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Germany

INTERNATIONAL ARBITRATION

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This country-specific Q&A provides an overview of international arbitration laws and regulations applicable in Germany.

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GERMANY
INTERNATIONAL ARBITRATION

1. What legislation applies to arbitration in your country? Are there any mandatory laws?

The rules governing arbitration in Germany are mainly set out in the 10th Book of the German Code of Civil Procedure (*Zivilprozessordnung* or *ZPO*), in particular Sections 1025 to 1066. While parties have the freedom to determine their own rules and procedures in arbitration, certain mandatory provisions apply to ensure that the fundamental principles of fairness and equal treatment of the parties are observed, including the right to be heard (Section 1042 Para.1 ZPO). Furthermore, Section 1030 ZPO expressly excludes certain types of disputes from arbitration such as family law disputes as well as certain tenancy agreements.

2. Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?

Germany signed the New York Convention (*NYC*) on 10 June 1958, it was ratified on 30 January 1961 and entered into force on 28 September 1961. As of date, Germany has not made any reservations to the general obligations of the New York Convention.

3. What other arbitration-related treaties and conventions is your country a party to?

Germany is party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (*ICSID Convention*), the European Convention on International Commercial Arbitration and the Geneva Convention on the Execution of Foreign Arbitral Awards. Additionally, Germany is also party to numerous bilateral investment treaties (*BITs*) which provide for a dispute settlement mechanism. On 19 December 2022, Germany notified its withdrawal from the Energy Charter Treaty.

4. Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant differences between the two?

While German arbitration law is not directly based on the UNCITRAL Model Law of 1985 on International Commercial Arbitration, Germany has incorporated elements of the Model Law into its legal framework. In particular, Germany adopted key principles of the UNCITRAL Model Law, such as provisions related to the arbitration agreement, the composition of the arbitral tribunal, the conduct of arbitral proceedings, and the recognition and enforcement of arbitral awards. This adoption demonstrates a commitment to aligning its arbitration laws with widely accepted international standards.

The ZPO provides for specific formal requirements as regards arbitration agreements, including the necessity for a written form whereas the Model Law is more flexible on formal requirements, and an arbitration agreement may be in any form, unless the parties agree otherwise. Furthermore, German law allows for setting aside proceedings before state courts based on specific grounds listed in the ZPO whereas the Model Law provides limited grounds for challenging an arbitral award, and the primary avenue for challenging awards is through the courts at the seat of arbitration.

5. Are there any impending plans to reform the arbitration laws in your country?

On 18 April 2023, the German Ministry of Justice published a paper outlining key aspects for a potential reform of the German Arbitration law. This proposal is a first step towards a reform bill designed to amend chapter 10 of the ZPO, which pertains to arbitration. However, given that this paper is a preliminary step in the legislative process, the specifics of the reform are subject to significant potential alterations.

6. What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?

The German Arbitration Institute (*Deutsche Institution für Schiedsgerichtsbarkeit or DIS*) is the leading arbitration institution in Germany for national and international arbitration disputes. The 2018 DIS Arbitration Rules, effective as of 1 March 2018, superseded the previous set of rules enacted in 1998. In addition to its Arbitration Rules, the DIS also offers rules for mediation, adjudication, conciliation, expert determination and expertise.

Moreover, Germany has specialized arbitration institutions that cater to specific sectors or industries to address the unique characteristics and intricacies of disputes within specific sectors. A notable example is the German Maritime Arbitration Association (*Deutsche Gesellschaft für Schifffahrt und Meerestechnik e.V., or short DGSMT*), which focuses on maritime and shipping disputes. Another instance are specific commercial arbitration courts such as the Arbitration Court of the German Coffee Association (*Schiedsgericht der deutschen Kaffeewirtschaft*), which specialises in disputes related to the coffee industry.

7. Is there a specialist arbitration court in your country?

Although there is no “specialist” arbitration court per se in Germany, the higher regional courts (*Oberlandesgerichte or OLG*) are given judicial supervision of the arbitration process in Germany. In this regard, specific chambers exist within these higher regional courts and are designed to deal with arbitration matters which makes German courts very supportive of the law and practice of domestic and international arbitration.

8. What are the validity requirements for an arbitration agreement under the laws of your country?

Pursuant to Section 1031 ZPO, arbitration agreements must – in principle – be in writing, either embedded in a document signed by the parties or in letters, telefax copies, telegrams or other forms of communication exchanged between them that ensure documentary proof of the agreement.

Moreover, according to Section 1032 paras. 2 and 3 ZPO, if a party does not object to an arbitration clause contained in specific documents such as General Terms Conditions, it can lead to a valid arbitration clause. However, when the CISG (United Nations Convention on Contracts for the International Sale of Goods) is applicable, its stricter rules regarding the incorporation of contractual clauses will generally take precedence, despite the principle of separability (*BGH SchiedsVZ 2021, 97*).

Any failure to comply with formal requirements is remedied by a plea being made on the merits of the matter in the arbitral proceedings (Section 1031 para. 6 ZPO).

9. Are arbitration clauses considered separable from the main contract?

Pursuant to Section 1040 para. 1 ZPO, the doctrine of separability applies, i.e. an arbitration clause must be treated as an agreement independent of the main contract.

10. Do the courts of your country apply a validation principle under which an arbitration agreement should be considered valid and enforceable if it would be so considered under at least one of the national laws potentially applicable to it?

A validation principle is indeed applied by German courts. Under German law, the principle of party autonomy allows parties to expressly choose the law applicable to their arbitration agreement, and German courts tend to respect this choice. In particular, the German Federal Court of Justice (Bundesgerichtshof or BGH) ruled in a decision dated 21 September 2005 (BGH, Decision of 21 September 2005 - III ZB 18/05; SchiedsVZ 2005, 306) that the most favored treatment (Art. VII sub. 1 NYC) also permitted courts to recur to the more favorable domestic law – even without a party relying on it expressly – in its entirety. This means that not only the provisions relating to the recognition and enforcement of arbitral awards fall within the scope of the provisions which the courts have to take into account when deciding on the enforcement of foreign arbitral awards but if the law governing the arbitration agreement – determined pursuant to the conflict of laws rules of the state in which enforcement is sought – has more permissive form requirements than Art. II NYC, such more permissive provisions must also be taken into account.

11. Is there anything particular to note in your jurisdiction with regard to multi-party or multi-contract arbitration?

There are no express provisions in the German Arbitration law that specifically address multi-party arbitration. However, the 2018 DIS Arbitration Rules contain provisions dealing with multi-contract and multi-party arbitration in its Articles 17.1 and 18.1 and 20.

According to Article 17.1 DIS Arbitration Rules, claims arising out of or in connection with more than one contract may be decided in a single arbitration (*Multi-Contract Arbitration*), provided that all of the parties to the arbitration have agreed thereto.

Article 18 DIS Arbitration Rules further provides that claims made in an arbitration with multiple parties (*Multi-Party Arbitration*) may be decided in that arbitration if there is an arbitration agreement that binds all of the parties to have their claims decided in a single arbitration or if all of the parties have so agreed in a different manner.

Finally, Article 20 DIS Arbitration Rules deals with the effects of a multi-party arbitration on the constitution of the arbitral tribunal.

12. In what instances can third parties or non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?

Under German law, the general rule is that an arbitration agreement binds only the parties who have explicitly consented to it. However, there are circumstances where third parties or non-signatories may be bound by an arbitration agreement. Some instances include an assignment of rights, agency and estoppel or the group of companies doctrine. There are no recent court decisions on these issues.

13. Are any types of dispute considered non-arbitrable? Has there been any evolution in this regard in recent years?

According to Section 1030 ZPO, any dispute pertaining to patrimonial rights (*vermögensrechtlicher Anspruch*) or rights subject to settlement is arbitrable.

However, disputes in certain areas of law are considered non-arbitrable. These disputes include for instance family law matters, criminal law matters, residential tenancy law, employment law matters, certain public policy matters as well as disputes involving personal status or capacity.

One notable evolution occurred in the field of shareholders disputes. Although Germany's arbitration friendliness also encompassed corporate disputes, one important exception existed as regards arbitrations pertaining to the validity of shareholder resolutions. Following extensive debates, the German Federal Court of Justice issued four major decisions on this topic:

On 29 March 1996, the German Federal Court of Justice handed down its first ruling on the arbitrability of shareholder disputes (*Arbitrability I; BGH, decision of 29 March 1996, II ZR 124/95*) and essentially denied that these disputes were suitable for arbitration because an award would necessarily be binding on all shareholders, regardless of whether the shareholders participated in the arbitration or not. In State Court proceedings, this *erga omnes* effect is achieved via Section 248 German Stock Corporation Act (*AktG*). As at that time, the German Arbitration law provided that awards were only binding inter partes, the German Federal Court of Justice refused to apply this provision to arbitration proceedings as it deemed it to be inconsistent with the German Arbitration law in force at that time.

On 6 April 2009 the German Federal Court of Justice changed its view and reversed Arbitrability I through another ruling on the matter (*Arbitrability II; BGH, decision of 6 April 2009, II ZR 255/08*). The Court held that disputes regarding the validity of shareholder resolutions were, in principle, suitable for arbitration because parties have the freedom to agree on an *erga omnes* effect without the need for a specific legislative framework so long as arbitration proceedings provide an equivalent standard of protection to that provided by State Courts.

Thereafter, via two other decisions, the German Federal Court of Justice extended its ruling to limited partnerships in 2017 (*Arbitrability III; BGH, decision of 6 April 2017, I ZB 32/16*) and then to partnerships in 2021 (*Arbitrability IV; BGH, decision of 23 September 2021, I ZB 12/21*).

14. Are there any recent court decisions in your country concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the Parties?

In a decision dated 26 November 2020 (*BGH, 26.11.2020, I-ZR 245/19*), the German Federal Supreme Court ruled that the law applicable to the formal validity

of an arbitration agreement is (i) the general principles set out in Article II (2) NYC, (ii) the requirements pursuant to Section 1031 ZPO, and (iii) the law applicable to the arbitration agreement.

As regards the substantive validity of an arbitration agreement, it is governed by the law of the seat of arbitration in the absence of an express or implied choice by the parties.

Consequently, whilst the substantive validity of an arbitration agreement is only governed by one law in the absence of a choice of law by the parties (law of the seat), its formal validity can be governed by a multitude of laws and it is sufficient that the arbitration agreement is formally valid according to at least one of these laws.

15. How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?

The law applicable to the substance of the legal dispute is determined by the parties (Section 1051 para. 1 ZPO). In the absence of a choice of law by the parties, the arbitral tribunal must apply the law of that state that has the closest connection to the subject matter of the proceeding (Section 1051 para. 2 ZPO).

16. In your country, are there any restrictions in the appointment of arbitrators?

German law does not contain specific restrictions regarding the appointment of arbitrators aside from basic principles under due process such as impartiality and independence. The parties to an arbitration proceeding have therefore, in principle, significant autonomy in the appointment of arbitrators

Additionally, judges may only be granted permission to act as arbitrators or to give an expert opinion in arbitration proceedings if all parties to the arbitration agreement consent or if the judge is nominated by an independent institution (Section 40 para. 1 German Law on Judges).

17. Are there any default requirements as to the selection of a tribunal?

In principle, the parties to an arbitration proceeding have freedom to agree on the numbers of arbitrators desired, their qualifications as well as the procedure (Section 1035 para. 1 ZPO). Where the parties have agreed on an appointment procedure, the Courts must observe the parties' choice (Section 1035 para. 4 ZPO).

18. Can the local courts intervene in the selection of arbitrators? If so, how?

Absent an agreement made by the parties regarding the appointment of arbitrators, the court will appoint a sole arbitrator upon request by one party if the parties are unable to come to an arrangement regarding the appointment of the arbitrator. In arbitral proceedings with three arbitrators, each party appoints one arbitrator; the two arbitrators thus appointed will appoint the third arbitrator, who will act as presiding arbitrator. If a party has not appointed the arbitrator within one month of having received a request to do so from the other party, or if the two arbitrators are unable to agree upon the third arbitrator within one month of their appointment, then the court is to appoint the third arbitrator upon request of a party (Section 1035 para. 3 ZPO).

Additionally, pursuant to Section 1035 para. 5 ZPO, in appointing an arbitrator, the court is to have due regard to all prerequisites stipulated with regard to the arbitrator by the agreement of the parties and is to take account of all factors ensuring the appointment of an independent and impartial arbitrator. In appointing a sole arbitrator or a third arbitrator, the court also is to consider whether the appointment of an arbitrator of a nationality other than those of the parties may serve the intended purpose.

However, when the parties have agreed on institutional arbitration with a set of rules, the selection of arbitrators will follow the procedure laid out in the institutional rules selected.

19. Can the appointment of an arbitrator be challenged? What are the grounds for such challenge? What is the procedure for such challenge?

According to Section 1036 para. 2 ZPO, an arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to their impartiality or independence, or if they do not meet the prerequisites agreed to by the parties. A party may challenge an arbitrator whom they have themselves appointed, or in the appointment of whom the party has participated, solely for reasons of which the party became aware only after the appointment was made.

Additionally, pursuant to Section 1038 para. 1 ZPO, where an arbitrator is unable, whether de jure or de

facto, to perform their functions or fails to perform their functions within a reasonable time for other reasons, their mandate will end upon their withdrawal from office or upon the parties agreeing to terminate the mandate. Where the arbitrator does not withdraw from office, or where the parties are unable to agree on the termination of the mandate, each of the parties may request that the court decide on the termination of the arbitrator's mandate.

The parties are free to agree on a procedure for challenging an arbitrator (Section 1037 para. 1 ZPO). Absent such agreement, the party intending to challenge an arbitrator is to submit to the arbitral tribunal a written statement of the reasons for challenging the arbitrator. If the challenged arbitrator does not withdraw from office or if the other party does not agree to the challenge, then the arbitral tribunal decides on the challenge (Section 1037 para. 2 ZPO). Finally, if the challenge under the procedure agreed by the parties is not successful, then the challenging party may request that the court decide on the challenge (Section 1037 para. 3 ZPO).

20. Have there been any recent developments concerning the duty of independence and impartiality of the arbitrators

The only development regarding the duty of independence and impartiality of the arbitrators can be found in Article 9.1 DIS Arbitration Rules 2018 according to which every arbitrator must be impartial and independent of the parties throughout the entire arbitration and must have all of the qualifications, if any, that have been agreed upon by the parties.

21. What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?

Where an arbitrator is unable, whether de jure or de facto, to perform their functions or fails to perform their functions within a reasonable time for other reasons, their mandate will end upon their withdrawal from office or upon the parties agreeing to terminate the mandate. Where the arbitrator does not withdraw from office, or where the parties are unable to agree on the termination of the mandate, each of the parties may request that the court decide on the termination of the arbitrator's mandate (Section 1038 para. 1 ZPO).

Additionally, pursuant to Sections 1052 para. 1 and 1054 para. 1 ZPO, arbitral tribunals are allowed to render decisions and awards by majority. If an arbitrator refuses to participate in a vote, then unless otherwise agreed by the parties, the other arbitrators may decide on the matter without the arbitrator refusing to participate in the vote (Section 1052 para. 2 ZPO).

22. Are arbitrators immune from liability?

German law does not provide a specific set of rules as regards arbitrators' immunity although arbitrators generally benefit from a degree of immunity from liability, akin to judicial immunity, for actions taken in the course of their arbitral duties. This immunity is intended to foster a climate where arbitrators can perform their functions impartially and without fear of personal liability. However, this immunity is not absolute and may be subject to legal scrutiny in cases of gross misconduct or intentional wrongdoing (e.g. Article 45 DIS Arbitration Rules). In particular, the immunity may not extend to acts that are clearly beyond the scope of an arbitrator's authority or actions that involve intentional wrongdoing. If an arbitrator engages in willful misconduct, acts fraudulently, or exceeds the bounds of their authority, the immunity may be compromised.

Additionally, parties entering into arbitration agreements can, to some extent, shape the scope of arbitrator immunity through specific contractual provisions. They may use arbitration clauses to define the standards of conduct expected from arbitrators. As a result, an arbitrator may be held liable for contractual breaches under German law such as liability for failure to disclose any and all circumstances likely to give rise to doubts as to their impartiality or independence.

23. Is the principle of competence-competence recognized in your country?

Yes, Germany recognizes the principle of competence-competence. According to Section 1040 para. 1 ZPO, the arbitral tribunal may rule on its own jurisdiction and in this context on the existence or the validity of the arbitration agreement. However, Section 1040 para. 3 ZPO states that where the arbitral tribunal considers that it has jurisdiction and the arbitral tribunal's decision is challenged by a party, the courts will perform a full review the arbitral tribunal's jurisdiction while the arbitral tribunal may continue the arbitral proceedings and may make an award.

Furthermore, pursuant to Section 1032 para. 2 ZPO, when the constitution of the arbitral tribunal is pending, a request may be filed with the court to have it determine the admissibility or inadmissibility of arbitral proceedings. Although Section 1032 para. 3 ZPO

provides that the arbitration proceeding may be continued and an award maybe rendered despite the request made under Section 1032 para. 2 ZPO, if a State Court deems the arbitration proceedings inadmissible, the enforcement of the award might face severe obstacles.

24. What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?

According to Section 1032 para. 1 ZPO, where an action is brought before a court in a matter that is the subject of an arbitration agreement, the court is to dismiss the action as inadmissible, provided that the respondent has raised a corresponding objection prior to commencement of the hearing on the merits of the case, unless the court finds that the arbitration agreement is null and void, ineffective or incapable of being performed.

25. What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?

Under German law, a respondent fails to participate in the arbitration when it fails to submit a statement of defense, to make an appearance at a hearing for oral argument or to produce documentary evidence within a time-limit that has been set (Section 1048 paras. 2 and 3 ZPO). In any case, the arbitral tribunal may continue the proceeding without treating such failure to comply with procedural rules, in and of itself, as an acknowledgment of the claimant's allegations and may make the award based on the insights gained thus far (Section 1048 paras. 2 and 3 ZPO).

The arbitral tribunal or, with the approval of the arbitral tribunal, a party may request that a State Court provide assistance in taking evidence or by performing any other judicial acts for which the arbitral tribunal is not authorized, including where such evidence would have to be procured from a non-participating party (Section 1050 ZPO).

26. Can third parties voluntarily join arbitration proceedings? If all parties agree to the intervention, is the tribunal bound by this agreement? If all parties do not agree to the intervention, can the tribunal allow for it?

The German Arbitration law does not explicitly address these matters, and there is no existing case law discussing the possibility for voluntary intervention by third parties.

However, the possibility of joinder of a third party is foreseen and provided for in Article 19 DIS Arbitration Rules but the request to join additional parties must be initiated by one of the parties before the appointment of any arbitrator. Article 19 DIS Arbitration Rules therefore allows for the compelled involvement of a third party in the arbitration proceeding, without actually addressing the voluntary intervention of a third party. Nevertheless, there appears to be no prohibition against the voluntary intervention of third parties so long as all parties involved as well as the arbitral tribunal agree to such intervention.

27. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?

Pursuant to Section 1033 ZPO, it is not incompatible with an arbitration agreement for a Court to order, before or after arbitration proceedings have commenced and upon request by a party, an interim measure or measure of protection concerning the subject matter of the dispute submitted to arbitration.

However, the type of measures that a Court can order is limited to the ones that German Courts may grant in German litigation proceedings, e.g. asset freezing orders (Section 916 ZPO) and other interim injunctions (Section 935 ZPO).

Furthermore, pursuant to Section 1041 para. 1 ZPO, interim measures or measures of protection may also be directly granted by the arbitral tribunal as it considers necessary in respect of the subject matter of the dispute, at the request of a party, unless otherwise agreed by the parties.

28. Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?

No, anti-suit and anti-arbitration injunctions are not available as interim measure under German law nor are they enforceable.

29. Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence? Can local courts compel witnesses to participate in arbitration proceedings?

Pursuant to Section 1042 para. 4 ZPO, the arbitral tribunal is entitled to decide on the admissibility of taking evidence, to take evidence and to freely assess the evidence. Section 1050 ZPO further states that a party may request – the arbitral tribunal or, with the approval of the arbitral tribunal – that a court provide assistance in taking evidence or by performing any other judicial acts for which the arbitral tribunal is not authorized. Unless it regards the request to be inadmissible, the court deals with such request in accordance with its procedural rules for the taking of evidence or any other judicial acts. The arbitrators are entitled to participate in the court hearing at which evidence is taken and to ask questions.

The rules on the taking of evidence also include the forcible production of a witness ordered by an arbitral tribunal and compelled by local courts when a summoned witness failed to appear.

30. What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?

There are no ethical codes or other professional standards that would apply to counsel and arbitrators conducting proceedings under the German Arbitration law. They are only bound by the ethical codes or other professional standards applicable in their respective jurisdictions or bars.

31. In your country, are there any rules with respect to the confidentiality of arbitration proceedings?

Yes, in Germany, there are rules and principles that contribute to the confidentiality of arbitration proceedings. While confidentiality is not explicitly regulated by a specific statute under the German Arbitration law, it is an integral part of the arbitration process and is generally understood and respected. References to confidentiality are often found in institutional arbitration rules.

In particular, Article 44 DIS Arbitration Rules 2018 provides that, unless the parties agree otherwise, the parties and their outside counsel, the arbitrators, the DIS employees, and any other persons associated with the DIS who are involved in the arbitration shall not disclose to anyone any information concerning the arbitration, including the existence of the arbitration, the names of the parties, the nature of the claims, the names of any witnesses or experts, any procedural orders or awards, and any evidence that is not publicly available.

Furthermore, the DIS may publish an arbitral award only with the prior written consent of all the parties (Article 44.3 DIS Arbitration Rules 2018).

Nonetheless, disclosures may be made to the extent required by applicable law, by other legal duties, or for purposes of the recognition and enforcement or annulment of an arbitral award (Article 44.2 DIS Arbitration Rules 2018).

32. How are the costs of arbitration proceedings estimated and allocated?

If there an arbitration agreement has been concluded between the parties, the allocation of costs will be dealt with in accordance with the arbitration agreement. Otherwise, the arbitral tribunal has discretion to determine the allocation of costs between the parties while taking account of the circumstances of the individual case, in particular the outcome of the proceedings (Section 1057 para. 1 ZPO).

If the costs of the arbitral proceedings are fixed, the arbitral tribunal is to also decide on the amount to be borne by each party and if the costs have not been determined, or should it be possible to determine them only after termination of the arbitral proceedings, the arbitral tribunal will rule on the matter by separate award (Section 1057 para. 2 ZPO). Additionally, German law follow the principle according to which “costs follow the event”, i.e. each party bears its costs in proportion to its degree of success or failure.

Furthermore, as arbitral tribunals are not bound by the lawyers’ remuneration act (which determines lawyers’ fees depending on the amount in dispute), cost submissions on the basis of the actual costs incurred due to fee arrangements on a time spent basis are standard practice.

As regards pre- and post-award interest, the German Arbitration law does not address this question. However, the arbitral tribunal can award interest if the applicable substantive law allows a claim for interest (which is the case under German law), e.g. an interest rate of 5 percentage points above the reference rate for

contractual relationships where a consumer is involved and 9 percentage points above the reference rate for all the other contractual relationships under German law.

33. Can pre- and post-award interest be included on the principal claim and costs incurred?

Question answered above.

34. What legal requirements are there in your country for the recognition and enforcement of an award? Is there a requirement that the award be reasoned, i.e. substantiated and motivated?

Under German law, when an award is rendered by an arbitral tribunal seated in Germany, the award has the effect of a final and binding judgment handed down by a court (Section 1055 ZPO).

The award must also comply with the requirements set out in Section 1054 ZPO, i.e. be in writing, signed by the arbitrators and state the reasons upon which it was based as well as the date on which it was made.

If the award rendered is a domestic award, Section 1059 ZPO lists the grounds on which the award may be set aside. These grounds are the same as the ones set out in the New York Convention except that Article V para. 1 e) New York Convention has not been incorporated.

If the award rendered is a foreign award, Section 1061 para. 1 ZPO provides that their recognition and enforcement are governed by the New York Convention.

35. What is the estimated timeframe for the recognition and enforcement of an award? May a party bring a motion for the recognition and enforcement of an award on an ex parte basis?

In principle, enforcement proceedings are rather swift and take only a few months. However, it heavily depends on the behavior of both parties during the proceeding.

Pursuant to Section 1063 para. 3 ZPO, the party seeking enforcement can request an interim order in order to ensure enforceability of the arbitral award.

36. Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?

In Germany, the standard of review for the recognition and enforcement of a foreign arbitral award is generally the same as that for a domestic award. German Arbitration law, which is based on the UNCITRAL Model Law, provides a unified framework for the recognition and enforcement of both domestic and foreign awards.

Section 1059 ZPO, outlining grounds for setting aside an arbitral award, closely mirrors the wording of Article V NYC. This includes the distinction between grounds that must be raised by the parties (Section 1059 para. 1 ZPO; Article V (1) NYC) and those that may be considered by the competent court sua sponte (Section 1059 para. 2 ZPO; Article V (2) NYC).

Additionally, the ZPO explicitly incorporates the New York Convention without modifications for the recognition and enforcement of a foreign award (Section 1061 ZPO). Notably, Article V(1)(e) NYC lacks a corresponding provision in the ZPO, as it pertains specifically to the recognition and enforcement of foreign awards.

37. Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts

Under German Arbitration law, there are generally no specific limits on the types of remedies that can be awarded in arbitration. The principle of party autonomy allows parties to define the scope of the remedies they seek in their arbitration agreement. Arbitrators, within the bounds of the law and the agreement, have discretion to fashion appropriate remedies based on the specific circumstances of the dispute.

However, remedies awarded by an arbitral tribunal contrary to public policy (ordre public) render the award unenforceable and as such can be set aside (Section 1059 para. 2 No. 2b) ZPO).

38. Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure?

In principle, arbitration awards are final and not subject to appeal on the merits under German law. However, local courts do have a limited role in reviewing and

potentially setting aside arbitral awards under specified grounds Section 1059 para. 1 ZPO. Pursuant to Section 1059 para. 3 ZPO, unless the parties agree otherwise, the application for setting aside the arbitral award must be filed with the court within a period of three months. This period begins on the day on which the party filing the application has received the arbitral award. In cases in which an application has been filed in accordance with section 1058 ZPO, the period is extended by not more than one month following receipt of the decision regarding said application. The application for setting aside the arbitral award no longer may be filed once a German court has declared the arbitral award to be enforceable.

39. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?

No, the parties cannot waive the right to challenge an award in advance. Any such agreement is deemed null and void according to established case law.

40. In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the recognition of an award?

Third parties or non-signatories to an arbitration agreement may be bound by an award in certain instances, typically when the legal relationship between the third party and the parties to the arbitration agreement is closely connected. The general principle is that arbitration is consensual, and parties who did not agree to arbitrate are not ordinarily bound. A third party would therefore have to consent to arbitration in order to be bound by an award.

Under German law, third parties cannot challenge the recognition of an award.

41. Have there been any recent court decisions in your jurisdiction considering third party funding in connection with arbitration proceedings?

German Arbitration law does not address third-party funding, and there is no requirement under German procedural law to disclose such funding. As of date, there are no known court decisions addressing the issue of third-party funding.

42. Is emergency arbitrator relief available in your country? Are decisions made by emergency arbitrators readily enforceable?

German Arbitration law does not explicitly provide for emergency arbitrator relief. Emergency arbitrator provisions are often included in institutional rules, and the availability and enforceability of decisions made by emergency arbitrators depend on the rules chosen by the parties.

If parties have chosen institutional rules that include provisions for emergency arbitrator relief, they may seek such relief in urgent situations before the constitution of the arbitral tribunal. Common institutional rules that provide for emergency arbitrator procedures include those of the International Chamber of Commerce (ICC) and the Singapore International Arbitration Centre (SIAC).

Regarding the enforceability of decisions made by emergency arbitrators, this can vary. In general, the enforceability of interim or emergency measures ordered by arbitrators, including emergency arbitrators, is typically addressed in the relevant institutional rules. The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards may also be relevant for the enforcement of emergency arbitrator decisions. According to one opinion, emergency arbitrator orders can be enforced under Section 1041 para. 2 ZPO particularly in the case of domestic arbitration.

43. Are there arbitral laws or arbitration institutional rules in your country providing for simplified or expedited procedures for claims under a certain value? Are they often used?

German Arbitration law does not include specific provisions for simplified or expedited procedures based on the value of claims. However, the choice of institutional rules can significantly impact the procedure, and some arbitration institutions, such as the DIS, do provide for expedited or fast-track procedures. In particular, Annex 4 DIS Rules provides for expedited proceedings under an opt-in regime which possibility must be specifically discussed, by the arbitral tribunal, with the parties. However, these proceedings do not refer to a certain value of the claim.

44. Is diversity in the choice of arbitrators

and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?

There is a growing awareness of the importance of diversity in arbitration and several initiatives and practices contribute to promoting this diversity in Germany such as Institutional Initiatives and in particular the DIS-ERA Pledge Gender Champion Initiative created in October 2019. A Gender Champion within every participating firm and organization monitors the appointments of the arbitrators in order to raise awareness for gender equality in international arbitration.

45. Have there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?

According to Section 1061 para. 3 ZPO, where, after having been declared enforceable, the arbitral award is set aside abroad, an application may be filed seeking to have repealed the declaration of enforceability. However, to date, we are not aware of any recent court decision in that regard.

46. Have there been any recent court decisions in your country considering the issue of corruption? What standard do local courts apply for proving of corruption? Which party bears the burden of proving corruption?

In Germany, corruption offenses are primarily governed by the German Criminal Code. There is no certain standard of proof applied. If a party alleges corruption as a ground for challenging or setting aside an arbitral award, that party generally bears the burden of proving the corruption allegations. Nevertheless, German civil procedure incorporates a secondary principle known as the “burden of substantiation,” which entails the opposing party substantiating its defense thoroughly, including presenting evidence, against the party carrying the burden of proof. As of date, there is no known decision applying this principle or establishing a distinct standard or burden of proof for arbitration proceedings involving corruption matters.

47. What measures, if any, have arbitral institutions in your country taken in response to the COVID-19 pandemic?

The DIS has adapted its practices to navigate the challenges posed by the pandemic. The measures adopted include, inter alia: virtual hearings, electronic filings, guidance on delays and technology support for virtual hearings.

48. Have arbitral institutions in your country implemented reforms towards greater use of technology and a more cost-effective conduct of arbitrations? Have there been any recent developments regarding virtual hearings?

The 2018 DIS Arbitration Rules aim to enhance the cost-effectiveness of arbitration proceedings (Articles 32 et seq., Annex 2). Amid the COVID-19 pandemic, the DIS has actively promoted the increased utilization of electronic methods, as indicated in the Announcement of Specific Procedural Features for the Administration of Arbitrations in View of the Covid-19 Pandemic dated 1 July 2020.

49. Have there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?

The German Supply Chain Act was passed and entered into force on 1 January 2023. It requires German companies with more than 3,000 employees in Germany to prevent or at least minimize human rights and environmental rights infringements in their supply chains. It will initially apply to companies with a registered office or branch in Germany and 3,000 or more employees and by 2024, the law will extend to companies with more than 1,000 employees.

Additionally, in a significant ruling dated 24 March 24 2021, the German Federal Constitutional Court determined that specific provisions of the German Federal Climate Change Act, which pertain to national climate targets and permissible annual emission levels until the year 2030, infringe upon fundamental rights due to insufficient specifications for subsequent emission reductions beyond 2031.

50. Do the courts in your jurisdiction consider international economic sanctions

as part of their international public policy? Have there been any recent decisions in your country considering the impact of sanctions on international arbitration proceedings?

In Germany, the courts may consider international economic sanctions as part of their evaluation of public policy in the context of recognition and enforcement of foreign arbitral awards. The concept of public policy serves as a ground for refusing the enforcement of arbitral awards under Section 1059 para. 2 No.2(b) ZPO which states that an arbitral award may be set aside if the court finds that he recognition or enforcement of the arbitral award will lead to a result that is contrary to public policy (ordre public).

Public policy, in this context, encompasses fundamental principles of justice and morality that are considered crucial to the legal order. While the specific considerations and the application of public policy can vary, economic sanctions may be evaluated in light of their impact on the enforcement of contractual obligations and awards. The assessment of public policy in the context of economic sanctions would depend on the specific circumstances of each case. If enforcing an arbitral award would lead to a violation of applicable economic sanctions, a court might refuse enforcement on public policy grounds.

We are not aware of any recent court decision regarding the impact of sanctions on international arbitration proceedings.

51. Has your country implemented any rules or regulations regarding the use of artificial intelligence, generative artificial intelligence or large language models in the context of international arbitration?

Some jurisdictions and institutions globally have been considering guidelines to address the use of Artificial Intelligence (*AI*) tools in arbitration proceedings. The DIS has, as of date, not issued any guidelines in this regard.

However, the use of AI by arbitrators raises questions about its impact on the administration of justice and the rule of law. There is a current draft of the EU AI regulation which seeks to address this issue. In particular, the draft EU AI regulation classifies certain AI systems as high-risk when used in the administration of justice. While the draft does not directly refer to arbitration, it includes tools used to research, interpret, and apply the law to a concrete set of facts in a similar manner in alternative dispute resolution.

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