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Germany
International Arbitration

Contributor

GSK Stockmann

Dr. Justus Jansen

Equity Partner | justus.jansen@gsk.de

Sandrine Larghi, LL.M

Associate | sandrine.larghi@gsk.de

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 provisions pertaining to arbitration are set out in Book 10 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). Additionally, certain types of disputes are expressly excluded from arbitration such as family law disputes as well as certain tenancy agreements (Section 1030 ZPO).

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

Germany is a signatory of the New York Convention. It was signed on 10 June 1958, ratified on 30 January 1961 and it entered into force on 28 September 1961. To 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 European Convention on International Commercial Arbitration, the Geneva Convention on the Execution of Foreign Arbitral Awards and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention). Further, 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?

The German arbitration law is not directly based on the 1985 UNCITRAL Model Law on International Commercial Arbitration. Nonetheless, Germany has incorporated elements of the Model Law into its legal framework. In particular, Germany has 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. The incorporation of the provisions shows Germany's commitment to align its arbitration law with widely accepted international standards.

The ZPO currently 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. However, on 26 June 2024, the German Federal Ministry of Justice introduced a Draft Bill for the Modernization of the German Arbitration Law ("Draft Bill") which aims at enhancing the attractiveness of Germany as an international arbitration venue. To that end, the Draft Bill makes significant changes to the current German arbitration law. For instance, it is currently foreseen that the aforementioned formal requirements regarding arbitration agreement will be abolished for commercial transactions.

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. It must be noted in this regard that the Draft Bill seeks to introduce an entirely new remedy – under Section 1059a ZPO – that allows for the setting aside of arbitral awards to the extent that they have already become final and can no longer be challenged. The conditions for this foreseen new ground are similar to the German action for retrial set out in Section 580 ZPO. The grounds for such action would be, for instance, the other party's commission of perjury on a statement forming the basis of the award, or forgery of a document on which the award relies.

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

As previously explained under question 4., the German Federal Ministry of Justice introduced a Draft Bill for the Modernization of the German Arbitration Law on 26 June 2024. The Draft Bill aims at enhancing the attractiveness of Germany as an international arbitration venue by improving the efficiency of arbitral proceedings conducted in Germany. Among other things, the Draft Bill seeks to make use of technological advancements and respond to recent national reforms in other European countries, such as Austria and Switzerland.

Key proposals include the expansion of the jurisdiction of German commercial courts, relaxed form requirements for arbitration agreements, increased use of English in proceedings, recognition of electronic documents and video hearings, publication of arbitral awards, and provisions for retrial requests.

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. Additionally, the DIS also offers rules for mediation, conciliation, adjudication, expert determination and expertise.

Furthermore, Germany has specialized arbitration institutions that cater to specific sectors or industries in order to address the unique characteristics and intricacies of disputes within specific sectors. For instance, the German Maritime Arbitration Association (Deutsche Gesellschaft für Schifffahrt und Meerestechnik e.V., or DGSMT) which focuses on maritime and shipping disputes or the Arbitration Court of the German Coffee Association (Schiedsgericht der deutschen Kaffeewirtschaft) which specializes in disputes related to the coffee industry.

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

There is no "specialist" arbitration court per se in Germany. Nevertheless, 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 which are designed to deal with arbitration matters. The existence of those specific chambers makes German courts very supportive of the law and practice of domestic and international arbitration.

The Draft Bill does not make significant amendments in that regard. Section 1062(5) sentence 2 ZPO Draft Bill broadens the jurisdiction of German Commercial Courts to encompass arbitration-related court proceedings. The aim of this new provision is to expedite the resolution of disputes through the specialized expertise of the Commercial Courts.

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

In principle, arbitration agreements must 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 (Section 1031 ZPO).

If a party does not object to an arbitration clause contained in specific documents such as General Terms Conditions, the arbitration clause can be deemed valid (Section 1032 paras. 2 and 3 ZPO). However, whenever the CISG (United Nations Convention on Contracts for the International Sale of Goods) finds application, 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 case in the arbitration proceedings (Section 1031 para. 6 ZPO).

As regards the pending reform, the Draft Bill foresees the abolishment of this writing requirement for commercial transactions. As such, the Draft Bill will allow the oral conclusion of arbitration agreements in commercial transactions.

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

Arbitration clauses are considered separable from the main contract pursuant to Section 1040 para. 1 ZPO. Consequently, 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?

German courts do apply a validation principle. According to German law, the principle of party autonomy allows parties to expressly choose the law applicable to their arbitration agreement. This express choice is, in principle, upheld by German courts.

For instance, 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. Consequently, 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 also, 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, those more permissive provisions must also be taken account of.

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

There are currently no express provisions in the German Arbitration law that specifically address multi-party arbitration. However, it must be noted that the Draft Bill introduces a new Section 1035(4) ZPO which provides that in multi-party arbitration proceedings, a co-arbitrator must be jointly appointed by all relevant parties on one side (e.g. jointly by all claimants or all respondents). If the "all the relevant parties on one side" fail to reach an agreement within one month, the competent court at the seat of the arbitration will appoint the co-arbitrator upon request.

In any case, 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.

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

Multi-party arbitration is dealt with in Article 18 DIS Arbitration Rules. This provision further provides that claims made in an arbitration with multiple parties 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. The effects of such a multi-party arbitration on the constitution of the arbitral tribunal are dealt with in Article 20 DIS Arbitration Rules,

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?

In principle, an arbitration agreement binds only the parties who have explicitly consented to it. However, in certain circumstances, third parties or non-signatories may be bound by an arbitration agreement. The circumstances include, for instance, assignments of rights, agency, 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 German law, any dispute pertaining to patrimonial rights (vermögensrechtlicher Anspruch) or rights subject to settlement is arbitrable (Section 1030 ZPO).

However, disputes arising in certain fields of law are considered non-arbitrable. 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 the arbitration-friendly nature of Germany also encompasses corporate disputes, one important exception used to exist 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.

Finally, 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 held 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.

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

Whereas the formal validity of an arbitration agreement 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 a 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 which 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?

There are no specific restrictions regarding the appointment of arbitrators aside from basic principles resulting from due process such as impartiality and independence. The parties to an arbitration proceeding have therefore, in principle, significant autonomy in the appointment of arbitrators.

For the joint appointment of co-arbitrators in multi-party arbitrations in the Draft Bill, please see question 11.

Further, 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 are free to agree on the numbers of arbitrators desired, their qualifications as well as the procedure (Section 1035 para. 1 ZPO).

If the parties have agreed on an appointment procedure, the Courts must observe the parties' express choice (Section 1035 para. 4 ZPO).

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

If the parties have not reached an agreement on 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 agreement regarding the appointment of the arbitrator. In arbitral proceedings with three arbitrators, each party will appoint one arbitrator; the two appointed arbitrators will then 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).

For the joint appointment of co-arbitrators in multi-party arbitrations in the Draft Bill, please see question 11.

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.

Nonetheless, 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?

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 (Section 1036 para. 2 ZPO). 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 (Section 1036 para. 2 ZPO).

Additionally, 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 (Section 1038 para. 1 ZPO). 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).

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, including the duty of disclosure?

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.

As regards the arbitrators' duty of disclosure, such duty stems directly from Art. 9.4 DIS Arbitration Rules, according to which each prospective arbitrator shall disclose any facts or circumstances that could cause a reasonable person in the position of a party to have doubts as to the arbitrator's impartiality and independence. Article 9.6 DIS Arbitration Rules further states that every arbitrator shall have a continuing obligation throughout the entire arbitration to promptly disclose in writing to the parties, the other arbitrators and the DIS any facts or circumstances in the sense of Article 9.4.

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, arbitral tribunals are allowed to render decisions and awards by majority (Sections 1052 para. 1 and 1054 para. 1 ZPO). If an arbitrator refuses to participate in a vote, and 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?

Although arbitrators are to some degree immune from liability (akin to judicial immunity) for actions taken in the course of their arbitral duties, German law does not provide a specific set of rules. The aim is to allow arbitrators to 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.

Moreover, parties entering into arbitration agreements can, to some extent, shape the scope of this 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 recognised in your country?

The principle of competence-competence is recognized in Germany. The arbitral tribunal may therefore rule on its own jurisdiction and, in this context, on the existence or the validity of the arbitration agreement (Section 1040 para. 1 ZPO). However, 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 render an award (Section 1040 para. 3 ZPO).

Besides, 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 (Section 1032 para. 2 ZPO).

Finally, though 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 (Section 1032 para. 3 ZPO).

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

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 (Section 1032 para. 1 ZPO).

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

According to Section 1048 paras. 2 and 3 ZPO, 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 also provide that, 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.

Pursuant to Section 1050 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.

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, Article 19 DIS Arbitration Rules foresees the possibility of joinder of a third party but the request to join additional parties must be initiated by one of the parties before the appointment of any arbitrator. A third party can therefore be compelled to join the arbitration proceeding, although Article 19 DIS Arbitration Rules does not actually address 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?

Before or after arbitration proceedings have commenced and upon request by a party, a Court may order an interim measure or measure of protection concerning the subject matter of the dispute submitted to arbitration (Section 1033 ZPO).

The type of measures that a Court may order is however 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).

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

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

Anti-suit and anti-arbitration injunctions are not available as interim measures 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?

The arbitral tribunal is entitled to decide on the admissibility of taking evidence, to take evidence and to freely assess the evidence (Section 1042 para. 4 ZPO). Additionally, 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 (Section 1050 ZPO). Unless the court deems the request inadmissible, it will deal 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 evidentiary court hearing and are allowed to ask questions.

When a witness who has been summoned fails to appear at the arbitration hearing, the witness can be ordered by an arbitral tribunal and compelled by local courts to appear at the hearing.

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, 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 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). Additionally, the Draft Bill also foresees a new Section 1054b ZPO allowing for the publication of redacted arbitral awards with the parties' consent.

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).

32. How are the costs of arbitration proceedings estimated and allocated? Can pre- and post-award interest be included on the principal claim and costs incurred?

If 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 into account 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 in a separate award (Section 1057 para. 2 ZPO). Additionally, German law follows 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.

Besides, 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.

Finally, German law does not address pre- and post-award interest. However, the arbitral tribunal can award interest if the applicable substantive law allows for a interest claim (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. 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?

According to Section 1055 ZPO, 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.

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. In addition to the current provisions, the Draft Bill seeks to introduce a new Section 1054a ZPO which expressly permits an arbitrator to render a dissenting opinion in order to voice a disagreement with the arbitral tribunal and provide its own reasoning.

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.

Further, it must also be noted that the Draft Bill introduces a new Section 1059a ZPO which provides for an entirely new legal remedy in the form a request for retrial if the case. According to this foreseen new ground, arbitral awards which have become final and can no longer be challenged under conditions like those of an action for retrial, can be set aside. To that end, a party must substantiate one of the valid causes for retrial under Section 580 ZPO, such as the other party's commission of perjury on a statement forming the basis of the award, or forgery of a document on which the award relies.

34. 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 only take a few months. In actuality, the length of an enforcement proceedings is often dependent on the behavior of both parties during the proceeding.

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

35. 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?

The standard of review for the recognition and enforcement of a foreign arbitral award is, in principle, the same as that for a domestic award. As the German Arbitration law is based on the UNCITRAL Model Law, it provides a unified framework for the recognition and enforcement of both domestic and foreign awards.

The grounds for setting aside an arbitral award are set out in Section 1059 ZPO. This provision 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). However, Article V(1)(e) NYC lacks a corresponding provision in the ZPO, as it pertains specifically to the recognition and enforcement of foreign awards.

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

There are in principle 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 arbitration agreement, have discretion to grant appropriate remedies based on the specific circumstances of the dispute.

Nevertheless, if an arbitral tribunal awards remedies that are contrary to public policy, the award will be unenforceable and as such can be set aside (Section 1059 para. 2 No. 2b) ZPO).

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

In principle, arbitration awards are final and cannot be appealed on the merits under German law. However, local courts are given a limited role in reviewing and potentially setting aside arbitral awards, provided that at least one of the grounds set out in Section 1059 para. 1 ZPO is met.

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.

For the request for retrial of a case foreseen in the Draft Bill, please see question 33.

38. 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)?

The parties cannot waive the right to challenge an award in advance. According to established German case law, any such agreement is deemed null and void.

39. 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 when the legal relationship between the third party and the parties to the arbitration agreement is closely connected. However, this is limited to specific circumstances and constellations due to the consensual nature of arbitration which entails that 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.

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

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

The German Arbitration law does not address third-party funding. There is also 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.

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

German 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).

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

42. 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?

There are no specific provisions for simplified or expedited procedures based on the value of claims under German law.

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. For instance, Annex 4 DIS Arbitration Rules provides for expedited proceedings under an opt-in regime. The expedited proceedings under Annex 4 DIS Arbitration Rules must be specifically discussed by the arbitral tribunal with the parties. Nonetheless, these proceedings do not refer to the value of the claim.

43. 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.

44. 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?

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

45. 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?

Corruption offenses are primarily governed by the German Criminal Code. There is no specific 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.

46. 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 for instance: virtual hearings, electronic filings, guidance on delays and technology support for virtual hearings.

Additionally, the Draft Bill introduces a new Section 1047(2) sentence 1 ZPO according to which arbitral tribunals may conduct arbitral hearings by video link even in cases where one of the parties objects to such a "remote hearing". Furthermore, Arbitral Tribunals will also have the option to render arbitral awards electronically without a hardcopy original. This "e-award" will have to include the names of all tribunal members and their qualified electronic signatures. A qualified electronic signature as defined by the Draft Bill will be created by using a "qualified electronic signature creation device" and authenticated by a "qualified certificate for electronic signatures." Nonetheless, the parties will have the right to object to the issuance of an e-award and instead request a hardcopy.

47. 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.

For developments regarding virtual hearings, please see Question 46.

The DIS has also recently implemented a "DIS eFile", It is a digital case file set up at the beginning of the proceedings which access to the case file by the parties and the arbitrators or other persons involved in the proceedings, subject to their consent. All documents can be uploaded directly to the case file by authorised persons and are immediately available to all users of the DIS eFile throughout the arbitration proceeding. The eFile contains, inter alia, information on the parties to the proceeding, current deadlines and recent uploads as well as an integrated case calendar and task management system that can be used by the arbitrators and the DIS Case Management Team to communicate and monitor deadlines and tasks.

48. 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 initially applied to companies with a registered office or branch in Germany and 3,000 or more employees and, since 2024, the law has been extended to companies with more than 1,000 employees.

Additionally, in a significant ruling dated 24 March 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.

49. 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 public policy assessment 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. According to this provision, an arbitral award may be set aside if the court finds that the recognition or enforcement of the arbitral award will lead to a result that is contrary to public policy.

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 assessed 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.

50. 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.

On 1 August 2024, the European Artificial Intelligence Act (AI Act) enters into force. The Act aims at fostering responsible artificial intelligence development and deployment in the EU. The AI Act introduces a uniform framework across all EU countries, based on a forward-looking definition of AI and a risk-based approach: Minimal risk, Specific transparency risk and Unacceptable risk. The provisions on GPAI will enter into application in 12 months. The Commission expects to finalize the Code of Practice by April 2025.

As a member of the European Union, Germany is subject to the EU Artificial Intelligence Act. However, beyond the AI Act, the use of AI-based technologies and information systems is not subject to any specific laws and regulations in Germany but governed by general regulations such as the General Data Protection Regulation (GDPR), or the Civil Code (BGB), etc.

Contributors

Dr. Justus Jansen
Equity Partner
justus.jansen@gsk.de

Sandrine Larghi, LL.M
Associate
sandrine.larghi@gsk.de