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The legal systems of the DACH region

Predictable, effective and cost-efficient
The law of Germany, Austria or Switzerland:
the perfect choice for international agreements and disputes

September 2022

Legal, court and arbitration systems in the DACH region

In projects with business partners from CEE and investments by German-speaking investors in the region, the question which law should apply and which would be the appropriate forum for settling potential future disputes keeps arising when drafting the underlying contracts. Parties frequently need to choose a neutral law and agree on the jurisdiction of a court or arbitral tribunal outside the state of the project or investment.

This brochure highlights the special advantages of the three DACH legal systems (i.e., those of Germany, Austria and Switzerland) and shows why, in many cases, these jurisdictions are the ideal choice for international business contracts with partners from CEE:

- **German, Austrian and Swiss contract and commercial law** offer business partners a high degree of legal certainty, long-standing case law and plenty of leeway when drafting contracts. DACH civil codes have been the model for many CEE codifications and are therefore often more familiar to business partners in the region than the non-codified common law systems of the Anglo-American sphere.
- **Court proceedings** in the DACH region are characterised by their efficiency and cost-effectiveness, the special expertise of the courts in commercial disputes, as well as the straightforward and prompt enforcement of civil judgments in the EU as well as in Switzerland, Iceland and Norway.
- **Arbitration** in the DACH region has an exceptionally high standing. The law is especially conducive to arbitration: it allows parties to shape arbitral proceedings according to their needs and ensures that the state courts – if necessary – support arbitration proceedings efficiently and enforce arbitral awards. The DACH region has renowned arbitral institutions with modern arbitration rules and efficient case management. Arbitral awards issued by an arbitral tribunal in the DACH region can be enforced in almost any country in the world.

Our experts help clients analyse the interests of the parties involved and all project-related specifics in order to draft the ideal choice of law and dispute resolution clauses for their contracts. Our lawyers do not only keep a close eye on the DACH legal systems, but also on the particularities arising from any CEE state law involved in the project or transaction. This ensures that the choice of law and dispute resolution arrangements will serve their purpose in the event of a dispute and that the parties will be able to benefit from the advantages of their designated DACH legal and court, respectively arbitration system.

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Germany

German contract and commercial law

- Codified, predictable and reliable legal framework
- High degree of legal certainty due to long-standing and established case law on codified and not (comprehensively) codified types of agreements
- Detailed and balanced catch-all statutory provisions; agreements under German law are significantly shorter and therefore usually less expensive than agreements under English or US law
- No “surprises”: transitional provisions and time limits apply as a matter of principle even in the case of legislative changes
- Protection of the inferior party from oppressive contracts: judicial review of the appropriateness of clauses (which are not customary in the industry or which are particularly disadvantageous to one party)
- No *punitive damages*: compensation only for the loss actually incurred



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Court proceedings in Germany

- Efficient court proceedings:
 - » The court manages the proceedings: lawyers do not spend time and charge fees for organisational services
 - » The court identifies options for settlements and indicates the relevant issues usually at the first hearing
 - » 25 % of the proceedings before the regional courts are concluded within six months; more comprehensive litigations take about one to one and a half years on average
- The courts have special commercial law expertise:
 - » Disputes concerning commercial matters within the jurisdiction of the regional courts¹ may be referred to the chambers for commercial matters (Handelskammer); the commercial judges have special commercial expertise and practical business experience
 - » Chambers for international commercial matters (known as commercial courts) exist at some regional courts², where court proceedings can be partly conducted in English
- Court costs and lawyer’s fees recoverable if the party is successful (EUR)³:

Amount in dispute	1 million	5 million	20 million
Court fees	17,643	65,163	243,363
Recoverable lawyer’s fees	12,992.50	45,992.50	169,742.59

- The losing party bears the costs of the proceedings as well as the lawyer’s fees (plus travel expenses) which are recoverable in accordance with the Act on the Remuneration of Lawyers (RVG) and depend on the amount in dispute
- Judgments can be enforced even before they become final and binding in return for provision of security
- Courts decide on applications for interim relief within only a few days
- Efficient enforcement of court decisions: enforcement proceedings can be initiated cost-effectively within a few days or weeks
- Recognition and enforcement of German court decisions in all EU Member States ensured by the Brussels Ia Regulation⁴ and in Switzerland, Iceland and Norway by the Lugano Convention⁵

1 This is generally the case where the amount in dispute in an action exceeds EUR 5,000.

2 These are currently the regional courts in Frankfurt a.M., Hamburg, Stuttgart and Mannheim.

3 The figures do not include VAT and refer to the 1st instance.

4 Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters of 12 December 2012.

5 Lugano Convention on jurisdiction and the enforcement of judgments in civil and commercial matters of 30 October 2007.



Austria

Arbitration proceedings in Germany

- Arbitration-friendly procedural law
 - » German arbitration law is largely modelled on the UNCITRAL Model Law; provisions on the admissibility and conduct of arbitral proceedings largely discretionary
 - » All pecuniary claims as well as non-pecuniary claims on which the parties can reach a settlement can be subject of arbitration
 - » State courts only responsible for supporting activities during the arbitration proceedings, reviewing the proceedings and the award for serious irregularities and declaring an award enforceable; German case law is particularly arbitration-friendly
- Large choice of experienced and internationally recognised arbitrators, party representatives, experts and third-party funders
- The arbitration rules of the most well-known arbitration institution, the German Institution of Arbitration (DIS) e.V., were comprehensively revised in 2018 to increase the efficiency and cost-effectiveness of arbitration proceedings
 - » Overview of the administration fee and arbitrator’s fee under the DIS Arbitration Rules (EUR)⁶:

Amount in dispute	1 million (sole arbitrator)	5 million (three-member arbitral tribunal)	20 million (three-member arbitral tribunal)
DIS fees	10,500	30,500	50,000
Fee arbitral tribunal	25,285	146,685	229,185

- » Decision on costs at the discretion of the arbitral tribunal: unless otherwise agreed, the reasonable costs and expenses will usually be borne by the losing party
- German arbitral awards are recognised practically worldwide due to the application of the New York Convention⁷

⁶ The figures do not include VAT.
⁷ New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958.

Austrian contract and commercial law

- One of the oldest codified European civil law systems with a long tradition of case law and comprehensive legal literature
- Commercial and company law largely comparable to German law, therefore attractive “neutral” legal system for companies with a connection to the German corporate and commercial legal system
- Comprehensive catch-all statutory provisions ensure that gaps in contracts are filled appropriately; the true intention of the parties is the basis for interpretation of contracts
- Large legal community with experienced arbitrators, experts and party representatives with international experience



They are always available, helpful and very knowledgeable. The team understands customers’ needs and is also proactive.

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Court proceedings in Austria

- Course and duration of court proceedings:
 - » Shortest average length of civil proceedings in first instance in Europe: civil cases are usually resolved within 12 to 24 months
 - » To a large extent, proceedings are conducted and files are kept digitally
 - » Courts have extensive procedural management powers to efficiently conduct and organise hearings and can structure proceedings by handing down partial and interim judgments
 - » Oral hearings and taking of evidence are performed almost exclusively in the first instance, appeal proceedings are efficient and structured as purely written proceedings
- The courts have special commercial law expertise:
 - » Specialised commercial court in Vienna
 - » Appointment of experienced experts
 - » Interim relief possible within a few days
- Court costs (EUR)⁸:

Amount in dispute	1 million	5 million	20 million
Court fees	15,488	63,488	243,488
- Reimbursement of lawyer’s fees depends on the costs and the amount in dispute as well as the proportion of success of a party; in high-value disputes the lawyer’s fees incurred are usually reimbursed
- Recognition and enforcement of German court decisions in all EU Member States ensured by the Brussels Ia Regulation and in Switzerland, Iceland and Norway by the Lugano Convention

⁸ The figures refer to the court fees for the 1st instance.



Arbitration proceedings in Austria

- Arbitration-friendly, modern procedural law
 - » Revision of the Austrian Arbitration Act 2013 in close alignment with the UNCITRAL Model Law
 - » Annulment of arbitral awards can only be applied for in a single-instance procedure before the Austrian Supreme Court of Justice subject to very limited preconditions
 - » Almost all pecuniary claims can be subject of arbitration
 - » State courts support arbitral tribunals with the appointment of arbitrators and issuing interim injunctions
- Vienna as a well-connected, cost-effective arbitration venue
- Austrian arbitral institutions
 - » VIAC (Vienna International Arbitral Center) as the leading arbitral institution for proceedings in CEE
 - » Modern VIAC rules ensure extensive procedural autonomy and support from VIAC Secretariat
 - » E-proceedings possible to a large extent
 - » Support with the organisation of arbitral hearings
 - » Overview VIAC costs and arbitrator’s fee under the VIAC rules (EUR)⁹:

Amount in dispute	1 million (sole arbitrator)	5 million (three-member arbitral tribunal)	20 million (three-member arbitral tribunal)
VIAC costs and arbitrator’s fee (average)	46,000	188,000	315,000
 - » Reimbursement of the actual costs (if reasonably incurred)
- Austrian arbitral awards are recognised practically worldwide due to the application of the New York Convention

⁹ The figures do not include VAT.



Court proceedings in Switzerland

- Swiss courts work very efficiently: after the first exchange of written statements, usually a settlement hearing is held at which the court gives the parties a preliminary assessment of the case and tries to assist with achieving an amicable settlement of the dispute, a settlement hearing usually takes place within six to ten months after the filing of the statement of claim, at the Commercial Court of the Canton of Zurich, around 60 to 75 % of cases are therefore settled early and cost-effectively within less than a year
- The courts have special commercial law expertise:
 - » In various Swiss cantons, such as the Canton of Zurich, there are highly specialised commercial courts. At the commercial courts, the panel is composed of both professional judges and industry experts.
- Overview of court costs and party compensation exemplified by the courts of the Canton of Zurich¹⁰:

Amount in dispute (EUR)	1 million	5 million	20 million
Ordinary court fee ¹¹ (CHF)	30,750	70,750	170,750
Ordinary party compensation ¹² (CHF)	31,400	68,900	156,400

- » In principle the losing party bears the court costs and reimburses the winning party for a proportion of its legal fees dependent on the amount in dispute
- Recognition and enforcement of Swiss judgments in all 27 EU Member States according to the Brussels Ia Regulation as well as in Iceland and Norway on the basis of the Lugano Convention

¹⁰ The figures refer to the 1st instance.
¹¹ The ordinary court fee may be reduced by up to half or doubled depending on the circumstances of the specific case.
¹² The ordinary party compensation may be reduced by up to 20 % or increased by a factor of 1.5 depending on the circumstances of the specific case.

Swiss contract and commercial law

- Codified, predictable law which is easy to understand (legal opinions normally not required)
- All laws and statutes available in German, French and Italian and the most important ones also in English
- Very liberal as it leaves the parties the greatest possible freedom of contract (also within the framework of general terms and conditions)
- Catch-all statutory provisions in legislation reflect best practice in international trade and make long and expensive agreements unnecessary
- Swiss courts and arbitral tribunals take account of the customary expectations of the parties and the needs of international trade
- Swiss law is considered to be balanced and “neutral” and is traditionally the “civil law” most often chosen by the parties in international ICC arbitrations



The lawyers have a hands-on approach, are pragmatic and business-minded. They deeply understand our business and needs. They are a joy to work with and I always feel in safe hands.

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Arbitration proceedings in Switzerland

- Arbitration-friendly procedural law
- The parties enjoy the greatest possible freedom: they may be represented by legal representatives of their choice and may freely choose the language of the proceedings, the applicable procedural rules and the arbitrators
- Extensive arbitrability: any pecuniary claim can be subject of arbitration proceedings
- Arbitrators may issue interim injunctions before and during the arbitral proceedings
- State courts can only intervene to provide support for arbitration proceedings (appointment of arbitrators, enforcement of arbitral evidence orders or interim injunctions)
- Challenging arbitral awards is only possible within very narrow limits
- Overview costs and arbitrator’s fee for arbitrations administered by the Swiss Arbitration Centre (EUR):

Amount in dispute	1 million (sole arbitrator)	5 million (three-member arbitral tribunal)	20 million (three-member arbitral tribunal)
Costs and arbitrator’s fee (average)	53,866	235,451	385,356

- » Party compensation on the basis of the actual costs (if reasonably incurred)
- Swiss arbitral awards are recognised practically worldwide due to the application of the New York Convention



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(Bloomberg, Mergermarket and Thomson Reuters)

>> #1 Germany, DACH, Austria

>> #2 Europe, UK, Switzerland, Benelux

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