Arbitration - Austria

Legislative amendment further increases Vienna's appeal as arbitration venue

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Following the revision of the Vienna Rules, which will become effective on July 1 2013, (1) another important development recently took place that is aimed at further increasing the attractiveness of Vienna as a venue for international arbitration.

On June 12 2013, with the introduction of the Arbitration Amendment Act 2013, Parliament adopted a significant change to arbitration law in Austria, under which annulment claims will now be decided directly by the Supreme Court. The court will also assume jurisdiction in other arbitration-related matters. The amended law will become effective on January 1 2014.

Arbitration law in Austria was last revised in 2006, when the country implemented a second-generation arbitration law based on the United Nations Commission on International Trade Law (UNCITRAL) Model Law. The 2006 amendments received positive feedback and led to the publication of several comprehensive commentaries in both English and German.

Nevertheless, one issue remained worth improving - legal actions aimed at setting aside arbitral awards were still running through all three instances of the court system. Although Austria was not alone in that system, the 2013 amendment will go beyond even the two-instance system followed by other countries. Under the new system, annulment claims in Austria will be decided by the Supreme Court, which will act as first and final instance.

The amended act is aimed at increasing the attractiveness of Austria for international arbitrations by accelerating the court review process in relation to arbitral awards. Over the 250 years during which arbitration laws have been in place in Austria in one form or another, the courts (most notably the Supreme Court) have established clear guidelines on the interpretation of the laws. Arbitral awards have rarely been set aside. Therefore, taking annulment proceedings through all three instances of the court system (which could take several years) was seen as an unnecessary delay. The positive experience with the Swiss one-instance system and the need to increase time and cost efficiencies have further supported the changes.

The amendment is based on a ministerial draft which had received overwhelmingly positive feedback. Despite its significant workload, the Supreme Court acts in an efficient manner and hands down decisions in a matter of months. Annulment claims must be asserted within three months of service of the award. Thus, final certainty on arbitral awards can be obtained in a very short time.

The grounds for annulment - which closely follow the New York Convention and the UNCITRAL Model Law - have not been changed under the 2013 amendment. However, the Supreme Court has been made competent for proceedings regarding the determination of non-existence of an arbitral award. This is a unique legal remedy permitting a party to assert a declaratory claim that a certain instrument must not be classified as an arbitral award, and thus cannot have any effects.

Furthermore, the Supreme Court will also decide on questions regarding the formation of arbitral tribunals - be it regarding challenges of arbitrators, or in cases of appointing arbitrators (primarily outside institutional proceedings). Under the previous legal regime, these cases were decided by the regional or commercial courts at first and final instance, and thus there was no need to shorten the appeal instances. However, due to the crucial role of arbitrators in proceedings and the advantage of concentrating matters within the Supreme Court as the most experienced instance, this change must equally be applauded.

The amendment has received extremely positive feedback from practitioners, judges and arbitration organisations and demonstrates an important step beyond the mere modernising of Austrian arbitration law.

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Endnotes

(1) For further information please see "New Vienna Rules geared to modernise arbitration".