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On 1 July 2006, a fully revised fourth part of the Austrian Code on Civil Procedure (aCCP), that traditionally includes the Austrian law on arbitration, replaced its predecessor that had been enacted in the late 19th century. The predecessor of the current law set forth little more than the principal guideposts of Austrian arbitration, although it proved sufficiently modern and flexible to draw foreign parties to arbitrate in Austria. Notwithstanding, the aCCP – as amended in 2006 and based on the 1985 UNCITRAL Model Law on International Commercial Arbitration (UNCITRAL Model Law) – made Austria an even more attractive place for international arbitration. Most of the case law rendered on its predecessor remains good law today and, together with the flourishing case law that deals with the 2006 Arbitration law, provides parties with a predictable and reliable framework for arbitration. According to the ICC's 2009 Statistical Report, Vienna ranked fifth of all European cities and globally ranked sixth of the cities most frequently chosen as place of arbitration. Austria's success as an international arbitration venue is likewise reflected in the statistics of the Vienna International Arbitral Centre (VIAC, see www.wko.at/arbitration). While the VIAC counted a mere 32 new international cases in 2006, this number more than doubled in 2010 when 68 new international cases were filed with the VIAC and 28 awards were rendered under the Vienna Arbitration Rules. The parties to arbitration proceedings under the Vienna Rules are diverse and include the following nationalities, in descending order:

- Austria (34);
- Czech Republic (15);
- Germany (13);
- Poland (11);
- Croatia/Italy/Slovak Republic/USA (7 each);
- Hungary/UK/Romania (6 each);
- Russia (5);
- Bulgaria (4);
- Cyprus/France/Switzerland (3 each);
- Liechtenstein/Serbia/Turkey/Ukraine (2 each); and
- China/Belgium/Estonia/Iceland/Japan/Monaco/The Netherlands/Slovenia/Spain/Sweden (1 each).

The VIAC's success as an arbitration institution is certainly due to the Vienna Rules, which provide a safe and up-to-date arbitration framework that is flexible enough to equip experienced parties with the freedom to tailor their proceedings as they see fit, while at the same time giving sufficient guidance to less experienced parties that wish to adopt a standard procedure. A review of the Vienna Rules – last updated in 2006 – for further improvement and modernisation has been scheduled for 2012 when the VIAC's presiding committee will appoint a successor for its current and long-standing secretary general, who has rendered outstanding services to the Centre.

Below follows an update on the Austrian arbitration law, as set forth in the aCCP and as construed by recent decisions of the Austrian Supreme Court.

Austrian courts broadly construe the notion of arbitrability for corporate disputes and respect the limits of court review when it comes to the setting aside of arbitral awards

Section 582.1 of the aCCP defines arbitrability as follows:

Any proprietary claim which lies within the jurisdiction of the ordinary courts may be subject to an arbitration agreement. An arbitration agreement relating to non-proprietary claims has legal effect insofar as the parties are able to conclude a settlement regarding the matter in dispute.

As far as corporate disputes arising out of a corporation's articles of association are concerned, an issue of arbitrability arises to the extent that some of the shareholders who may ultimately be affected by the award are unable to take part in the arbitration proceedings. This is due to the principle that the legally binding effect of arbitral awards only extends to the parties of the proceedings (section 607 aCCP). For instance, with respect to claims for the annulling of shareholder resolutions and similar corporate disputes, the Austrian Corporations Act orders that the respective award or judgment is legally binding towards all shareholders of the corporation. This in turn requires that in order for such claims to be arbitrable, all of the shareholders must be bound by the arbitration clause and thus have an opportunity to participate in the respective arbitration since a party cannot be bound by a decision without even having had a chance to be heard in the underlying proceedings.

In case No. 7Ob 103/10p (decision of 22 October 2010), the Austrian Supreme Court was concerned with a partial award by which the arbitral tribunal had decided that it was competent to hear a dispute relating to a syndicate contract. In the arbitration, some of the parties to the syndicate contract had claimed for declaratory relief to the effect that some other syndicate partners had breached the syndicate contract. However, not all parties to the syndicate contract participated in the arbitration. In its partial award, the arbitral tribunal decided that it was nonetheless competent to hear this dispute. Respondents to the arbitration filed for proceedings to set aside the partial award.

In order for disputes arising out of the syndicate contract to be arbitrable, the Supreme Court found it sufficient that all parties to the syndicate contract had submitted to arbitration. It rejected the argument that in order for syndicate disputes to be arbitrable, the arbitration clause would need to concretely determine which other shareholders of the corporation will be joined to the arbitration proceedings. The Court distinguished awards dealing with the annulment of shareholders' resolutions, for which the Austrian corporations act foresees an extension of the award's binding effect to all shareholders, from the current dispute that arose out of a mere

syndicate contract. Syndicate contracts are concluded as a mere supplement to articles of association and do not interfere with the corporation's organisation. The Court thus reasoned that here it was not the effect of the award, but rather the origin of the claim subject to arbitration that is decisive for the evaluation of whether or not all shareholders need to participate in the arbitration proceedings.

The Supreme Court determined that the claim brought in the arbitration was solely based on the syndicate contract and was unrelated to the articles of association. Therefore, the corporations act's statutory extension of an award's legal effect to all shareholders of the corporation would not apply anyway and therefore it was irrelevant as to whether or not all shareholders had agreed to arbitrate in accordance with the arbitration clause embedded in the syndicate contract.

On a similar footing, the claimants further argued in the set-aside proceedings that their claim relating to the syndicate contract concerned a 'common legal relationship' that may only be determined for and against all shareholders of the corporation. If this argument was accepted, then either all shareholders would need to be joined as parties to the underlying arbitration ('compulsory joinder of parties') or the case would need to be dismissed. Under the theory of 'common legal relationship', if none of the shareholders were joined in such situations or the case wasn't dismissed, a diverging decision could ensue that could lead to irresolvable conflicting orders towards one and the same shareholder that shall be avoided. In this regard, the Supreme Court found that whether or not all shareholders of a corporation mandatorily need to be joined to the proceedings depends on whether the subject matter of the proceedings indeed requires a uniform decision because of its potential effect on all shareholders. This question was, however, qualified as a substantive legal question regarding the merits of the case and the interpretation of the arbitration clause, which is why, in the Court's eyes, under section 611.2 of the aCCP, it was reserved for the arbitral tribunal without any court review being admissible.

Section 611.2 of the aCCP sets forth the grounds on which the setting aside of arbitral awards may be applied for in a conclusive way, generally reflecting the grounds mentioned in article 34 of the UNCITRAL Model Law, and thus prevents any review on the merits by state courts:

An arbitral award shall be set aside if

- (i) *a valid arbitration agreement does not exist, or if the arbitral tribunal denied its jurisdiction even though a valid arbitration agreement did exist, or if a party, under the respective applicable law, was incapable of concluding a valid arbitration agreement;*
- (ii) *a party was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case;*
- (iii) *the arbitral award deals with a dispute not falling within the terms of the arbitration agreement, or contains decisions on matters which are beyond either the scope of the arbitration agreement or the submission of the parties to arbitration; if this defect concerns only a separable part of the award, only this part shall be set aside;*
- (iv) *the constitution or composition of the arbitral tribunal is not in accordance with the provisions of this Part or with a valid agreement of the parties;*
- (v) *the arbitration proceedings were conducted in a way so as to violate Austrian public policy;*
- (vi) *[there are grounds to reopen the proceedings due to evidence of criminal acts which led to the making of a particular award];*

(vii) the matter in dispute is not arbitrable under domestic law; or, the arbitral award violates Austrian public policy.

Since the arbitral tribunal, in its partial award, had apparently resolved that no common legal relationship was on hand that would require the participation of all shareholders of the corporation, this decision regarding the merits of the dispute could not be reviewed by the Supreme Court. Respecting the power of arbitral tribunals and the limits of court reviews of arbitral awards, the Austrian Supreme Court rejected the claimants' request for the set aside of the partial award on jurisdiction.

An arbitral challenge is inadmissible upon termination of the arbitration proceedings

In its decision of 17 December 2010 (file No. 6 Ob 228/10p), the Austrian Supreme Court dealt with the challenge of an arbitrator that was filed with the arbitral tribunal and the Court after the arbitral proceedings had been closed and the final award had been rendered to the disadvantage of the challenging party. Upon receipt of the challenge, the arbitral tribunal had informed the applicant that, after the issuance of the final award, the arbitral tribunal was *functus officio* and would refrain from rendering any further decision in this matter.

Sections 608.1 and 608.3 of the aCCP, which are based on article 32.3 of the UNCITRAL Model Law, state that an arbitration is terminated either upon issuance of a final award, upon the parties' settlement or upon an order of the arbitral tribunal:

- (i) *Arbitration proceedings are terminated by an arbitral award on the merits, by settlement, or by an order of the arbitral tribunal in accordance with 608.2. [...]*
- (iii) *The mandate of the arbitral tribunal terminates with the termination of the arbitration proceedings, subject to the provisions of [...] as well as subject to the duty to repeal an ordered interim or protective measure.*

The Supreme Court reviewed the situation when grounds for challenge were only discovered after the conclusion of the arbitral proceedings. The language of sections 588 and 589 of the aCCP, which determine the grounds for challenge and the challenge procedure, does not clearly regulate this situation.

Section 588.2 of the aCCP, mirroring article 12 of the UNCITRAL Model Law, provides as follows:

An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess the qualifications agreed by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment or participation in it.

With respect to applications for challenge, sections 589.2 and 589.3 of the aCCP, largely corresponding to article 13 of the UNCITRAL Model Law, provide:

- (ii) *[...] a party who intends to challenge an arbitrator shall, within four weeks after becoming aware of the composition of the arbitral tribunal, or after becoming aware of any circumstance pursuant to section 588.2, submit a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal, including the challenged arbitrator, shall decide on the challenge.*

(iii) *If a challenge under any procedure agreed upon by the parties or under the procedure of 589.2 is not successful, the challenging party may apply, within four weeks after having received notice of the decision rejecting the challenge, to the court to decide on the challenge. The decision of the court shall be subject to no appeal. While such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.*

Reading section 589 of the aCCP in conjunction with section 608, the Supreme Court found that, upon termination of the arbitration proceedings and the arbitrator's function through the issuance of a final award, no challenge pursuant to section 589 may be filed. An application for a challenge pursuant to section 589 is thus limited to the time period during which the arbitration proceedings are pending. Given that the applicant had only filed a section 589 challenge, but had not submitted an application to set aside the final award, the Court was not required to finally resolve the question as to whether or not a potential lack of independence, impartiality or of an agreed qualification on the part of the arbitrator that was only discovered after the termination of the arbitral proceedings could – on an exceptional basis – present grounds for a set aside. However, the Court did not categorically reject this possibility. In cases of lack of impartiality and independence that are of a particularly clear and grave nature and that could not be discovered by the challenging party during the proceedings, it may indeed be sensible to review the matter under section 611.2, clauses 2, 4 and 5 of the aCCP. It thus seems wise that the Austrian Supreme Court left this door open for further consideration.

A convenient place of arbitration ensures smooth award enforcement – recent Austrian case law reconfirms Austria as a safe venue for enforcement

The aCCP includes several advantages in comparison to most commonly accepted legislative frameworks when it comes to enforcement. For instance, according to section 614.2 of the aCCP, the presentation of an original or certified copy of the arbitration agreement pursuant to article IV.1.b of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) shall only be necessary upon request by the court. Thus, in a first step, the arbitration agreement does not need to be supplied to the enforcement court along with the application for enforcement which – at the very least – spares creditors the efforts and cost related to the translation and certification of these agreements.

Another special enforcement feature of the 2006 Austrian arbitration law is the power of the chairman of the arbitral tribunal to confirm the enforceability of domestic arbitral awards upon a party's request pursuant to section 606.6 of the aCCP. Under the aCCP, domestic awards are defined as awards that have been rendered in proceedings where the place of arbitration is located in Austria. In case of the chairman's incapacity, it is a co-arbitrator who exercises the power to confirm the enforceability of the award. Under this rule, the arbitrator makes a note that the award is 'final and enforceable' on a copy of the award and signs this confirmation. Due to arbitrators generally being faster than state court judges when it comes to the issuance of such confirmations (with arbitrators, their issuance is generally a matter of one or two days) and arbitrators naturally being aware of the preconditions for confirming the enforceability of awards, this rule is generally perceived as practical and presents an advantage over the numerous

other national arbitration acts that leave this task to the state courts instead.

Exceeding the content of the UNCITRAL Model Law, section 607 of the aCCP further specifies that as between the parties the award bears the effect of a final court judgement, to the extent that the award has been served on the parties and is not subject to review on the merits by a higher arbitral instance. Such higher arbitral instance would need to be specifically agreed upon by the parties – an agreement that is rarely encountered in practice for obvious reasons. Thus, in general, if a domestic award has been served upon the parties, the chairman shall issue the confirmation of enforceability. In case of a foreign award, the courts fulfil this function.

In addition, for the enforcement of small monetary claims up to €50,000, Austrian enforcement law foresees simplified enforcement proceedings to the effect that even the underlying title – ie, the arbitral award – need not be filed with the application for enforcement. Simplified enforcement is also available for foreign awards if a declaration of enforceability has been obtained in Austria. To the extent that small claims have been decided by arbitration – for example, through fast-track arbitration proceedings or on the basis of small claims guidelines – simplified enforcement again helps cutting down the time and cost involved and is available where enforcement into real property has not been claimed. However, even the most welcoming simplification of enforcement must have its limits in order to prevent abuse that is on hand where enforcement of awards is attempted without the award being final and binding in the above-mentioned sense. This is the reason why the Austrian Supreme Court, in its decision of 24 February 2010 (file No. 3Ob25/10p), held that, even in simplified enforcement proceedings where there is no need to submit the award along with the application for enforcement, the underlying award must nevertheless be equipped with a confirmation of enforceability pursuant to section 606.6 of the aCCP at the time enforcement is applied for. From a practitioner's view, this approach is sensible as it only bars enforcement of awards that are subject to review by a higher arbitral instance – effectively a mere theoretical possibility – and of awards that have not yet been served upon the parties. Although every effort must be made to facilitate the enforcement of arbitral awards, the fundamental principles of finality and legal effect on the parties must simply be observed in order to prevent abuse. The Austrian Supreme Court's balanced view on the matter thus is to be welcomed.

Austrian courts respect the sanctity of the tribunal's deliberations and disregard dissenting opinions when ordering enforcement

In another Supreme Court decision, dated 13 April 2011 (file No. 3 Ob 154/10h), the Court had to deal with a majority award, a dissenting opinion and further examined the acceptable ways of deliberation within an arbitral tribunal. The matter involved an application for enforcement of an award issued under the rules of the International Commercial Arbitration Court (ICAC) at the Russian Chamber of Commerce and Industry (RCCI). The debtor opposed the enforcement order granted by the lower courts by reasoning that, since a dissenting opinion had been rendered and only two members of the arbitral tribunal had signed the award, this would violate Austrian public order and should have triggered an ex officio review by the enforcement court on the exact reason for which the third arbitrator did not sign the award. The debtor also alleged that the award as filed along with the enforcement

application did not correspond to article IV.1 of the New York Convention, given that the dissenting opinion had initially not been filed along with the application. Finally, the debtor argued that due process had been infringed since the three arbitrators had not gathered for a personal meeting to deliberate on their decision. Also, the two arbitrators who signed the award had allegedly ignored the dissenting arbitrator's opinion. The Supreme Court reviewed the above arguments and ultimately upheld the lower courts' view that enforcement had to be granted.

As an introduction, the Supreme Court restated the long-standing notion that the grounds for refusal of enforcement under article V.2 New York Convention (public order and non-arbitrability) shall be taken into account ex officio. It further recalled its restrictive definition of public order under article V.2.b of the New York Convention, which requires the violation of fundamental principles of the Austrian legal system and is used sparingly (Austrian Supreme Court, 26 April 2006, file No. 3 Ob 211/05h). With respect to court investigation of potential public order violations, the Supreme Court opined that the enforcement court may only enter into ex officio investigations if the same were required by the purpose of the underlying public order defence.

According to section 606.1 of the aCCP, which corresponds to article 31.1 of the UNCITRAL Model Law,

[t]he arbitral award shall be made in writing and shall be signed by the arbitrator or arbitrators. Unless the parties have agreed otherwise, in arbitration proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the chairman or another arbitrator notes the obstacle which prevented the missing signatures on the award.

In line with section 606.1 of the aCCP, the Supreme Court found that the missing signature on the award of the third arbitrator does not violate Austrian law, not to speak of Austrian public order, provided that the 'obstacle' preventing the arbitrator to sign was stated on the award. The latter requirement had been complied with in the case on hand. With respect to the definition of an 'obstacle' that could prevent an arbitrator from signing an award, the Court determined that both an arbitrator's permanent physical unavailability and likewise the pursuit of an obstructive tactic by flatly refusing to sign any award is covered by section 606.1 of the aCCP. In support of the party's desire to receive an award within a reasonable time frame, it was the Austrian legislator's intention to avoid truncated tribunals, which is why tribunals have been empowered to proceed in situations of disagreement and render a majority award if they only briefly state the cause for the arbitrator's refusal of signature. Court review of the accuracy of the cause stated on the award – as requested by the debtor – was, however, held impossible and furthermore unnecessary from the perspective of legal security. By this language, the Austrian Supreme Court may have referred to its older jurisprudence (decision of 29 January 1970, file No. 1 Ob 252/69), according to which an award is in fact already made at the time the arbitrators achieve a majority vote on a final draft (although this draft award is certainly yet without effect on the parties).

With respect to the voting mechanism used by tribunals, section 604.1 of the aCCP, mirroring section 29 of the UNCITRAL Model Law, states that

[u]nless otherwise agreed by the parties, the following shall apply:

- (i) *In arbitration proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made by a majority of all its members.*

Questions of procedure may be decided by the chairman alone, if so authorised by the parties or all members of the arbitral tribunal.

The issuance of awards in writing that are signed by the (majority of) arbitrators thus merely fulfils a criterion of form, while the final decision on how to dispose of the claims has already been taken by the (majority of) arbitrators at this point in time. Ex-officio court investigation about the reason for which an arbitrator failed to sign the award are thus unnecessary, as far as legal certainty is concerned and to the extent the reason for the missing signature is briefly stated on the award.

The Court's approach to such ex officio investigations is sensible since

- the arbitrators are explicitly empowered to decide as a majority, whether the third arbitrator agrees with their view or not;
- review of the refusal to sign would infringe the secrecy of the tribunal's deliberation;
- the tribunal is granted broad discretion when it comes to the way in which deliberations are conducted (see immediately below); and
- such investigations on the tribunal's deliberations and voting would frequently be tied to matters of substance that are anyway not for the courts to review.

Also, neither section 604.1 nor section 606.1 of the aCCP provide for such court investigation, which is why it seems inadmissible considering that courts are generally not allowed to intervene in arbitration except where such intervention has been explicitly provided for in the Austrian arbitration law (section 578 of the aCCP, cf article 5 of the UNCITRAL Model Law). Austrian enforcement courts will thus not examine ex officio a dissenting arbitrator's decision not to join the majority. In times where arbitrators show a tendency to render dissenting opinions, this position again promotes the smooth enforcement of awards and the sanctity of the tribunal's deliberations.

The latter principle was emphasised by the Supreme Court's modern position to the effect that the failure of all members of the arbitral tribunal to meet for personal deliberations of the award does neither violate due process under article V.1.b of the New York Convention nor Austrian public order. Starting the discussion, the Court first restated that the grounds under article V.1 of the New York Convention need to be argued and – at least prima facie – proven by the party opposing enforcement. In addition, this party is required to make a showing that the violation of due process may have had a concrete effect on the way in which the claims were disposed of.

As a principle, it shall be noted that it is extremely rare that Austrian courts set aside arbitral awards due to the tribunal's failure to observe the right to be heard. They are all the more restrictive when a party seems to argue that 'the right to be heard of the arbitrator' appointed by the party opposing enforcement has been violated. In the eyes of the Supreme Court, there is no mandatory form of deliberation and the latter may be done in person, by telephone, video conference or in writing. Yet, by its decision of 26 April 2006 (file No. 3 Ob 211/05h), the Court had granted enforcement of an award that had been arrived at 'only' on the basis of separate deliberations of the chairman held by telephone with one of his respective co-arbitrators at a time. It is the general decision in which the claims are disposed of and the basic underlying grounds that the arbitrators need to discuss and vote upon in whichever form, to

the extent that an arbitrator that has been overruled has not been prevented from voicing his or her opinion or from contacting the other arbitrators. Since none of the aforementioned situations had been shown to have occurred, the form of deliberation chosen was considered irrelevant by the Court, whether under articles V.1.d or V.2.b of the New York Convention.

Finally, the Court reasoned that, in general, and in particular under the ICC and ICAC Arbitration Rules, dissenting opinions do not form part of the award and therefore need not be filed with the application for enforcement under article IV.1.a of the New York Convention.

Austrian courts opt for reduction of formalism for enforcement under the New York Convention and refuse to review awards on the merits

In another enforcement matter (file No. 3Ob 65/11x), this time concerning an award rendered in Paris under the ICC Rules of Arbitration, the Austrian Supreme Court, by its decision of 24 August 2011, reversed a lower court's decision that had refused to grant enforcement in favour of a Nigerian creditor against an Austrian debtor.

Upon the debtor's objection, the Court first examined whether the award submitted presented a 'duly certified copy' of the original award under article IV.1.a of the New York Convention. Having been supplied with an award certified as a true copy by the ICC's secretary general, the Supreme Court held that such certification was sufficient under article IV.1.a of the New York Convention, although it had been issued by the ICC's secretary general who, albeit neutral when it comes to the underlying proceedings, is not a notary public but rather holds a position within an arbitration institution. This was, however, judged to be admissible under article IV.1.a of the New York Convention, as long as the certifier was authorised as such by the underlying arbitration rules. Proper cer-

tification under article IV.1.a of the New York Convention only requires the stamp and signature of the certifier if the underlying arbitration rules do not provide for superlegalisation. The prerequisite for an at least indirect certification of the authenticity of the signature on the original award was considered met in view of articles 28.1 and 28.4 of the ICC Arbitration Rules, which provide for service of the tribunal's awards on the parties by the ICC Secretariat, which also retains an original of the award signed by the arbitrator, of which the certified copy is thereupon produced by the secretary general. As the underlying set of arbitration rules must be examined in order to review whether certification pursuant to these rules is sufficient under the New York Convention, the respective set of rules shall be submitted to the enforcement court along with the enforcement application.

In a second step, the Court considered whether the award should be enforced, notwithstanding the fact that extraordinary revision proceedings were currently pending with the Cour de Cassation in Paris in which the Cour d'Appel's decision to reject the debtor's application for set aside would be re-examined. Inter alia, relying on a publication of the author of this contribution, the Court found that, in order for an arbitral award to be considered binding, it is irrelevant under article V.1.e of the New York Convention whether the award was enforceable in France as the country of the place of arbitration ('no double exequatur') and whether set aside proceedings were available or pending in France. Only in the case that an award has actually been set aside, the award would no longer be binding and enforcement would be barred. However, since this was not the case here, the Court found that enforcement could not be denied and, inter alia, based its opinion on article 28.6 of the ICC Arbitration Rules according to which ICC awards are final and binding once rendered.

Finally, with respect to the debtor's allegation that the award violated public order under article V.2.b of the New York Conven-



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Brauneis Klausner Prändl (b k p) is one of the leading business law firms in Austria, well known for its high-profile service that is paired with personal, efficient and target-oriented advice. With about 30 lawyers, b k p is able to advise and represent its clients comprehensively in all major areas of business law, ranging from IP& IT to M&A, banking, competition as well as international arbitration and litigation. The firm is appreciated for its expertise as much as for its lawyers' commitment, availability and their academic recognition.

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Since January 2010, b k p's arbitration department is headed by Barbara Helene Steindl. The department successfully represents domestic and international companies in arbitration matters under all major arbitration rules (eg, International Chamber of Commerce – ICC, Vienna International Arbitral Centre – VIAC, the London Court of International Arbitration – LCIA, UNCITRAL, the Romanian, Danish & Swiss Rules).

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tion by repeating its argument that the underlying contracts including their arbitration clauses were invalid due to corruption related to those contracts, the Court held that a review of public order defences may not lead to a 'revision au fond' of the award. Public order defences, however, require the Court to review whether the factual basis and the legal consequences as drawn by the arbitrator amount to a violation of public order, albeit without examining whether, in the eyes of the Court, the underlying dispute has been correctly decided. The Court, again confirming its sparing use of public order defences in order not to disrupt the uniformity of international decisions, examined the debtor's argument against the

background that, in order for enforcement to be denied, it is not the award itself but rather the consequence of its enforcement in Austria that would need to violate the fundamental legal principles of the Austrian legal system. Given that the arbitrator had already decided on the validity of the underlying contracts on the basis of the facts established by the arbitrator that did not include instances of corruption and had remained unchallenged by the debtor, the Court again found that any re-evaluation of the contract's validity would amount to an inadmissible review of the arbitrator's findings on the merits. The Court therefore concluded that there were no grounds to deny the enforcement of the award.

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representation of corporations in domestic and international arbitration proceedings under all major arbitration rules involving cross-border trade and distribution, secured transactions, plant construction, sports, corporate, post M&A disputes and investment protection. In addition, Ms Steindl frequently sits as an arbitrator. Her record in the field further includes service as assistant counsel with the ICC International Court of Arbitration in Paris and appointments as ad hoc clerk for the Tribunal Arbitral du Sport in Lausanne.

Ms Steindl is a frequent speaker at international arbitration conferences, regularly lectures on international arbitration at the Speyer College for higher education and holds arbitration training seminars for corporate counsel. During 2009, she served as a research assistant at Columbia University's European Legal Studies Centre in New York.

Ms Steindl is a recommended practitioner of the VIAC and is furthermore listed as an arbitrator at the International Court of Commercial Arbitration attached to the Romanian Chamber of Commerce. She regularly publishes on arbitration and her commentary on the 2012 ICC arbitration rules will be published in January 2012 (nvw publishers).

In addition to her practice, Ms Steindl serves as Central & Eastern European representative of YIAG/LCIA, as a member of the ICC Commission on Arbitration, the ICC Task Force on the Revision of the 1998 ICC Arbitration Rules and chairs the IBA's subcommittee on the Vienna Convention. Ms Steindl works in German, English and French.



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