

Table of contents

Foreword	V
Table of abbreviations	XIX
I. Sources of law for (international) arbitration	1
A. Sources of law based on party autonomy: arbitration agreements, arbitration rules and other party agreements	1
B. Sources of law based on sovereign legal acts	2
i. The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards	3
ii. The European Convention on International Commercial Arbitration (European Convention)	4
iii. EU law	4
iv. §§ 577–618 ZPO and other provisions of autonomous Austrian law	5
C. Guidelines and recommendations (soft law)	7
II. The making of the arbitration agreement	9
A. Introduction: the significance of the arbitration agreement	9
B. Election between ad hoc arbitration/UNCITRAL arbitration/ institutional arbitration	10
i. Ad hoc arbitration	10
ii. UNCITRAL arbitration	11
iii. Institutional arbitration	11
C. Choice between various arbitral institutions	15
D. Agreement on the seat of the arbitral tribunal – significance of the seat	16
E. Agreement on the language of the arbitration	19
F. Specifying the number of arbitrators and stipulation of special qualifications of arbitrators	20
G. Autonomy of arbitration agreements	21
H. Entering into the arbitration agreement	23
i. The law governing the arbitration agreement	23
ii. Substantive requirements under Austrian law	24

I. Subject-matter arbitrability (“Objektive Schiedsfähigkeit”)	27
i. Definition and applicable law	27
ii. Subject-matter arbitrability under Austrian law	28
J. Capacity to arbitrate	30
i. Definition and applicable law	30
ii. Capacity to arbitrate under Austrian law	30
K. Form of arbitration agreements	31
i. Introduction	31
ii. The law applicable to the form of the arbitration agreement	32
iii. Form of arbitration agreements under domestic Austrian law – electronic arbitration agreements	33
L. Representation at the time of entering into the arbitration agreement	36
i. Representation by constitutive bodies or officers	36
ii. The law applicable to the power and the law applicable to the form of the power to enter into arbitration agreements	37
iii. Domestic Austrian law regarding the power to enter into arbitration agreements and its form	38
iv. Lack of good faith in relying on defects of form or of the power of attorney	39
M. Interpretation of arbitration agreements	40
N. Substantive scope of arbitration agreements	42
O. “Extending” arbitration agreements	44
P. Termination and expiry of arbitration agreements	46
Q. Med-arb clauses	47
 III. Arbitration clauses in testamentary dispositions and articles of association	 49
A. Testamentary dispositions	49
B. Arbitration clauses in “articles of association or incorporation”	50
 IV. Demarcation of jurisdiction between arbitral tribunals and state courts	 53
A. Introduction: the significance of disputes on jurisdiction	53
B. Disputes on jurisdiction before state courts	54
C. Disputes on jurisdiction before arbitral tribunals	56
 V. Initiating arbitral proceedings	 61
A. Introduction: avoiding/preparing for arbitration	61
B. Notice of Arbitration v. Request for Arbitration (Statement of Claim)	63
C. Contents of the Request for Arbitration (Statement of Claim)	64
i. Precise designation of the parties, including details of their corporate form, addresses and contact information	64

ii. Provision of counsel's contact details and potentially power of attorney	64
iii. Cause of action and specific relief requested	65
iv. Details or estimate of amount in dispute	66
v. Details of arbitration agreement	67
vi. Underlying contract	67
vii. Information on constitution of the arbitral tribunal and/or nomination of arbitrator	68
viii. Place of arbitration and language of arbitration	68
ix. Miscellaneous	69
D. Filing of a Request for Arbitration or Statement of Claim with an arbitral institution – transmitting the Notice of Arbitration to the respondent	69
E. The arbitral institution serves the Request for Arbitration (Statement of Claim) on the respondent(s)	71
F. Answer to the Request for Arbitration (Answer to the Statement of Claim)	73
i. Introduction	73
ii. Cure of defective arbitration agreements	74
iii. Comments on constitution of the arbitral tribunal and/or nomination of arbitrator	75
iv. Comments on carrying out expedited proceedings	75
v. Comments on the place and language of arbitration	76
vi. Extension of time limits for filing the Answer	77
vii. Default in filing the Answer – passive respondents	78
viii. Miscellaneous	79
G. Counterclaim and set-off defence	79
i. Counterclaim	79
ii. Set-off defence	80
1. Jurisdiction of arbitral tribunal to rule on set-off claim	81
2. Point up to which defence of set-off may be asserted	82
H. Amendment of claims and new claims	82
I. Multi-party proceedings	84
i. Introduction: frequency of multi-party proceedings	84
ii. Initiating multi-party proceedings	86
1. ICC multi-party arbitration	86
2. VIAC multi-party arbitration	87
3. Ad hoc proceedings with more than two parties	88
VI. Constitution and legal status of arbitral tribunal	89
A. Introduction: importance of selection of arbitrators	89
B. Independence and impartiality of arbitral tribunal, including IBA Guidelines on Conflict of Interest in International Arbitration	90
C. Initiating contact and duty of disclosure	92

D. Nomination/appointment process	94
i. Single arbitrator or three-arbitrator tribunal	94
ii. Nomination/appointment process for sole arbitrator	96
iii. Nomination/appointment process for three-member tribunal	97
iv. The appointment process at the OGH	98
E. Constitution of arbitral tribunal in multi-party situations	100
F. “Arbitrators’ contract” (receptum arbitri)	102
G. Rights and duties of arbitrators	103
H. Liability of arbitrators	105
i. Criminal liability of the arbitrator	105
ii. Civil liability of the arbitrator	105
VII. Financing of arbitration	109
A. Introduction: reducing costs through modern technologies and possibilities offered by third-party funding	109
B. Various items of costs	111
i. Costs of arbitral institution (including registration fee) and costs of arbitrators	111
ii. Legal fees and expenses of counsel	113
iii. Other costs of the proceedings	113
C. Payment of costs	114
D. Default by the parties in financing the arbitration	116
VIII. Case management	119
A. From transmission of the file to the Case Management Conference	119
B. Legal and institutional framework of case management	122
i. Autonomy of arbitral proceedings	122
ii. Party agreements	123
iii. Discretion of arbitral tribunal	123
iv. Fairness	124
v. Other mandatory rights of the parties	125
vi. Speed and cost-effectiveness	126
C. Decisions of procedural issues through procedural orders	126
D. Terms of Reference in ICC arbitral proceedings	127
E. Procedural Order No. 1	130
F. Procedural timetable	132
G. Bifurcation	134
H. Settlement negotiations and mediation	135
I. Coordination with parallel proceedings	135
J. Tribunal secretaries	136
IX. Challenge of arbitrators	139
A. Introduction: frequency and effects of challenges	139

B. Reasons for challenge	140
i. General standards	140
ii. Conflicts of interest	141
iii. Unilateral contacts (including contacts via social media)	143
iv. Violations of due process	144
v. Bias	144
C. Challenge procedure	145
i. Challenge proceedings before the arbitral institution or the arbitral tribunal	145
ii. Appeal to the OGH	147
D. Appointment of the substitute arbitrator and continuation of the proceedings	148
E. Other reasons for early termination of the arbitrator’s mandate . . .	149
X. Settlement of the dispute and awards by consent – awards on agreed terms	153
A. Mediation proceedings	153
B. Settlement agreement and award by consent	155
XI. The taking of evidence	157
A. Introduction	157
i. The powers of the arbitral tribunal	157
ii. Mandatory rights of the parties and passive respondents	158
iii. Judicial assistance	158
iv. Cut-off dates	159
v. Burden and standards of proof	159
vi. The IBA Rules on the Taking of Evidence in International Arbitration (IBA Evidence Rules) and other sources of soft law	161
vii. New technologies and the internet	162
B. Documentary evidence	163
i. Introduction: the importance of documentary evidence	163
ii. Submission of documents in the possession of a party	163
iii. Production of documents by the opponent	164
C. Oral evidence (witnesses and party witnesses)	168
i. Introduction: broad concept of witnesses in international arbitration	169
ii. Witness preparation	169
iii. Summary of the procedure under the IBA Evidence Rules	170
iv. Further selected issues regarding witness evidence	174
1. Alternative methods	174
2. Psychological issues related to witness evidence	174
3. Social media	174
4. No duty of the witness to appear before the arbitral tribunal	175

5. False testimony and perjury	175
6. Technicalities, including translations, to be discussed at the pre-hearing conference	176
7. Videoconference technologies	176
D. Expert evidence	177
i. Introduction: importance of party-appointed experts	177
ii. Procedure for the taking of expert evidence	178
iii. Hybrid forms of expert evidence	181
E. Site visits	182
F. Evidence obtained in unlawful ways	183
XII. Interim measures	185
A. Introduction: different types of interim measures	185
B. Requirements for the ordering of interim measures	187
C. Procedure for the ordering of interim measures	188
D. Enforcement of interim measures	190
E. Parallel jurisdiction of state courts	192
F. Security for costs	194
G. Emergency arbitral proceedings	196
XIII. Hearing and closing of the proceedings	199
A. Mandatory nature of the hearing	199
B. Scheduling and preparation of the hearing	200
C. Transcript of the hearing	201
D. Privacy of the hearing and confidentiality	202
E. Conduct of the hearing by the president of the arbitral tribunal ...	203
F. Closing of the proceedings	204
XIV. The making of the award	207
A. Definition of the term “award”	207
B. Time limit for the making of the award	208
C. Organisation of deliberations	209
D. Majority decisions, casting vote, truncated arbitral tribunals and dissent	210
E. Drafting of the award	211
i. Findings of fact	212
ii. Legal assessment	213
1. Introduction	213
2. Choice of law made by the parties	213
3. Determination of applicable substantive law by the arbitral tribunal	216
4. <i>Iura novit curia</i> and the parties’ right to be heard	218
5. The importance of gap filling	219
6. Decisions <i>ex aequo et bono</i> (§ 603(3) ZPO)	220

iii. Decision on costs	221
iv. Dispositive section	224
F. Scrutiny of the award in ICC arbitral proceedings	224
G. Formal requirements for awards	225
H. Service of the award on the parties	226
XV. Enforcement of domestic and foreign awards in Austria	229
A. Introduction	229
B. Enforcement of domestic awards	232
C. Recognition and enforcement of foreign awards	237
i. Legal basis for recognition and enforcement of foreign awards	237
ii. Procedure for recognition and enforcement	239
iii. Possible remedies of the debtor against recognition	242
iv. Reasons for non-recognition	242
XVI. The setting aside of awards	247
A. Bases for setting aside awards under Austrian law – which reasons are considered valid?	247
i. Introduction	247
ii. Awards subject to judicial review	248
iii. Grounds on which an award may be set aside	249
1. General remarks	249
2. The grounds for setting aside in detail	251
iv. Reasons for which an award cannot be set aside	256
B. Setting aside proceedings before the OGH	257
Keyword index	263