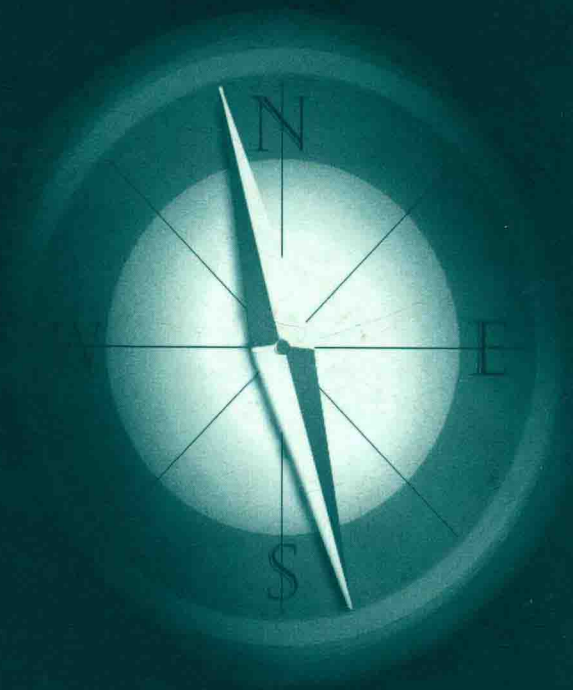


The Austrian Arbitration Act 2006

TEXT AND NOTES

English
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Christoph Liebscher

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The Austrian Arbitration Act 2006: Text and Notes

Christoph Liebscher

Dr. iur., MBA (INSEAD), FCI Arb

Partner at Wolf Theiss Rechtsanwälte, Vienna

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The Austrian Arbitration Act 2006: Text and Notes

Preface

The new Austrian arbitration act comes into effect on 1 July 2006. This quadrilingual issue with footnotes should make it easier above all for non-Austrian readers, to quickly gain an overview of the new act.

The new Austrian arbitration act is not the subject of its own bill but is regulated as before within the fourth section of the Austrian Code of Civil Procedure.

The Austrian arbitration act which has been effective up till now, dated in essence from 1895. Although by and large it provided an adequate framework for the successful development of arbitration in Austria, several points were still in need of reform.

However, already whilst doing the preliminary work on the reform, it was decided not to limit the reform to those few points, but to implement the UNCITRAL Model Law, which is developing more and more to an international standard. The new Austrian arbitration act doesn't only follow the content but also the structure of the UNCITRAL Model Law. When deliberating about the reform, the German implementation in particular was an important role model.

In order to simplify matters, it was decided to forbear from creating different legal foundations for national and international arbitration proceedings. The new Austrian arbitration act is therefore in principle valid for all arbitration proceedings.

Austria already plays an important role as a seat for arbitration proceedings affecting Central and East Europe. A major goal of the reform was to make Austria even more prominent.

The Austrian Arbitration Act 2006

In translating the text emphasis was laid on comprehensibility rather than an exact word for word translation.

I would like to thank Alexei Belokonov, Florian Haugeneder, Birgit Kraml, James Linkogle, Kylie Parker-Bittner and Tomislav Popovic for their help.

Christoph Liebscher

Vienna, March 2006

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Austrian Code of Civil Procedure

Fourth Section

Arbitration Procedure¹

¹ The new Austrian arbitration act comes into effect on 1 July 2006. Arbitration proceedings that were initiated before 1 July 2006 shall be governed by the previously applicable provisions. The effectiveness of arbitration agreements that were entered into before 1 July 2006 shall be determined by the previously applicable provisions.

First Chapter

General Provisions

Scope of Application

Article 577.¹ (1) The provisions of this section shall apply if the seat² of the arbitral tribunal is within Austria.

(2)³ Articles 578, 580, 583, 584, 585, 593 paragraph 3 to 6, articles 602, 612 and 614 are also applicable if the seat of the arbitral tribunal is not within Austria or has not yet been determined.

(3)⁴ As long as the seat of the arbitral tribunal has not yet been determined, Austrian courts shall be competent for those court functions specified in the third

¹ Art. 577: The section of the Austrian Code of Civil Procedure on arbitration procedure does not define “arbitration”. However, essential elements may be inferred above all from arts. 581 and 582.

² Art. 577 (1): Apart from the exceptions specified in art. 577 (2) and (3), Austrian arbitration law applies if the seat of the arbitral tribunal is in Austria. This term is not defined. It can be inferred from art. 595 (2) that “seat” has a purely legal meaning (“fictional seat”). It is not necessary that any actions take place at the location designated as the seat. It follows from art. 577 (1) that, for proceedings where the seat is in Austria, the mandatory provisions of Austrian arbitration law must always be applied.

³ Art. 577 (2): The provisions that also apply if the seat of the arbitral tribunal is not within Austria or has not yet been determined are the provisions on permissible court intervention (art. 578), the receipt of written communications (art. 580), the form of the arbitration agreement (art. 583), the effect of arbitration agreements in court proceedings (art. 584), unimpeded access to the courts for provisional measures (art. 585), the enforcement of provisional measures rendered by the arbitral tribunal (art. 593 (3) to (6)), court assistance (art. 602), the determination of the existence or non-existence of an award (art. 612) and the recognition and enforcement of foreign awards (art. 614).

⁴ Art. 577 (3): The seat of arbitration is not always determined at the initiation of arbitration proceedings. This provision makes it possible to constitute an arbitral tribunal if