CODE OF CIVIL PROCEDURE, 4th Chapter

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ARBITRATION PROCEDURE – ARBITRATION AGREEMENT ➦

Article 577

An agreement that a legal dispute shall be settled by one or more arbitrators (an arbitration agreement) is valid insofar as the parties are entitled to conclude a settlement concerning the subject matter of the dispute.

An arbitration agreement submitting future disputes arising from a specified legal relationship to arbitration by one or more arbitrators is also valid.

The arbitration agreement must be in writing or be contained in telegrams, telexes or in electronic representations exchanged by the parties.

Article 578

Judicial officers may not accept appointment as arbitrators during their tenure of judicial office.

Article 579

No one is obliged to accept appointment as arbitrator. If he has reasonalble cause an arbitrator may resign even after accepting appointment.

Article 580

If the arbitration agreement contains neither the names of the arbitrators nor a provision concerning number and appointment of arbitrators, each party shall appoint an arbitrator, and they in turn shall appoint the chairman of the arbitral tribunal.

Article 581

A party which is obliged to make an appointment of an arbitrator pursuant to an arbitration agreement can be required by the opposing party to appoint an arbitrator within 14 days and to give notice to the party making the demand. The demand may also be made if the arbitrator who has already been appointed pursuant to the arbitration agreement refuses to accept office as arbitrator or refuses to fulfil his obligations or dies or is challenged successfully or ceases to act for any other reason.

If the party making the demand also has to appoint an arbitrator, the demand shall also give notice of the person appointed as arbitrator.

The exchange of demands and notices can be made by post or through a public notary.

A person who is called on to appoint an arbitrator is bound by an appointment made by him as soon as the opposing party or one of the parties has received notice of the appointment.

Article 582

If an appointment is not made within the proper time or if the arbitrators cannot agree upon a chairman, the Court shall upon application make the appointment. The application should be brought before the Court which would have been competent to hear the dispute in first instance in the absence of an arbitration agreement; however, if a Court has been indicated in the arbitration agreement as being competent for this purpose and if it would be possible for that Court to be given competence by agreement of the parties (Art. 104(1) and (2) Judicature Act), or if the arbitration agreement indicates the venue of the arbitral procedure, then that Court is competent, or in the absence of such indication, the Court under whose jurisdiction this venue comes. If there is no Court with local jurisdiction, or if such Court cannot be ascertained, the application should be brought before the Court which has local jurisdiction for the 1st municipal district of Vienna, insofar as the arbitration agreement requires the arbitral tribunal to meet within Austria. The application may be made by the parties and under Article 580 by either of the arbitrators. The applicant does not need to be represented by an attorney, even before the Superior Court of First Instance.

The order on the application is not subject to appeal.

Article 583

If the parties cannot agree on the arbitrator to be appointed by them jointly, the Court mentioned in Article 582 shall pronounce the rescission of the arbitration agreement.

The same procedure shall be followed

if named persons are appointed as arbitrators in the arbitration agreement and one of these arbitrators dies, ceases to act consequent upon a challenge or for any other reason, refuses to accept office as arbitrator or withdraws from the contract concluded with him because of his appointment; or

if an arbitrator who is named in the arbitration agreement or appointed by a party pursuant to the arbitration agreement or by the Court pursuant to Article 582 refuses to fulfil the obligations assumed by his acceptance of office as arbitrator, or delays unreasonably in their fulfilment.

If the arbitration agreement is concluded with reference to all disputes arising out of a particular legal relationship and the circumstances in which the Court is to declare the arbitration agreement as rescinded are such that submission to arbitration of possible disputes arising in the future is not excluded, the Court shall only declare the arbitration agreement of no effect for the case in question.

Article 584

the decision on an application under Article 583 shall be made by order after an oral hearing. This decision and the decision on an application under Article 582 may be made in the Superior Court of First Instance by the President of the Court or by a judge authorized by him.

An arbitrator who does not fulfil in time or at all the obligations assumed by his acceptance of office is liable to the parties for all the loss caused by his wrongful refusal or delay, without prejudice to the parties' rights to claim rescission of the arbitration agreement.

Article 585

The provisions of Articles 582 and 583 are not applicable insofar as the parties have agreed otherwise in the arbitration agreement or in a written agreement made after the conclusion of the arbitration agreement.

Article 586

An arbitrator may be challenged for the same reasons that a judge may be challenged. *)

A party which appoints an arbitrator alone or jointly with the opposing party is entitled to challenge him only if the reason for the challenge arose or became known to the party after the appointment.

CHALLENGE OF JUDGES ➦

(Articles 19 and 20 Judicature Act)

Article 19

A judge can be challenged in civil cases,

if he is excluded by statute from acting judicially in the particular case;

if there is sufficient reason to doubt his impartiality.

Article 20

Judges are excluded from acting in civil cases,

in cases where they are themselves a party or where in relation to the subject matter of the case they have rights or liabilities in common with a party or are liable to indemnify a party;

in cases concerning their spouses or persons directly related to the spouse by blood or marriage or persons related collaterally to the judge by blood to the fourth remove or by marriage to the second remove;

in cases concerning their adoptive or foster-partents, adoptive or foster-children, and their wards;

in cases in which they held or hold power of attorney from a party;

in cases in which they took part in the making by a lower court of the judgement or decision appealed against.

PROCEDURE BEFORE THE ARBITRATORS ➦

Article 587

The arbitrators shall hear the parties and investigate the facts of the case before making their award. The procedure shall be determined by the arbitrators in their discretion unless the parties have agreed otherwise in the arbitration agreement or in a subsequent written agreement.

If a party refuses to attend the hearing before the arbitrators, the hearing shall continue in the presence of the other party.

Article 588

The arbitrators are not entitled to administer the oath to the parties, witnesses and experts, who appear voluntarily before them. They may not apply coercive measures or award punishments against parties or other persons.

Article 589

Those judicial acts considered necessary by the arbitrators but which they have no jurisdiction to undertake will be carried out by the State Court which has jurisdiction on the application of the arbitrators. In case of doubt the application is to be made to the District Court in whose district the act is to be carried out or the evidence to be taken.

The Court to which the application is made shall accede to it insofar as it is not legally inadmissable. In particular the Court shall also take those decisions regarding taking of evidence which are reserved by the present statute in the case of taking of evidence on commission to the Court hearing the case.

Article 590

If more than two arbitrators are to decide, the award shall be made by an absolute majority unless the arbitration agreement contains anything to the contrary.

Article 591

If the necessary majoritiy for taking a decision, or where there are only two arbitrators, unanimity cannot be reached the arbitrators must inform the parties.

If no other provision for this case is contained in the arbitration agreement or in a subsequent written agreement of the parties, any party may apply to the Court mentioned inn Article 582 for a declaration that the arbitration agreement is rescinded or of no effect in the particular case.

Article 592

Copies of the award shall be served on the parties either in person before the arbitral tribunal or by post or by a public notary.

These copies and the original of the award shall mention the date of the making of the

award and shall be signed by the arbitrators. The signature of the majority of the arbitrators shall suffice if there is a statement in the award that the minority refuses to sign or if signature of the minority cannot be obtained because of an obstacle which cannot be overcome within a reasonable period of time.

Article 593

The original award and documents recording the service of copies on the parties shall be kept in safe custody by the person named in the arbitration agreement. If no such agreement has been made or the named custodian has died, the arbitrators shall determine the method of deposit. In case of doubt these documents shall be deposited with a public notary of the district where the arbitral tribunal has its seat.

The original of the award and the documents recording service are to be deemed documents common to the parties.

Article 594

The arbitral award has the effect between the parties of a final and binding Court judgment unless the parties have agreed in the arbitration agreement that there shall be the possibility of an appeal against the award to a second-tier arbitral body.

The chairman of the tribunal, or if he is unable to act, any other arbitrator, shall at the request of a party confirm in writing on a copy of the award the final and binding nature and the enforceability of the award.

CANCELLATION OF THE AWARD ➦

Article 595

The award shall be set aside,

1. if an arbitration agreement according to Article 577 does not exist, if the arbitration agreement has become invalid before the making of the award or ceased to have effect for the particular case or if a party was unable to conclude the arbitration agreement because of its status; if the party applying to have the award set aside was unable to present its case in the proceedings before the arbitrators or if required by statute to be represented by an agent or guardian was not so represented in those proceedings unless in the latter case the procedure has been subsequebtly properly ratified; if statutory or contractual provisions regarding the composition of the arbitral tribunal or the method of reaching a decision have been infringed or if the original of the award has not been signed in accordance with the provisions of Article 592 (2); if a challenge to an arbitrator has been rejected unjustifiably by the arbitral tribunal; if the arbitral tribunal dealt with matters beyond those referred to it; if the award is incompatible with the basic principles of the Austrian legal system or if it infringes mandatory provisions of the law, the application of which cannot be set aside by a choice of law of the parties even in a case where a foreign contact according to Article 35 of the International Private Law Act is involved; if the conditions are present in which a request can be made under Article 530 (1) figures 1 to 7 for a Court judgement to be set aside and the case re-opened.
2. In the cases set out in section (1) above, figures 2 to 7, the arbitration agreement will become invalid in respect of the subject matter of the arbitration procedure if an arbitral award thereupon has been set aside twice by final and binding judgement.

Article 530 Application to re-open a case:

A case concluded by a judgement can be re-opened on application of a party,

1. if a document on which the judgement was based was completely or partially forged;
2. if a witness or expert of the opposing party has given false testimony during his examination and the judgement is based on this testimony;
3. if the judgement was given as a result of an act punishable at law, whether as willful misrepresentation (para. 108 of the Austrian Penal Code), embezzlement (para. 134 APC), fraud (para. 146 APC), forgery of documents (para. 223 APC), forgery of documents especially protected by the law (as defined in para. 224 APC), forgery of public seals (para. 225 APC), indirect false recording or certification (para. 228 APC), suppression of documents (para. 229 APC), or of displacement of boundary marks (para. 230 APC), on the part of the representative of the party, or of the opposing party or its representative;
4. if the judge has been guilty of criminal negligence of his official duties to the prejudice of the applicant in giving judgement or in a previous decision relating to the case on which the judgement is based;
5. if a decision by a criminal court on which the judgement is based has been set aside by a subsequent final judgement;
6. if the applicant discovers the existence of, or is placed in a position to use a previous judgement concerning the same claim or the same legal relationship which is already final and which determines the rights of and between the parties of the case to be re-opened;
7. if the applicant has discovered or is placed in a position to use new facts or evidence which would have resulted in a more favourable decision for the applicant on the merits, if they had been presented in the previous hearing. The re-opening of the case under figures 6 and 7 is only permissible if the applicant was unable without fault on his part to assert the finality of the judgement or the new facts or evidence before the end of the oral hearing after which the judgement of First Instance was given.

Article 596

If an applicant is made to set aside an award, the application shall be made to the Court specified in Article 582.

If the application is based on one of the grounds set out in Article 595 (1) figures 1 to 6, it must be made within a time limit of three months failing which the application will be time barred. The time limit begins to run on the day of service of the award on the party concerned, or, if the ground for rescission only came to the party's notice later, from the day when the party became aware of the said ground.

The time limit for applications under Article 595 (1) figure 7 is governed by the provisions concerning the application to re-open the case.

Article 597

The procedure on an application to set aside the award shall be in accordance with the general provisions of the present statute.

Article 598

A party cannot waive the application of Articles 586, 592 and 595, either in the arbitration agreement or any other agreement.

If both parties have concluded the arbitration agreement as businessmen (Article 1 (1) figure 1 of the Consumer Protection Act), they may waive the application of Article 595 (1) figure 7.

Article 599

The provisions of this chapter are applicable mutatis mutandis to arbitral tribunals constituted in ways permitted by statute whether by will or other dispositions not being based on the agreement of the parties to the dispute or by articles of association. The provisions of Articles 586, 592 and 595 may not be waived by unilateral dispositions or provisions of articles of association.

Arbitral tribunals constituted in accordance with the Act for the Settlement of Differences in Associations 1951, Official Gazette No. 233/1951 (Vereinsgesetz 1951, BGBl. Nr. 233/1951), are not subject to the provisions of this chapter.