and the arbitrators. This book therefore sets out to familiarize the international user of arbitration with Austrian law, while at the same time placing the Vienna Rules and Austrian law into the context of international arbitral practice. It draws from, and seeks to reconcile, processes available in civil and common law jurisdictions in order to serve the overriding goal of ensuring that arbitration remains predicable, expeditious and fair.

We are very grateful for the critical comments and support we have received from our friends and colleagues at our respective firms Wilmer Cutler Pickering Hale and Dorr LLP and Freshfields Bruckhaus Deringer LLP. We wish to gratefully acknowledge, in particular, the mentorship of Gary Born and Georg Prantl, as well as Günther Horvath and Helmut Neudorfer. We also acknowledge the thoughtful advice of Werner Melis, Manfred Heider, Paul Oberhammer, Kurt Neuteufel, Karl Hempel, Christoph Liebscher, Kurt Heller, Jenny Power,

Anton Baier, Rudolf Fiebinger, Gerold Zeiler and Wolfgang Hahnkamper. Heidrun Halbartschlager deserves particular mention, and praise, for her meticulous research. Yvonne Schierl, Tamara Lueckoff and Marta Wrobel have assisted in the production of the manuscript with characteristic care and dedication. Gwen de Vries and Eleanor Taylor at *Kluwer Law International* provided invaluable editorial support. Finally, we are grateful for the understanding and support of our families, and in particular Eva and Johanna.

As W. Somerset Maugham wrote in the foreword of his book *Of Human Bondage*, '[a]uthors . . . are conscious how far the work on which they have spent much time and trouble comes short of their conception, and when they consider it are much more vexed with their failure . . . than pleased with the passages here and there they can regard with complacency. Their aim is perfection and they are wretchedly aware that they have not attained it'. As we entrust this work to our readers, we are sympathetic with that statement. We are grateful, therefore, for the comments that users of arbitration in Austria and elsewhere may wish to share with us.

Franz T. Schwarz

Christian W. Konrad

London, Vienna
January 2009

List of Abbreviations

A.C.	Appeal Cases Law Reports
AAA	American Arbitration Association
AAA Rules	AAA Commercial Arbitration Rules
AAA/ICDR	American Arbitration Association/International Centre for Dispute Resolution
AAA/ICDR Rules	AAA/ICDR International Arbitration Rules
ABA	American Bar Association
ABGB	<i>Allgemeines Bürgerliches Gesetzbuch</i> (Austrian Civil Code)
ADR	Alternative Dispute Resolution
AFCC	Austrian Federal Chamber of Commerce
AFEC	Austrian Federal Economic Chamber
AG	<i>Amtsgericht</i> (German Local Court); <i>also:</i> <i>Aktiengesellschaft</i> (Stock Coporation)
AHG	<i>Amtshaftungsgesetz</i> (Austrian Public Liability Act)
AHR	<i>Autonome Honorar-Richtlinien</i> (Austrian Autonomous Fee Guidelines for Attorneys)
AIAJ	Asian International Arbitration Journal
ALR	Australian Law Reports
Am Rev Int'l Arb	American Revue of International Arbitration
AnwBl	<i>Anwaltsblatt</i> (Austrian Law Journal)
App	Appendix
Arb Int'l	LCIA Arbitration International
Arb L Monthly	Arbitration Law Monthly
ArbSlg	<i>Sammlung arbeitsrechtlicher Entscheidungen</i> (Collection of Decisions on Labour Matters)

Art./Arts	Article(s)
ASA	<i>Association Suisse de l'Arbitrage</i> (Swiss Arbitration Association)
ASGG	<i>Arbeits- und Sozialgerichtsgesetz</i> (Austrian Labour and Social Courts Act)
AußStrG	<i>Außerstreitgesetz</i> (Austrian Act on Non-Contentious Matters)
BayObLG	<i>Bayerisches Oberstes Landesgericht</i> (Bavarian Highest Regional Court)
BB	<i>Betriebs-Berater</i> (German Law Journal)
Bezirksgericht	Austrian District Court
BGB	<i>Bürgerliches Gesetzbuch</i> (German Civil Code)
BGBI	<i>Bundesgesetzblatt</i> (Austrian Federal Law Gazette)
BGE	<i>Entscheidungen des Schweizer Bundesgerichtes</i> (Decisions of the Swiss Federal Supreme Court)
BGer	<i>Bundesgericht</i> (Swiss Federal Supreme Court)
BGH	<i>Bundesgerichtshof</i> (German Federal Supreme Court)
BGHZ	<i>Entscheidungen des Bundesgerichtshofs in Zivilsachen</i> (Decisions of the German Federal Supreme Court)
BLR	Building Law Reports
Brussels I Regulation	Council Regulation (EC) No 44/2001 of 22 December 2000 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters
Brit YB Int'l L	British Yearbook of International Law
Brussels Convention	1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters
BSG	<i>Bundessozialgericht</i> (German Federal Social Court)
Bull ASA	Bulletin de l'Association Suisse de l'Arbitrage
Bundesgericht	Swiss Federal Supreme Court
Bundesgerichtshof	German Federal Supreme Court
Bus L Int'l	Business Law International
BVerfG	<i>Bundesverfassungsgericht</i> (German Federal Constitutional Court)
BVerfGE	<i>Entscheidungen des Bundesverfassungsgerichts</i> (Decisions of the German Federal Constitutional Court)
Case W Res J Int'l L	Case Western Reserve Journal of International Arbitration
CBOE	Chicago Board Options Exchange
CCBE	Council of Bars and Law Societies of Europe
CCI	<i>Chambre de Commerce Internationale</i> (see also: ICC)

CEE	Central and Eastern Europe
CEPANI	<i>Centre belge d'arbitrage et de médiation</i> (Belgian Center for Mediation and Arbitration)
CEPANI Rules	CEPANI Arbitration Rules
ch.	chapter
CIDRA	Chicago International Dispute Resolution Association
CIDRA Rules	Arbitration Rules of Chicago International Dispute Resolution Association
CIETAC	China International Economic and Trade Arbitration Commission
CIETAC Rules	CIETAC Arbitration Rules
Comp L YB Int'l Bus	Comparative Law Yearbook of International Business
Columbia UP	Columbia University Press
Corte de Cassazione	Italian Supreme Court
Cour d'Appel	French Court of Appeal
Cour de Cassation 1re Ch. Civ./2e Ch. Civ.	French Supreme Court
CPR	Civil Procedure Rules
Croatian Rules	Rules of Arbitration of the Permanent Arbitration Court at the Croatian Chamber of Economy
CTR	Claims Tribunal Report
Czech Rules	Rules of the Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic
d	deutsch(es) (German)
Dalloz	<i>Recueil Dalloz</i> (French Law Journal)
D.C. Cir.	US Court of Appeals for the D.C. Circuit
DDR	<i>Deutsche Demokratische Republik</i> (German Democratic Republic)
DHG	<i>Dienstnehmerhaftpflichtgesetz</i> (Austrian Employee Liability Act)
DIS	<i>Deutsche Institution für Schiedsgerichtsbarkeit</i> (German Institution of Arbitration)
DIS Rules	DIS Arbitration Rules
Disp Res Mag	Dispute Resolution Magazine
D. Minn	United States District Court for the District of Minnesota
Doc.	Document
dRGBL.	<i>deutsches Reichsgesetzblatt</i> (German Reich Law Gazette)
e.g.	exempli gratia/for example
EC	European Community
EC Treaty	Treaty establishing the European Community
ECHR	European Convention on Human Rights; <i>also</i> European Court of Human Rights

ECICA	European Convention on International Commercial Arbitration
ECJ	European Court of Justice
ecolex	<i>Zeitschrift für Wirtschaftsrecht</i> (Austrian Law Journal)
ECR	European Court Reports
ECT	Treaty establishing the European Community
E.D.Ca	United States District Court for the Eastern District of California
ed./eds	editor(s)
edn	edition
EGBGB	<i>Einführungsgesetz zum Bürgerlichen Gesetzbuch</i> (Introductory Act to the German Civil Code)
EGJN	<i>Einführungsgesetz zur Jurisdiktionsnorm</i> (Introductory Act to the Austrian Judicature Act)
EHR Court / Commission	European Court of Human Rights/European Commission of Human Rights
EHRR	European Human Rights Reports
EO	<i>Exekutionsordnung</i> (Austrian Enforcement Act)
ERCL	European Review of Contract Law
et al.	and others
<i>et seq.</i>	et sequentes/and the following
etc.	et cetera
EU	European Union
ECJ	European Court of Justice
European Convention	European Convention on International Commercial Arbitration (1961)
EvBl	<i>Evidenzblatt der Rechtsmittelentscheidungen</i> (Austrian Law Journal)
EWCA	Court of Appeal of England and Wales
EWHC	High Court of England and Wales
F.3d	West's Federal Reporter, Third Series
F.C.	Federal Court of Canada
F.Supp.	Federal Supplement
FCPA	Federal Corrupt Practices Act
FETAC	Foreign Economic and Trade Arbitration Commission
fn.	footnote
Fordham Urb LJ	Fordham Urban Law Journal
Forum Int'l	Forum International
fZPO	Former <i>Zivilprozessordnung</i> (former Austrian Code of Civil Procedure prior to the 2006 reform of the Austrian Arbitration Act)
GAFTA	Greater Arab Free Trade Area; <i>also</i> Grain and Free Trade Association
GebG	<i>Gebührengesetz</i> (Austrian Law on Stamp Duties)

Gericht für Arbeits- und Sozialssachen	Austrian Labour and Social Court
GesRZ	<i>Der Gesellschafter</i> (Austrian Law Journal)
GestG	<i>Gerichtsstandsgesetz</i> (Swiss Federal Statute on the Jurisdiction of Courts in Domestic Civil Matters)
GH	<i>Die Gerichtshalle</i> (Austrian Law Journal)
GIUNF	<i>Sammlung von zivilrechtlich Entscheidungen des k.k. Obersten Gerichtshofes</i> (Collection of Decisions in Civil Matters of the Austrian Imperial and Royal Supreme Court)
GmbH	<i>Gesellschaft mit beschränkter Haftung</i> (Limited Liability Company)
GmbHG	<i>Gesetz über die Gesellschaft mit beschränkter Haftung</i> (Austrian Law on Limited Liability Companies)
GPR	<i>Zeitschrift für Gemeinschaftsprivatrecht</i> (German Law Journal)
GVO-Kfz	<i>Verordnung (EG) Nr. 1475/95 der Kommission vom 28. Juni 1995 über die Anwendung von Artikel 85 Absatz 3 des Vertrages auf Gruppen von Vertriebs- und Kundendienstvereinbarungen über Kraftfahrzeuge</i> (Commission Regulation (EC) No 1475/95 of 28 June 1995 on the application of Article 85(3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements)
Handelsgericht	Austrian Commercial Court
HaRÄG	<i>Handelsrechtsänderungsgesetz</i> (Revision of the Austrian Commercial Code)
HG	<i>Handelsgericht</i> (Commercial Court)
HGB	<i>Handelsgesetzbuch</i> (Austrian Commercial Code)
Hungarian Rules	Rules of Proceedings of the Arbitration Court attached to the Hungarian Chamber of Commerce and Industry that is
i.e.	
IBA	International Bar Association
IBA Guidelines	IBA Guidelines on Conflicts of Interest in International Commercial Arbitration
IBA Rules	IBA Rules on Taking of Evidence in International Commercial Arbitration
ICC	International Chamber of Commerce
ICC Ct Bull	International Chamber of Commerce Court Bulletin
ICC Pub No	International Chamber of Commerce Publication Number
ICC Rules	Rules of Arbitration of the International Chamber of Commerce
ICCA	International Council for Commercial Arbitration

ICDR	International Centre for Dispute Resolution
ICJ	International Court of Justice
ICJ Reports	International Court of Justice Reports
ICLQ	International and Comparative Law Quarterly
ICSID	International Centre for Settlement of Investment Disputes
ICSID Arbitration Rules	ICSID Rules of Procedure for Arbitration Proceedings (Arbitration Rules)
ICSID Convention	Convention on the Settlement of Investment Disputes Between States and Nationals of Other States
ICSID Rev-FILJ	ICSID Review – Foreign Investment Law Journal
IHR	<i>Internationales Handelsrecht – Zeitschrift für das Recht des internationalen Warenkaufs- und vertriebs</i> (German Law Journal)
ILA	International Law Association
ILM	International Legal Materials
Int'l Arb L Rev	International Arbitration Law Review
Int'l Bus LJ	International Business Law Journal
Int'l Fin L Rev	International Financial Law Review
IPRax	<i>Praxis des internationalen Privat- und Verfahrensrechts</i> (Austrian Law Journal)
IPRG	<i>Internationales Privatrechtsgesetz</i> (Austrian Private International Law Act)
J Chart Inst Arb	Journal of the Chartered Institute of Arbitrators
J Int'l Arb	Journal of International Arbitration
JBl	<i>Juristische Blätter</i> (Austrian Law Journal)
JCP	<i>La Semaine Juridique: Juris Classeur Periodique</i> (French Law Journal)
JDI	<i>Journal du Droit International</i> (French Law Journal)
JGS	<i>Justizgesetzsammlung</i> (Austrian Law Gazette)
JN	<i>Jurisdiktionsnorm</i> (Austrian Judicature Act)
JW	<i>Juristische Wochenschrift</i> (German Law Journal)
JZ	<i>Juristenzeitung</i> (German Law Journal)
KartG	<i>Kartellgesetz</i> (Austrian Cartel Act)
KSchG	<i>Konsumentenschutzgesetz</i> (Austrian Consumer Protection Act)
KTS	<i>Konkurs-, Treuhand- und Schiedsgerichtswesen</i> (German Law Journal)
Landesgericht	Regional Court
L & P Int'l Bus	Law and Policy in International Business
LandeskammerSG	<i>Landeskammer-Schiedsgericht</i> (Arbitral Tribunal of the Regional Economic Chamber)
LCIA	London Court of International Arbitration
LCIA Rules	LCIA Arbitration Rules
LG	<i>Landesgericht</i> (Regional Court)

Lugano Convention	Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters done at Lugano on 16 September 1988
LGZ	<i>Landesgericht für Zivilrechtssachen</i> (Regional Court for Civil Matters)
LJ	Law Journal
Lloyd's Rep	Lloyd's Reports
LLP	Lloyd's of London Press
Ltd.	Limited
Mealy's Int'l Arb Rep	Mealy's International Arbitration Report
Mich J Int'l L	Michigan Journal of International Law
MietSlg	<i>Mietrechtliche Entscheidungen</i> (Decisions on Tenancy Matters)
MR	<i>Medien und Recht</i> (Austrian Law Journal)
MRG	<i>Mietrechtsgesetz</i> (Austrian Tenancy Act)
N.Y. App. Div.	New York Appellate Division
NAI	Netherlands Arbitration Institute
ND. Ga	United States District Court for the Northern District of Georgia
NetV	<i>Nova & Varia Zeitschrift des Juristenverbandes</i> (Austrian Law Journal)
NJW	<i>Neue Juristische Wochenschrift</i> (German Law Journal)
NJW-RR	<i>Neue Juristische Wochenschrift Rechtsprechungs-Report</i> (German Law Journal)
No(s)/no(s)	Number(s)
NY	New York
NY Convention	Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958
NY L School J Int'l Comp L	New York Law School Journal of International and Comparative Law
NY Law Journal	New York Law Journal
Oberlandesgericht	Court of Appeal
Oberster Gerichtshof	Austrian Supreme Court
OGH	<i>Oberster Gerichtshof</i> (Austrian Supreme Court)
ÖJZ	<i>Österreichische Juristenzeitung</i> (Austrian Law Journal)
OLG	<i>Oberlandesgericht</i> (Court of Appeal)
OUP	Oxford University Press
p./ pp	page/pages
para./paras.	paragraph(s)
PATV	Permanent Arbitral Tribunal of the Vienna Economic Chamber
PATV Rules	Arbitration Rules of the Permanent Arbitral Tribunal of the Vienna Economic Chamber

PCA	Permanent Court of Arbitration
PLN	Polish Zloty
Polish Rules	Rules of the Court of Arbitration at the Polish Chamber of Commerce in Warsaw
P 2d 1	Pacific Reporter, Second Series
Q.B. (Comm)	Queen's Bench
QC	Queen's Counsel
RAO	<i>Rechtsanwaltsordnung</i> (Professional Rules of the Austrian Bar)
RATG	<i>Rechtsanwaltstarifgesetz</i> (Austrian Attorney Tariff Act)
RDAI	<i>Revue de Droit des Affaires Internationales</i> (French Law Journal)
RdW	<i>Recht der Wirtschaft</i> (Austrian Law Journal)
Rev Arb	<i>Revue de l'arbitrage</i> (French Law Journal)
RG	<i>Reichsgericht</i> (Supreme Court of the German Reich)
RGBI	<i>Reichsgesetzblatt</i> (Austrian Law Gazette)
RGZ	<i>Entscheidungssammlung des Reichsgerichts in Zivilsachen</i> (Collection of Decisions of the German Reich)
RIW	<i>Recht der internationalen Wirtschaft</i> (German Law Journal)
Rsp	<i>Rechtsprechung</i> (Austrian Law Journal)
Rspr.	<i>Rechtsprechung</i> (German Law Journal)
RStDG	<i>Richter – und Staatsanwaltsschaftsdienstgesetz</i> (Austrian Law on Employment of State Court Judges and Prosecutors)
RWZ	<i>Österreichische Zeitschrift für Recht und Rechnungswesen</i> (Austrian Law Journal)
RZ	<i>Österreichische Richterzeitung</i> (Austrian Law Journal)
S.D.N.Y.	United States District Court for the Southern District of New York
SCC	Stockholm Chamber of Commerce
SCC Institute	Arbitration Institute of the Stockholm Chamber of Commerce
SCC Rules	Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce
SchiedsRÄG	<i>Schiedsrechtsänderungsgesetz</i> (Revision of the Austrian Arbitration Law)
SchiedsVZ	<i>Zeitschrift für Schiedsverfahren</i> (German Law Journal)
Sec	Section
2nd Cir./3rd Cir/ 4th Cir/10th Cir	United States Court of Appeals, Second Circuit/Third Circuit/Fourth Circuit/Tenth Circuit

SEE	South Eastern European
SIAC	Singapore International Arbitration Centre
SigG	<i>Signaturgesetz</i> (Austrian Federal Law Regarding Electronic Signatures)
Slg	<i>Sammlung</i> (Collection of judicial decisions)
Slovak Rules	Rules of Procedure of the Court of Arbitration of the Slovak Chamber of Commerce and Industry
Slovenian Rules	Rules of Arbitration of the Permanent Court of Arbitration attached to the Chamber of Commerce and Industry of Slovenia
SLR	Singapore Law Review
Swiss IPRG	<i>Swiss Internationales Privatrechtsgesetz</i> (Swiss Private International Law Act)
Swiss Rules	Swiss Rules of International Arbitration
Stockholm Arb Rep	Stockholm Arbitration Report
subs	subsection
Suppl.	Supplement
SWK	<i>Steuer- und Wirtschaftskartei</i> (Austrian Law Journal)
SZ	<i>Entscheidungen des österreichischen Obersten Gerichtshofes in Zivilsachen</i> (Decisions of the Austrian Supreme Court on Civil Matters)
TDM	Transnational Dispute Management
Tul L Rev	Tulane Law Review
U.K.	United Kingdom
U.S.	United States
U.S. S. Ct.	United States Supreme Court
UGB	<i>Unternehmensgesetzbuch</i> (Austrian Commercial Code)
UKHL	United Kingdom House of Lords
UKPC	United Kingdom Privy Council
UN	United Nations
UNCITRAL	United Nations Commission On International Trade Law
UNCITRAL Model Law	UNCITRAL Model Law On International Commercial Arbitration
UNCITRAL Notes	UNCITRAL Notes on Organizing Arbitral Proceedings 1996
UNCITRAL Rules	UNCITRAL Arbitration Rules
UNICTRAL YB	UNCITRAL Yearbook
UNTS	United Nations Treaty Series
US	United States
U.S.C.	United States Code
US FAA	United States Federal Arbitration Act
UStG	<i>Umsatzsteuergesetz</i> (Austrian Federal Law Regarding Taxation Of Turnover)

Va J Int'l Law	Virginia Journal of International Law
Vand J Transnat'l L	Vanderbilt Journal of Transnational Law
VAT	Value Added Tax
VIAC	International Arbitral Centre of the Austrian Federal Economic Chamber
VIAC Conciliation Rules	Conciliation Rules of the International Arbitral Centre of the Austrian Federal Economic Chamber
Vienna Rules	Rules of Arbitration and Conciliation of the Vienna International Arbitral Center of the Austrian Federal Economic Chamber
VO	<i>Verordnung</i> (Regulation)
VR	<i>Die Versicherungsrundschau</i> (Austrian Law Journal)
wbl	<i>Wirtschaftsrechtliche Blätter</i> (Austrian Law Journal)
WIPO	World Intellectual Property Organization
WIPO Rules	WIPO Arbitration Rules
WKG	<i>Wirtschaftskammergesetz</i> (Austrian Federal Economic Chamber Act)
WL	Westlaw
WLR	Weekly Law Reports
WM	<i>Wirtschafts- und Bankrecht</i> (German Law Journal)
wobl	<i>Wohnrechtliche Blätter</i> (Austrian Law Journal)
WuW	<i>Wirtschaft und Wettbewerb</i> (German Law Journal)
YB Comm Arb	Yearbook Commercial Arbitration
YBILC	Yearbook of the International Law Commission
Zak	<i>Zivilrecht aktuell</i> (Austrian Law Journal)
ZBl.	<i>Zentralblatt für die juristische Praxis</i> (Austrian Law Journal)
ZfRv	<i>Zeitschrift für Europarecht, IPR und Rechtsvergleichung</i> (Austrian Law Journal)
ZGR	<i>Zeitschrift für Unternehmens- und Gesellschaftsrecht</i> (German Law Journal)
ZPO	<i>Zivilprozessordnung</i> (Austrian Code of Civil Procedure)
ZPO GE	<i>Loi de procedure civile de Genève</i> (Code of Civil Procedure of the Canton of Geneva)
ZustG	<i>Zustellgesetz</i> (Austrian Rules of Delivery)
ZVN	<i>Zivil-Verfahrensnovelle</i> (Revision of the Austrian Code of Civil Procedure)
ZZP	<i>Zeitschrift für Zivilprozessrecht</i> (German Law Journal)