Austrian Yearbook
on
International Arbitration 2018

The Editors

**Christian Klausegger, Peter Klein, Florian Kremslehner,
Alexander Petsche, Nikolaus Pitkowitz, Irene Welser,
Gerold Zeiler**

The Authors

Dirk Buschle, Lucia Dulovičová, Philip Exenberger, Alice Fremuth-Wolf, Simon Gabriel, Johannes Gasser, Catrice Gayer, Beata Gessel, Shiva Ghahremani, Monika Hartung, Gefion Hauer, Duarte G. Henriques, Thomas Herbst, Laurent Hirsch, Katharina Kitzberger, Gregor A. Klammer, Nefeli Lamprou, Johannes Landbrecht, Niamh Leinwather, Brian Lin, Martin Magál, Natalie Morris-Sharma, Michael Nueber, Sonja Otenhajmer, Irina Paliashvili, Nada Ina Pauer, Ulrike Paukner, Victoria Pernt, Nikolaus Pitkowitz, Karl Pörnbacher, Michele Potestà, Dietmar W. Prager, Iain Quirk, Lucia Raimanová, Tobias Schaffner, Markus Schifferl, Philipp Schwarz, Barbara Sesser, Anke Sessler, Alfred Siwy, Sherlin Tung, Bianca Vogt, Lukas Wedl, Kay-Jannes Wegner, Irene Welser, Venus Valentina Wong

C.H.BECK

Wien 2018
MANZ'sche Verlags- und Universitätsbuchhandlung
Verlag C.H. Beck, München
Stämpfli Verlag, Bern

To be cited as:

Author [first and last name], *Title of Work*, *in* AUSTRIAN YEARBOOK ON INTERNATIONAL ARBITRATION 2018 [first page on which work appears, pincite] (Klausegger, Klein, Kremslehner, Petsche, Pitkowitz, Welser & Zeiler eds., 2018)

Disclaimer

ISBN 978-3-214-00778-2 (Manz)
ISBN 978-3-406-72285-1 (Beck)
ISBN 978-3-7272-3387-6 (Stämpfli)

Telephone: +43 1 531 61-0
E-Mail: verlag@manz.at
www.manz.at
Data Conversion and Type Setting: EXAKTA GmbH, Wien, www.exakta.at
Printed by: FINIDR, s. r. o., Český Těšín

Introduction

The 2018 edition of the Austrian Yearbook on International Arbitration is the 12th edition of the Yearbook. It has – hopefully – become a standard reference work for the arbitration community.

This Yearbook covers a number of areas of both topical and enduring importance which are likely to be of relevance to academics, practitioners or persons who may become involved in arbitration in Austria or in any other place. Some of the articles in the Yearbook analyze significant trends in international arbitration, like the idea of a multilateral investment court, the enforcement of settlement agreements, transparency in international commercial arbitration and in arbitration institutions, arbitration as a means of private enforcement as well as unilateral arbitration clauses.

It also includes the Vienna Repositioning Propositions, a proposal by 27 experts on how to reposition actors and actions in international arbitrations.

We are grateful for each contribution contained in this Yearbook and hope that you will find the 2018 edition of the Yearbook to be an essential tool and up-to-date reference in your arbitration library.

Vienna, January 2018

The Editors

Overview

Table of Contents

Chapter V
Recent Publications

Excursus: Brexit and Arbitration

Chapter VI
The Vienna Repositioning Propositions

The Editors and Authors

Dirk Buschle is Professor and Chairholder of the European Energy Policy Chair at the College of Europe in Bruges. He teaches the annual course "European and International Energy Policy and Governance"

Dirk Buschle is also Deputy Director of the Energy Community Secretariat since 2011 and has led its legal unit since 2007. In the latter capacity, he is in charge of ensuring implementation of and compliance with European energy law in the countries of the Energy Community. As Chairman of the Energy Community Dispute Resolution and Negotiation Center, he is also responsible for dispute resolution and negotiations and has acted as mediator in high-profile investor-state conflicts in the energy sector. He is a certified negotiation facilitator.

Prior to his current position, Dirk Buschle was Head of Cabinet of the President of the Court of Justice of the European Free Trade Association (EFTA) in Luxembourg.

Dirk Buschle graduated in law from Constance University, Germany, and earned his Ph.D. at St. Gallen University in Switzerland. He has widely published in different areas of European policy and law, has lectured at Universities of Reykjavik, Constance and St. Gallen as visiting professor.

Contact: Energy Community Secretariat
Am Hof 4, Level 5, A-1010 Vienna, Austria
T: +43 1 535 2222-224
E: dirk.buschle@energy-community.org
www.energy-community.org

Lucia Dulovičová is a paralegal at the dispute resolution team of Allen & Overy Bratislava, s.r.o. Her focus is on international commercial and investment treaty arbitration.

Lucia obtained her law degrees from the University of Groningen (LL.B. 2015) and the London School of Economics and Political Science (LL.M. with Distinction 2016). She is a member of various professional associations such as the YIAG (LCIA Young International Arbitration Group) and the YAAP (Young Austrian Arbitration Practitioners).

Contact: Allen & Overy Bratislava, s.r.o.
Eurovea Central 1, Pribinova 4, SVK-81109 Bratislava, Slovakia
T: +421 2 5920 2477
E: lucia.dulovicova@allenovery.com
www.allenovery.com

Philip Exenberger specialises in international commercial arbitration and cross-border litigation. Since he joined the firm's Dispute Resolution Team in 2011, his particular focus is on complex disputes, both with regard to technical (e.g. construction disputes) and commercial aspects. He is an expert in managing extensive evidentiary proceedings, in particular including large numbers of documents, witnesses and experts.

Philip is an experienced party counsel both before arbitral tribunals as well as state courts, but also advises clients with respect to claim management prior to the initiation of arbitral or state court proceedings.

Philip Exenberger graduated from University of Vienna School of Law (Mag.iur. 2011). He is a member of the Young Austrian Arbitration Practitioners as well as of the International Young Lawyers Association (AIJA).

Philip Exenberger is fluent in German and English.

Contact: DORDA Attorneys at Law
Universitätsring 10, A-1010 Vienna, Austria
T: +43 1 5334795-102
F: +43 1 5334795-50102
E: philip.exenberger@dorda.at
www.dorda.at

Alice Fremuth-Wolf is Secretary General of the Vienna International Arbitral Centre (VIAC) as of 1 January 2018 and before has been its Deputy SG since 2012. Having studied law at Vienna University (Mag. iur. 1995, Dr. iur. 2002), Utrecht University (1994) and the London School of Economics and Political Science (LL.M. 1998), she served as assistant professor at the Department of Civil Procedure Law at the Law Faculty of Vienna University. Before opening her own practice in 2004, she worked with major Austrian law firms and acted as party representative and arbitrator in international commercial arbitration cases. Alice has authored articles and books on arbitration and also serves as a lecturer for arbitration at the Law Faculty of Vienna University, where she was coach of the Vienna team for the Willem C. Vis International Commercial Arbitration Moot from 2004–2009. She is also a qualified mediator and is a co-organizer of the CDRC IBA-VIAC-Elsa Consensual Dispute Resolution Competition in Vienna.

Contact: VIAC – Internationale Schiedsinstitution der Wirtschaftskammer Österreich
Wiedner Hauptstraße 63, P. O. Box 319,
A-1045 Vienna, Austria
T: +43 (0) 5 90 900-4400
F: +43 (0) 5 90 900-114400
E: alice.fremuth-wolf@viac.eu
www.viac.eu

Simon Gabriel specialises in international arbitration and has participated in more than 60 international arbitration proceedings. He is founder and owner of the Zurich-based arbitration boutique law firm Gabriel Arbitration and is thus entirely independent.

Simon is regularly appointed as arbitrator in proceedings governed by the ICC Rules, Swiss Rules, Vienna Rules and DIS Rules. He is a Swiss delegate in the ICC Arbitration and ADR Commission in Paris and endorsed on the following panels of arbitrators: ICC Switzerland; Austrian VIAC; Russian Arbitration Association; and Kuala Lumpur Regional Centre for Arbitration.

Simon is in particular experienced in disputes concerning joint ventures and consortia, distribution contracts, international sales contracts, licensing contracts and post-M&A issues.

Contact: Gabriel Arbitration AG
Bahnhofstrasse 108, CH-8001 Zurich, Switzerland
T: +41 44 206 20 80
F: +41 44 206 20 81
E: s.gabriel@gabriel-arbitration.ch
www.gabriel-arbitration.ch

Johannes Gasser is the managing partner of GASSER PARTNER Attorneys at Law, formerly Batliner Gasser, a Chambers Global top-tier firm and one of the leading law firms in Liechtenstein, which was established in 1954.

Chambers Global has ranked Dr. Gasser as a "leading individual" in Liechtenstein. He is admitted to the Liechtenstein and Austrian Bar and has extensive experience in the field of Liechtenstein foundations and trusts, with a particular focus on international and cross border litigation and arbitration. In recent cases, he has handled complex litigation on trust matters involving trustee removals and liabilities.

Dr. Gasser is a frequent speaker at the Liechtenstein University on foundation and trust law issues and he acts as a legal expert witness on Liechtenstein law in UK and other courts. He is a member of the Judiciary Selection Panel appointed by H.H. the Prince of Liechtenstein, a member (Trust Estate Practitioner) of the Society of Trust and Estate Practitioners (STEP), chairman of the Liechtenstein Arbitration Association (www.lis.li) and is also member of the board of the Liechtenstein Trustees Association (www.thk.li).

Contact: Gasser Partner Attorneys at Law
Wuhrstrasse 6, LIE-9490 Vaduz, Principality of Liechtenstein
T: +42 32363080
E: johannes.gasser@gasserpartner.com
www.gasserpartner.com

Catrice Gayer regularly acts as counsel and arbitrator in international and national arbitration cases under the auspices of various institutional rules (ICC, DIS, SIAC etc.) and *ad hoc*. Her particular fields of industry are energy/infrastructure (renewables and non-renewables (oil, coal, nuclear)), IP and antitrust (including FRAND), commercial (agency, trade, distribution, license), and corporate including post M&A-related disputes. She also regularly acts as (co-)counsel in setting aside and enforcement proceedings of awards and in other arbitration-related disputes before German courts and abroad. She has a particular expertise in Asia-related arbitrations.

Her track record also includes the representation of national and foreign clients in civil and commercial disputes before the regional courts, share and asset deals, advising in compliance matters, and advising and drafting a broad range of supply, distribution, sale and corporate contracts.

Catrice has been nominated as a rising star in commercial arbitration by Euromoney's Expert Guides and is recognized as Future Leader in Who's Who Legal: Arbitration 2018.

She is a regional chair of the DIS40 *(German Institution for Arbitration*), a co-chair of the Young CEAC (*Chinese European Arbitration Centre*) and a member of the Executive Committee of the AIJA (*Association Internationale des Jeunes Avocats*). Catrice was also a member of the organising committee for the IX. Düsseldorfer C.VIS. Pre-Moot Rounds.

She holds law degrees from the Université de Paris XII, Queen Mary/University College of London and the University of Mayence. She is admitted to the bar in Germany.

Catrice regularly speaks on international arbitration at conferences and publishes on international arbitration and corporate matters. One of her recent publications is the German chapter in Global Legal Insights to International Arbitration 2017.

Contact: Herbert Smith Freehills Germany LLP Germany
Breite Straße 29–31, D-40213 Düsseldorf, Germany
T: +49 211 9755 9 136
E: catrice.gayer@hsf.com
www.herbertsmithfreehills.com

Beata Gessel is an expert practitioner in arbitration, M&A, private equity and commercial law. She has acted as an arbitrator or counsel in cases under rules of ICC, FCC, IAA, SCAI, UNCITRAL, Lewiatan, KIG and National Depository for Securities. Between 2011 and 2017, served as President of the Lewiatan Arbitration Court; upon leaving this position, she was appointed Honorary President. She is an alternate member of the of ICC International Arbitration Court (2015). She chairs the Audit Committee of the Polish Private Equity Association. Beata Gessel is an adjunct professor in commercial arbitration as well as M&A transactions at the Cardinal Stefan Wyszynski University.

An author of the concept and a chair of biannual Dispute Resolution in M&A Transactions conference in Warsaw, described by OGEMID as "groundbreaking".

For many years, distinguished in Chambers Global and Chambers Europe in the most in-demand arbitrators category. She has been praised for her inquisitive style, effectiveness, and strong business sense as well as for the strength which she brings to bear in promoting Polish arbitration: "*Beata Gessel has put Poland on the international arbitration scene*". 2017 Chambers Global commentary named her the "*first lady of arbitration in Poland*". In 2017 Beata has been recognised as a Leading Individual in Dispute Resolution in the Legal 500 ranking. According to Clients, she has "*exceptional business acumen and second-to-none legal knowledge*" and is a "*strong leader*".

In 2015–2017 she run comparative law research on breach of M&A transactions, as a visiting academic at Oxford University Law Department and at Cambridge University Law Department within the Herbert Smith Freehills Visiting Professors Scheme.

Contact: GESSEL Attorneys at Law
Sienna 39, PL-00-121 Warszawa, Poland
T: +48 22 318 69 10
E: b.gessel@gessel.pl
www.gessel.pl

Shiva Ghahremani is a Ph.D. Candidate-in-Law at the University of Vienna. She is specialized in commercial dispute resolution and investment arbitration. By working the last three years in arbitration teams in various law firms in Vienna, including Konrad & Partners Attorneys at Law, Freshfields Bruckhaus Deringer and Willheim Muller Rechtsanwälte, she has gained experience in energy, construction and investment disputes as well as disputes governed by CISG. Shiva graduated from Shiraz University with an LL.B. degree in 2012 and then pursued her post-graduate studies at the University of Vienna obtaining her LL.M. degree in 2014.

She is a member of YIAG, Young ICCA and YAAP and speaks Persian (Farsi), English and German.

Contact: E: shiva.ghahremani@gmail.com

Monika Hartung co-heads the Dispute Resolution & Arbitration practice. She is also responsible for the Insurance practice and the German Desk.

She has great experience representing clients in commercial disputes before the state courts as well as Polish and foreign arbitration courts. She handles cases involving civil law, bills of exchange, arrangements and bankruptcy.

She serves as vice president of the Permanent Court of Arbitration at the German-Polish Chamber of Industry and Commerce and is the author of numerous publications on arbitration and litigation.

She joined Wardyński & Partners in 1993.

Contact: Wardyński & Partners
Al Ujazdowskie 10, POL-00-478 Warsaw, Poland
T: +48 22 437 82 00
E: monika.hartung@wardynski.com.pl
www.wardynski.com.pl

Since 2003, ***Gefion Hauer*** is General Counsel of the HEAD Sports Group ("HEAD"), a leading global manufacturer of sporting goods (tennis rackets, tennis balls, skis, ski boots, bindings, snowboards, sportswear, scuba diving) marketed under the brands "HEAD", "PENN", "MARES" and "TYROLIA". HEAD was listed at the NYSE until 2008 and at the Vienna Stock Exchange until 2015 and is now privately owned.

As General Counsel she is responsible for HEAD's group legal affairs worldwide, which includes all kinds of International Contracts (such as Sourcing Agreements, Sponsorship Agreements, Research & Development Agreements, License Agreements, Distribution contracts), Cross Border Transactions (joint venture agreements, sale and purchases of production sites, M&A activities), Corporate Financial Agreements (issuance of Bonds, credit facility agreements), Intellectual Property issues (trademarks and patents), and other general commercial and corporate issues.

Prior to joining HEAD, Gefion Hauer worked for a number of years as associate for Freshfields, Bruckhaus, Deringer in Vienna and Brussels.

Gefion Hauer holds a doctor's degree in law from the University of Vienna, Austria and obtained a master's degree in law (LLM) from the University of Manchester, UK. She speaks German, English, Spanish and French.

Contact: HTM Sport GmbH
Tyroliaplatz 1, A-2320 Schwechat, Austria
T: +43 (1) 701 79 204
F: +43 (1) 707 89 40
E: g.hauer@head.com
www.head.com

Duarte Henriques is a lawyer and arbitrator based in Lisbon – Portugal, and partner at **BCH Lawyers**. Since 1990, he acts both as counsel and arbitrator in several litigation and arbitrations cases related to investment disputes, banking & finance, corporate, commercial and construction disputes. He serves as sole arbitrator, chair or member of tribunals in domestic and international arbitration proceedings, and as counsel in domestic and international arbitration proceedings, both institutional and ad hoc. Duarte Henriques advises major banking and finance institutions, insurance companies, construction companies, and technology / software solution providers in litigation and arbitration disputes. Duarte Henriques specialises in Banking and Finance Law, Business & Commercial Law, Mergers and Acquisitions, Agency and Distribution, Construction, Intellectual Property, and Third Party Funding.

Duarte Henriques is listed as arbitrator in several institutions, including the VIAC, CIETAC, the HKIAC and WIPO. Duarte Henriques is a member of several international associations, including the Russian Arbitration Association, LCIA, IBA, ICC, and ICCA. Duarte Henriques is a member of the ICC Task Force on Financial Institutions and International Arbitration and of the Task Force on Third-Party Funding in International Arbitration of the International Council for Commercial Arbitration (ICCA) & Queen Mary University of London Law School – London.

He has been recently admitted to the SVAMC Tech List (Silicon Valley Arbitration and Mediation Center's 2017 List of the World's Leading Technology Neutrals) and to the List of Specialized Arbitrators of the International Distribution Institute.

Duarte Henriques authors several works regarding international arbitration.

Contact: **BCH Advogados**
Rua Fialho de Almeida 32, 1 E, PRT-1070-129 Lisboa, Portugal
T: +351 213853899
F: +351 213878440
E: dhenriques@bch.pt
www.bch.pt

Thomas Herbst is an associate with zeiler.partners, where he is specialising in international arbitration and commercial litigation. Thomas has almost three years of arbitration experience. During this time he has been involved in numerous arbitral proceedings under the rules of ICC, ICSID, VIAC and UNCITRAL as counsel and as secretary to the arbitral tribunal. Thomas has gained experience in a variety of disputes, such as corporate, energy, telecommunications and post-M&A disputes.

Prior to joining zeiler.partners, Thomas clerked at Austrian courts and interned with various law firms, in Austria as well as in New York. He obtained his master's degree in law (2012) from the University of Vienna with a summer school diploma in European studies (2009) and an additional diploma in Law of international relations (2012).

Thomas is an active member of the young Austrian arbitration community and recently spoke on "Disputes with third parties – the joinder of third-parties to arbitration proceedings" at the Young Austrian Arbitration Practitioners' Roundtable event.

Contact: zeiler.partners Rechtsanwälte GmbH
Stubenbastei 2, A-1010 Vienna, Austria
T: +43 (1) 890 10 87 94
F: +43 (1) 890 10 87 55
E: thomas.herbst@zeiler.partners
www.zeiler.partners

Laurent Hirsch is a Geneva-based sole practitioner handling international arbitration worldwide. He advises and represents companies before arbitral tribunals in international commercial disputes, and serves as an arbitrator. Laurent Hirsch is a Fellow of the Chartered Institute of Arbitrators, a member of the Geneva bar ADR Committee and a co-leader of the ASA local Geneva group. Laurent Hirsch publishes regularly on arbitration topics. He is a member of the international arbitration editorial group of the International Business Law Journal (IBLJ) and a co-editor responsible for international arbitration in the Swiss electronic law review Jusletter. He is an organizer of, and speaker at, arbitration conferences.

Whether in arbitration or for transactional purposes, his practice extends to all fields of business law. In recent years, Laurent Hirsch advised companies involved in M&A transactions and negotiated and drafted on a regular basis patent licensing agreements in the pharmaceutical and medical devices industries. When assisting clients, Laurent Hirsch carefully avoids resorting to ready-made recipes and strives to find tailor-made solutions matching client's needs and interests as closely as possible.

He is fluent in French and English and has good knowledge of German and Swiss German.

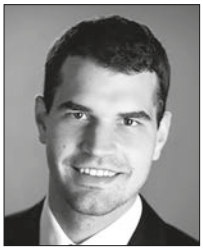
Contact: 8 rue Eynard, CH-1205 Geneva, Switzerland
T: +41 22 318 30 00
F: +41 22 318 30 10
E: laurent.hirsch@hirsch-law.ch
www.hirsch-law.ch

Katharina Kitzberger is a partner specialising in commercial litigation, asset recovery and arbitration. She has extensive experience in representing clients in Austrian court proceedings and arbitration proceedings, in both defending and bringing claims. She has also wide experience of internal investigations.

Katharina regularly advises clients in civil, commercial and competition law/distribution law matters and has particular expertise in the field of civil fraud cases. Her clients include Austrian and international corporates and individuals from a range of sectors including finance, aerospace, construction, real estate and retail. Katharina has conducted court and arbitral proceedings involving large amounts in dispute and cases of utmost complexity due to e.g. the involvement of foreign clients, the application of international law and other complex legal issues.

Katharina is a graduate of the University of Vienna (Mag.iur. 2005, Dr.iur. 2011). Further she gained a B.A. in political sciences at the University of Vienna (2009). In the course of her doctoral thesis she dealt with the appointment and challenge of arbitrators under Austrian law. Besides, she has published numerous articles on arbitration, civil procedural, distribution and antitrust law. Katharina is a member of the ICC, YAAP, IBA, AIJA and TI-AC (Working Group on Whistleblowing).

Contact: Weber & Co Rechtsanwälte
Rathausplatz 4, A-1010 Wien, Austria
T: +43 1 427 2000
F: +43 1 427 2010
E: k.kitzberger@weber.co.at
www.weber.co.at



Gregor A. Klammer is an associate at CHSH Cerha Hempel Spiegelfeld Hlawati Rechtsanwälte GmbH. He specializes in the field of litigation and arbitration in commercial matters.

Gregor Klammer received his law degree at the University of Vienna (Mag. Iur.) and the University of Sheffield. During his studies, he participated in the XXXIV Willem C. Vis International Commercial Arbitration Moot. He is currently a PhD student at the University of Vienna.

Prior to joining CHSH in 2017, Gregor Klammer has practiced law for four years in an international law firm and one year in a boutique law firm specialised in the field of arbitration. He acted as counsel in various post-merger disputes, construction disputes and commercial disputes in Austria, Germany and the CEE region. While litigation and arbitration has been the main focus of his practice, Gregor Klammer has also gained considerable experience as counsel in the areas of compliance, commercial criminal law, corporate law, banking and finance, public law, general civil law as well as media law. He successfully passed the bar exam and is candidate to the bar.

Gregor Klammer speaks German, English and Spanish.

Contact: CHSH Cerha Hempel Spiegelfeld Hlawati Rechtsanwälte GmbH
Parkring 2, A-1010 Vienna, Austria
T: +43 1 514 35-121
F: +43 1 514 35-37
E: gregor.klammer@chsh.com
www.chsh.com

Christian Klausegger is a partner of Binder Grösswang Rechtsanwälte since 1997 and heads Binder Grösswang's dispute resolution group.

He has more than 15 years experience as counsel in international arbitration proceedings, both in institutional proceedings under the VIAC, ICC and UNCITRAL rules and in *ad-hoc*-arbitration proceedings. Christian Klausegger regularly represents before Austrian courts in matters relating to arbitration, including the challenge and enforcement of arbitral awards. Christian Klausegger is a member of the Austrian exam board for judges and a member of the board of the Austrian Arbitration Association (ArbAut). He publishes regularly on international litigation and arbitration.

He holds a doctorate in law (1987) and a degree in economics (1987), both from the University Vienna and was admitted to the Austrian Bar in 1992.

Contact: Binder Grösswang Rechtsanwälte GmbH
Sterngasse 13, A-1010 Vienna, Austria
T: +43 1 534 80-320
E: klausegger@bindergroesswang.at
www.bindergroesswang.at

Peter Klein is partner of Petsch Frosch Klein Arturo Rechtsanwälte with offices in Vienna and Milan. He has considerable experience in the field of mergers & acquisitions transactions (including share and asset acquisitions), joint ventures, and civil and commercial law in general.

Peter Klein has been involved in many international and domestic arbitrations either as co-arbitrator, sole arbitrator, chairman of arbitral tribunals or party counsel including proceedings under various rules (such as Vienna Rules, ICC, UNCITRAL and Milan Chamber of Commerce arbitration rules). Many of his transactions are with Italian and Austrian companies and clients having business relationswith Austria and Italy.

Peter Klein was admitted to the Vienna Bar in 1993 and holds a Doctor of Laws (Dr. iur.) degree from the University of Vienna (1985).

Contact: Petsch Frosch Klein Arturo Rechtsanwälte
Esslinggasse 5, A-1010 Vienna, Austria
T: +43 1 586 21 80

Corso di Porta Romana 46, I-20122 Milan, Italy
T: +39 2 58 32 82 62
E: peter.klein@pfka.eu
www.pfka.eu

Florian Kremslehner has been a partner at Dorda Brugger Jordis since 1992 and leads the firm's arbitration and litigation department. He is a graduate of the University of Vienna and was admitted to the Austrian Bar in 1990.

Florian Kremslehner has 20 years of experience in dispute resolution, advising clients in civil and criminal litigations as well as in international arbitrations. He also has extensive experience as arbitrator and counsel in institutional and adhoc arbitrations (ICC, UNCITRAL, Vienna Rules). Florian Kremslehner's present practice as an arbitrator and party counsel covers all areas of commercial law, with a focus on telecom and investment disputes. His advocacy skills are complemented by many years of experience in banking and finance transactions.

Florian Kremslehner has a reputation for advising financial institutions in asset recovery and corporate liability cases. He advises a wide range of banking and industry clients, governments and international organisations and insurance companies.

Contact: Dorda Brugger Jordis Rechtsanwälte GmbH
Universitätsring 10, A-1010 Vienna, Austria
T: +43 1 533 47 95-18
E: florian.kremslehner@dbj.at
www.dbj.at

Nefeli Lamprou is an associate working for the International Arbitration Group of Clyde & Co LLP (London). Nefeli's main area of practice focuses on commercial and investment treaty arbitrations related to energy and infrastructure disputes, representing both sovereign and corporate entities before ICC, LCIA, LMAA and ICSID tribunals. She is advising on a wide range of multijurisdictional contentious and non-contentious dispute resolution matters, acting for international clients, including oil & gas companies and offshore service providers, and tackling issues from a private and public international law perspective.

Nefeli has previously worked with Timagenis Law Firm (Piraeus, Greece) where she provided advice to shipowning companies and offshore providers. Nefeli's practice focused on contractual matters related to asset finance, banking and business transactions with particular emphasis on charterparties, joint ventures, shipbuilding and conversion contracts.

Nefeli holds an LL.M. in International Business Law from Queen Mary University of London and an LL.B. (JD equivalent) from National & Kapodistrian University of Athens (Greece).

Her academic interests lie in the broader field of dispute resolution related to energy and shipping and she is an author at Transnational Dispute Management Journal (TDM), Kluwer Arbitration Blog as well as a contributor to CIArb's publications.

Contact: **Clyde & Co LLP**
The St Botolph Building, 138 Houndsditch,
London, EC3A 7AR, United Kingdom
T: +44 (0) 20 7876 5986
E: nefelilamprou@gmail.com
www.clydeco.com

Johannes Landbrecht is an international arbitration practitioner and academic. Before joining Gabriel Arbitration in 2017, he learned his trade, during more than nine years, at leading international arbitration practices in Frankfurt am Main, Paris, Geneva, and Singapore, advising and representing, among others, several Fortune 500 companies, in proceedings involving a few hundred thousand US dollars up to several billions of US dollars of amount in dispute. Experienced in a wide variety of commercial disputes, under most of the leading arbitration rules and involving more than a dozen different legal systems from around the globe, Johannes Landbrecht has developed particular expertise in energy- and IP-related disputes. In the context of his prior practice, Johannes Landbrecht has managed very complex disputes and large teams. He has also served as an administrative secretary to arbitral tribunals.

Admitted to the bar in Germany (Rechtsanwalt, 2008) as well as in England & Wales (Barrister, 2014, non-practising), Johannes Landbrecht also holds a Ph.D. from the University of Geneva (2011). He regularly publishes and appears as speaker in the fields of arbitration, transnational dispute resolution, conflict of laws and alternative dispute resolution. Johannes Landbrecht has been included in the 'Who's Who Legal-Arbitration: Future Leaders guide' for 2017 and 2018. Since 2017, Johannes Landbrecht has furthermore served as a co-editor of the ASA Bulletin, the quarterly journal of the Swiss Arbitration Association.

Contact: **Gabriel Arbitration AG**
Bahnhofstrasse 108, CH-8001 Zurich, Switzerland
T: +41 44 206 20 80
F: +41 44 206 20 81
E: j.landbrecht@gabriel-arbitration.ch
www.gabriel-arbitration.ch

Niamh Leinwather is a principal associate and works in the Vienna office of Freshfields Bruckhaus Deringer LLP. She is a member of our dispute resolution practice group and specialises in international arbitration.

Niamh has experience in disputes involving construction, energy, joint ventures and post-M&A matters. She has acted as counsel and arbitrator in cases under the ICC, VIAC, UNCITRAL, DIS and *ad hoc* rules.

Niamh was born in Galway, Ireland and completed her legal education at the universities of Dublin (University College Dublin) and Vienna (University of Vienna). Niamh holds law degrees from both universities as well as a Master of European Studies (M.E.S.) from the University of Vienna. She was admitted to the Austrian Bar in 2013.

During her studies Niamh worked as a legal assistant at a number of international law firm in Vienna. After a clerkship with various courts in Vienna, Niamh worked as an associate in another prominent law firm's real estate group.

Niamh joined the firm in 2010. She speaks German and English.

Contact: Freshfields Bruckhaus Deringer LLP
Seilergasse 16, A-1010 Vienna, Austria
T: +43 1 515 15 0
F: +43 1 512 63 94
E: niamh.leinwather@freshfields.com
www.freshfields.com

Brian Lin is an associate with CMS Hasche Sigle in Hong Kong and a member of its international arbitration practice. Brian specializes in commercial dispute resolution across the Asia-Pacific. He has experience acting for clients, assisting counsel and acting as tribunal secretary in an array of international arbitrations across the region, including, Hong Kong, Mainland China and Singapore.

Brian previously worked as an arbitration clerk at Arbitration Chambers Hong Kong, assisting counsel in complex international arbitrations seated in Hong Kong and acted as tribunal secretary in arbitrations focusing on shipping and international trade under the auspices of the ICC, HKIAC and SIAC, as well as ad hoc arbitrations.

Brian is admitted to practice law in the State of New York ad holds degrees from McGill University and Hong Kong University. He is fluent in English, French and Mandarin Chinese.

Contact: CMS Hasche Sigle, Hong Kong LLF
27/F, 8 Queen's Road Central, Hong Kong
T: +852 3758 2215
E: brian.lin@cms-hs.com
www.cms.law/en/HKG/

Martin Magál is managing partner and head of Allen & Overy's Litigation and Arbitration practice in Slovakia. He also co-ordinates the Dispute Resolution practice in Allen & Overy's CEE offices. Martin holds law degrees from Comenius University in Bratislava (Mgr.) and Cambridge University (LL.M.). He is member of Slovak Bar Association since 2001.

Martin has been practicing law since 1999. He advises clients on a wide range of corporate and commercial transactions including acquisitions, disposals, joint ventures and privatisations. Martin frequently acts as party representative in numerous arbitrations conducted under the arbitration rules of the ICC, VIAC, SCAI, SCCI (Court of Arbitration of the Slovak Chamber of Commerce and Industry) and PAC SBA (Permanent Arbitration Court of the Slovak Banking Association). He has also acted as an arbitrator in arbitrations conducted under International Chamber of Commerce (ICC), German Institution for Arbitration (DIS) and Vienna International Arbitral Center (VIAC) rules. Martin is a Fellow of the Chartered Institute of Arbitrators.

Martin Magál has contributed articles and summaries to several domestic legal journals and international arbitration handbooks. Martin was the principal drafter of new Slovak legislation on commercial arbitration in effect since 2015 and is Slovakia's national correspondent to UNCITRAL on commercial arbitration

Contact: **Allen & Overy Bratislava, s.r.o.**
Eurovea Central 1, Pribinova 4, SVK-811 09 Bratislava, Slovakia
T: +421 2 5920 2400
F: +421 2 5920 2424
E: martin.magal@allenovery.com
www.allenovery.com/locations/europe/Slovakia/en-gb/Pages/default.aspx

Natalie Morris-Sharma is Director of the International Legal Policy Division in the Ministry of Law, which handles a variety of international law and policy concerns. Her previous roles have included: as legal advisor to the Permanent Mission of Singapore to the UN, and as Deputy Senior State Counsel in the international law department of the Attorney-General's Chambers. Natalie is Chairperson of UNCITRAL Working Group II (Dispute Settlement) for its work on the enforcement of conciliated settlement agreements. As Singapore's representative to UNCITRAL WG II from 2010, she negotiated the UNCITRAL Rules on Transparency and the Mauritius Convention, amongst other instruments. Natalie has been involved in a number of bilateral and multilateral negotiations, including trade and investment agreement negotiations. She is co-author of a book, "From Treaty-Making to Treaty-Breaking: Models for ASEAN External Trade Agreements". Natalie has degrees from the University of Cambridge and New York University School of Law. She is called to the Bar in Singapore and in New York.

Contact: Ministry of Law, 100 High Street #08-02,
The Treasury, Singapore 179434
T: +65 633 24671
E: Natalie_Sharma@mlaw.gov.sg
www.mlaw.gov.sg/

Michael Nueber is a Counsel with Gasser Partner Attorneys at Law and operates from both Vaduz and Vienna. He mainly specialises in international dispute resolution and estate planning.

In the past years Dr Nueber has also been involved in arbitration proceedings dealing with competition-, construction-, corporate-, and energy-related matters.

Michael Nueber obtained law degrees from the University of Vienna (Master's degree 2009, PhD 2012) and University College London (LL.M. in Competition Law 2017). In addition, he is the author of more than 40 legal publications, including a commentary on the Austrian arbitration act as well as a handbook on dispute resolution involving foundations under Austrian and Liechtenstein law.

Contact: Gasser Partner Attorneys at Law
Wuhrstrasse 6, LIE-9490 Vaduz, Principality Liechtenstein or
Tegethoffstraße 7/4, A-1010 Vienna, Austria
T: +423 236 30 80 / +43 1 310 33 11
E: michael.nueber@gasserpartner.com
www.gasserpartner.com

Sonja Otenhajmer is an associate and a member of the dispute resolution team of CMS Reich-Rohrwig Hainz in Vienna. Her practice focuses on national and international litigation and arbitration. She has represented clients in institutional as well as *ad hoc* proceedings under various rules, involving several languages. Prior to joining CMS, Sonja gained extensive experience working as a lecturer and research assistant at the department of civil procedure law at the University of Vienna as well as in dispute resolution departments of international law firms.

Sonja holds law degrees from the University of Vienna (Mag.iur) and the University Union in Belgrade (Mag.iur) and has also studied at the University of Bologna. She speaks English, German, Serbian/Bosnian/Croatian and Spanish and has basic knowledge of Italian.

Contact: CMS Reich-Rohrwig Hainz Rechtsanwälte GmbH
Gauermanngasse 2-4, A-1010 Vienna, Austria
T: +43 1 40443 2550
E: sonja.otenhajmer@cms-rrh.com
www.cms.law

Irina Paliashvili began her private practice by co-founding one of the first private law firms in Ukraine, and expanded by founding the Washington-based RULG-Ukrainian Legal Group, P.A., where she serves as the President and Senior Counsel. She graduated with highest honors from the Kiev State University School of International Law and received a Ph.D. in Private International Law from the same school. She also holds an LL.M. in International and Comparative Law from George Washington University.

Irina frequently speaks at international conferences and publishes on the legal and business climates in Ukraine and other countries of the ECA (Europe-Caucuses-Asia) economic region. She serves as the Chair of the Legal Committee of the U.S.-Ukraine Business Council, Co-Chair of the IBA Senior Lawyers Committee, member of the Advisory Board of Best Lawyers® and member of the ICC Commission on Arbitration and ADR. She is regularly included in the top 10 best lawyers in Ukraine, as well as named "Lawyer of the Year" in several practice areas by Best Lawyers®.

In addition to general corporate and transactional expertise, Irina has special experience in the areas of energy, oil and gas, intellectual property protection and antimonopoly law, as well as commercial dispute resolution and mediation. Irina is a member of the Energy Community Dispute and Negotiation Centre Panel of Mediators in Vienna. She has extensive experience in providing independent expert witness reports and testimony on the matters of Ukrainian and Russian law in international arbitration and in the US, UK and Swedish courts proceedings. Irina is included in the arbitrators panels of the Riga International Commercial Arbitration Court (RICAC) in Riga, the International Arbitral Centre of the Austrian Federal Economic Chamber (VIAC) in Vienna, Georgian International Arbitration Centre (GIAC) in Tbilisi and Lewiatan Court of Arbitration in Warsaw.

Contact: **RULG – Ukrainian Legal Group, P.A.**
4056 Mansion Drive, N.W, Washington, D.C. 20007, USA
T: +1-202-338-1182
E: irinap@rulg.com
www.rulg.com/

Nada Ina Pauer is a post-doc Research Fellow at the University of Konstanz, Germany, where she works at the Institute for Public Administrative-, European- and Comparative Law led by Professor Röhl. She specializes in European commercial and competition law, and has previously gained expertise in this area working at Eisenberger Herzog R.A. in Vienna (2014–2016).

Nada Ina Pauer obtained her law degree from the University of Vienna (Master's degree 2008, PhD 2013) and University of Sciences Po in Paris (Master en échange, 2010). She has published several articles in the area of European competition and commercial law and her Ph.D. thesis was published in the International Competition Law Series issued by Kluwer Law in 2014. Next to teaching in this area, as well as German administrative law, her focus is currently on the material intersection between competition and the regulatory law of the network industries.

Contact: Universität Konstanz
Lehrstuhl für Staats- und Verwaltungsrecht,
Europarecht und Rechtsvergleichung, Postfach 115
Universitätsstraße 10, D-78457 Konstanz, Germany
T: +49 07 531 88 2170 / +49 1 520 434 73 05
E: nada-ina.pauer@uni-konstanz.de
www.uni-konstanz.de

Ulrike Paukner is head of the legal department of VA Intertrading Aktiengesellschaft, Austria's leading trading house dealing with commodities.

She has more than 10 years of experience as in-house counsel in international arbitration proceedings under the most important arbitration rules including the Rules of Arbitration of the VIAC (Vienna Rules), the International Chamber of Commerce (ICC), the China International Economic and Trade Arbitration Commission (CIETAC), the Swiss Rules of International Arbitration (Swiss Rules), and the Arbitration Rules of the Grain and Feed Trade Association (GAFTA).

Before joining VA Intertrading Aktiengesellschaft Ulrike was a partner of SCWP Schindhelm in the firm's Linz office. She holds a Master degree of Fordham University School of Law (NYC) and a law degree from the University of Vienna. Her admissions with the Austrian, Czech and New York State Bar are currently inactive due to her employment with a private company.

Contact: VA Intertrading Aktiengesellschaft
Strasserau 6, A-4020 Linz, Austria
T: + 43 732 7804 387
E: ulrike.paukner@vait.com

Victoria Pernt is an associate at Schoenherr where she focuses on international commercial arbitration and investment arbitration. Victoria has been part of Schoenherr's Dispute Resolution Team representing in ICC and ICSID proceedings.

Victoria – a member of the New York Bar – graduated from the University of Vienna (Mag. iur. 2011), the William and Mary School of Law (Grad.cert. 2011), and the University of Chicago (LL.M. 2014). Prior to joining Schoenherr, Victoria was an associate at an international law firm based in New York City as well as a national law firm based in Vienna.

Victoria regulary publishes on arbitration and other forms of alternative dispute settlement on the Kluwer Arbitration Blog. She is fluent in German, English, and French.

Contact: Schoenherr Attorneys at Law
Schottenring 19, A-1010 Vienna, Austria
T:+43 1 534 37 50222
E: v.pernt@schoenherr.eu
www.schoenherr.eu

Alexander Petsche is a partner of Baker & McKenzie Diwok Hermann Petsche Rechtsanwälte LLP & Co KG and heads its Litigation and Arbitration department in Vienna. He specializes in arbitration and compliance.

Alexander Petsche acts as party representative in arbitral proceedings under various rules and in *adhoc* arbitrations. Furthermore, he is regularly appointed as arbitrator in *adhoc* and institutional arbitrations. He also represents parties before Austrian courts in matters relating to arbitration, including the challenge and enforcement of arbitral awards. In addition, he regularly acts as accredited business mediator. He is a member of the Board of the International Arbitral Centre of the Austrian Federal Chamber of Commerce.

He studied Law at the Universities of Vienna and Paris, and studied Business Administration at the University of Economics, Vienna, and the Lyon Graduate School of Business. He holds a doctorate in both disciplines. In 1995/96 he completed post-graduate studies at the College of Europe in Bruges.

Alexander Petsche publishes regularly on international litigation and arbitration and has written more than 150 publications on various business law topics. He is co-editor and co-author of "Austria: Arbitration Law and Practice" (Juris Publishing 2007). He is a member of the ICC Commission on Arbitration and lectures Professional Dispute Resolution at the Vienna University of Business Administration and Economics. He is member of the Austrian and Czech Bar.

Contact: **Baker & McKenzie Diwok Hermann Petsche**
Rechtsanwälte LLP & Co KG
Schottenring 25, A-1010 Vienna, Austria
T: +43 1 242 50
E: alexander.petsche@bakermckenzie.com
www.bakermckenzie.com

Nikolaus Pitkowitz is founding partner and head of dispute resolution at Graf & Pitkowitz, Vienna. He holds law degrees from University of Vienna (JD and PhD) and University of Sankt Gallen, Switzerland (MBL) and is also qualified and certified as a Mediator.

Dr. Pitkowitz has been practising law since 1985. His practice, which has always been very international with a strong focus on CEE, initially mainly comprised transactional work in the fields of Real Estate and M&A and soon expanded to international dispute resolution.

Nikolaus Pitkowitz is considered one of the preeminent Austrian dispute resolution practitioners. He acted as counsel and arbitrator in a multitude of international arbitrations, including several high profile disputes most notably as counsel in the largest ever pending Austrian arbitration (a multibillion telecom dispute).

Dr. Pitkowitz is Vice-President of VIAC (Vienna International Arbitral Centre). He is arbitrator and panel member of several arbitration institutions including ICC, ICDR, SIAC, CIETAC, HKIAC, KCAB and KLRCA. Dr. Pitkowitz is further a Fellow of the Chartered Institute of Arbitrators (FCIArb), Vice-chair of the International Arbitration Committee of the Section of International law of the American Bar Association (ABA), Chair of the International Bar Association (IBA) and past Co-chair of the Mediation Techniques Committee of the International Bar Association (IBA).

Nikolaus Pitkowitz frequently speaks at seminars and is author of numerous publications on international dispute resolution as well as CEE related themes. Among others he is author on the leading treatise on setting aside arbitral awards under Austrian law. Dr. Pitkowitz is a co-editor of the Austrian Yearbook on International Arbitration and co-organiser of the Vienna Arbitration Days.

Contact: Graf & Pitkowitz
Stadiongasse 2, A-1010 Vienna, Austria
T: +43 (1) 401 17 0
F: +43 (1) 401 17 40
E: pitkowitz@gpp.at
www.gpp.at

Karl Pörnbacher is German Head of International Arbitration at Hogan Lovells International LLP in Munich. He holds law degrees from the universities of Munich and Toulouse. Together with his international team of experienced arbitration lawyers, Karl Pörnbacher has represented clients in more than 80 domestic and international arbitration proceedings as counsel.

Karl has been appointed in more than 40 proceedings as an arbitrator, both as chairman/sole arbitrator and co-arbitrator. He assists clients in the efficient resolution of their national and international disputes. He has extensive experience in the energy industry (gas, oil, renewables), construction and projects, M&A, and the automotive and life science industries. Karl and his team have conducted arbitration proceedings under various rules, like ICC, VIAC, Swiss Rules, Danish Chamber of Commerce, Polish Chamber of Commerce, DIS or ad hoc proceedings.

Karl is fluent in Polish, English and French. Having worked for several years in Poland and being frequently involved in cross-border disputes involving Poland and other Central and Eastern European countries, he is a member of the DIS Advisory Board and Chairman of the Arbitration Court of the German-Polish Chamber of Commerce in Warsaw. Karl teaches arbitration at the University of Bayreuth.

Who's Who Legal places Karl „amongst the world's leading arbitrators", being „praised for his ‚pragmatic' approach" and regularly ranked by German directory JUVE as a „frequently recommended lawyer".

Contact: Hogan Lovells International LLP
Karl-Scharnagl-Ring 5, D-80539 Munich, Germany
T: +49 89 290 12 212
F: +49 89 290 12 222
E: karl.poernbacher@hoganlovells.com
www.hoganlovells.com

Michele Potestà is a an attorney at Lévy Kaufmann-Kohler in Geneva, specializing in international commercial and investment arbitration. He has acted as arbitrator (both sole and co-arbitrator), counsel or secretary/assistant of the arbitral tribunal in numerous international arbitration proceedings under various rules, including the ICC, ICSID, ICSID Additional Facility, UNCITRAL, Swiss Rules of International Arbitration, DIAC and Danish Institute of Arbitration rules.

His practice is mostly dedicated to international commercial and investment disputes, especially disputes in the energy and natural resources areas (oil, gas, mining and solar energy) arising under the ECT, NAFTA and BITs as well as under contracts. He has also advised sovereign states on their investment treaty program.

Michele is also a senior researcher at the Geneva Center for International Dispute Settlement (CIDS) where he co-ordinates a research project on the reform of investor-state dispute settlement.

Prior to joining Lévy Kaufmann-Kohler, Michele was an academic lecturer at the Geneva Master in International Dispute Settlement (MIDS), where he taught both investment and commercial arbitration. He has authored numerous publications on issues of investment and commercial arbitration and is frequently invited to speak at arbitration conferences.

An Italian national, Michele is qualified to practice law in Italy and is registered with the Geneva bar (foreign lawyers section). He holds a Ph.D. in international law, as well as a bachelor and a master's degree from the University of Milan (Italy). He is listed in the panel of arbitrators at the Vienna International Arbitration Centre (VIAC) and the Kuala Lumpur Regional Centre for Arbitration (KLRCA).

Contact: LKK Lévy Kaufmann-Kohler
3–5 rue du Conseil-Général, P.O. Box 552,
CH-1211 Geneva 4, Switzerland
T: +41 (0) 22 809 6200
E: Michele Potesta@lk-k.com
www.lk-k.com

Dietmar W. Prager is a litigation partner in the firm's New York office who focuses his practice on international arbitration and litigation with a particular emphasis on Latin America. He co-leads the firm's Latin America Practice Group.

Dr. Prager has represented parties in numerous arbitrations throughout the world under the auspices of the ICC, ICSID, LCIA, AAA, ICDR and the PCA as well as in *ad hoc* arbitration proceedings. He was also one of the youngest lawyers ever to argue before the International Court of Justice.

Dr. Prager is ranked among the leading international arbitration practitioners by *Chambers Global*, *Chambers USA, Chambers Latin America*, *Legal 500 Latin America*, *Benchmark Litigation* and *Who's Who Legal*. He has been described as "outstanding" and an "excellent lawyer." The publications have highlighted his "impressive work and responsiveness to clients' needs," his "great depth of analysis" and his "vast linguistic ability" and observed that "clients speak highly of his qualities, saying 'He's dynamic, intelligent, accessible and knowledgeable.'"

Dr. Prager is a vice-chair and member of the Executive Board of the Institute for Transnational Arbitration (ITA) and served as the first chair of ITA's Americas Initiative. He is co-editor-in-chief of the World Arbitration and Mediation Review. He is the author of several articles and blogs on international arbitration, international courts and tribunals, international procedural law, as well as Latin-American integration, and speaks regularly at international arbitration conferences.

Dr. Prager is a member of the bar of New York. He received his LL.M. from New York University School of Law, his Dr. iur. from University of Innsbruck and his Austrian law degree from University of Vienna.

Contact: Debevoise & Plimpton LLP
919 Third Avenue, NY-10022 New York, USA
T: +1 212 909 6243
F: +1 917-330-6417
E: dwprager@debevoise.com
www.debevoise.com

Iain Quirk has a broad commercial practice before the English courts and in arbitration. His practice has a particular emphasis on international commercial arbitration and investment arbitration. He regularly advises and appears as counsel in arbitrations under all of the main international institutions and is also appointed as arbitrator, including recent appointments in energy arbitrations. Iain teaches International Commercial Arbitration and Investment Arbitration on the MA course at Kings College, London.

In the commercial law field, he acts for major international corporate clients particularly in the financial, energy and construction sectors. Iain is often instructed on commercial and employment cases in the Commercial Court and Queen's Bench Division of the High Court. He has extensive expertise in acting for sports and media companies and individuals, in particular relating to the music industry and, on the sports side, Formula 1, football and horseracing. Iain is on the Attorney General's Panel of Counsel (B Panel) and has appeared for the UK Government at all levels up to the Supreme Court.

Contact: **24 Lincoln's Inn Fields,**
GBR-WC2A 3EG London, United Kingdom
T: +44 (0)20 7813 8000
F: +44 (0)20 7813 8080
E: iquirk@essexcourt.com
www.essexcourt.com

Lucia Raimanová is a solicitor-advocate of England & Wales and a Counsel in Allen & Overy's International Arbitration Group. Before relocating to Bratislava in 2016 to lead the firm's arbitration practice within Central and Eastern Europe, Lucia practiced with the firm for ten years in London. Lucia has represented both corporates and States in numerous investment treaty and commercial arbitration proceedings seated in both civil and common law jurisdictions and under all the major arbitration rules (e.g. CIArb, ICC, ICSID, LCIA, SIAC, UNCITRAL, VIAC). She also regularly advises clients on structuring investments, drafting investment agreements, aspects of sovereign immunity, privileges and immunities of international organisations and other aspects of public international law such as succession of States.

Lucia regularly publishes on international investment law and arbitration and is frequently invited to speak at international conferences on these topics.

Lucia has a Diploma in International Arbitration with Distinction from Queen Mary College, University of London and is a Member of the Chartered Institute of Arbitrators, London. She has been named by Who's Who Legal as a Future Leader in International Arbitration 2017 and is ranked as a next generation lawyer (Band 1) in Legal 500.

Contact: **Allen & Overy Bratislava, s.r.o.**
Eurovea Central 1, Pribinova 4, SVK-81109 Bratislava, Slovakia
T: +421 2 5920 2470
E: lucia.raimanova@allenovery.com
www.allenovery.com

Markus Schifferl, born 1977, is a partner of zeiler. partners Attorneys at Law. His principal areas of practice include international arbitration and corporate / commercial litigation.

He has acted as arbitrator, counsel and secretary to the arbitral tribunal in around 45 arbitrations, among others under the ICC, UNCITRAL, DIS and Vienna Rules. Markus regularly acts as party representative in corporate and commercial proceedings before Austrian courts.

Markus received his legal education at the University of Graz (Mag.iur. 2002), Sciences-Po Paris, University College London (LL.M in Dispute Resolution 2004) and the University of Vienna (Dr.iur. 2006).

Markus is fluent in German (native) and English.

Contact: zeiler.partners Rechtsanwälte GmbH
Stubenbastei 2, A-1010 Vienna, Austria
T: +43 1 890 108 70
E: markus.schifferl@zeiler.partners
www.zeiler.partners

Philipp Schwarz, is a senior associate with Platte Disputes.Solutions and focuses his practice on international arbitration and intellectual property law. Philipp Schwarz has published on current issues of international arbitration. He is a member of *Young Austrian Arbitration Practitioners* (YAAP), *International Chamber of Commerce Young Arbitrators Forum* (ICC YAF) and *DIS40*.

Contact: PLATTE disputes.solutions
Lothringerstraße 3/12, A-1010 Wien, Austria
T: +43 1 532 0420
E: philipp.schwarz@platte.legal
www.platte.legal

Barbara Sesser is an associate in the dispute resolution practice group of Binder Grösswang in Vienna. She focuses her practice on civil and commercial litigation as well as commercial arbitration.

Prior to joining Binder Grösswang Barbara worked *inter alia* as a research assistant at the University of Vienna (Department of European, International and Comparative Law) and as a law clerk for the Higher Regional Court of Vienna. She also gained practical experience as a research assistant and associate at a Vienna-based law firm.

Barbara obtained her law degrees from the University of Vienna (Mag. iur.) and Queen Mary University of London (LL.M. in Comparative and International Dispute Resolution) and studied international law at Universidade Católica Portuguesa in Lisbon. She already specialised on alternative dispute resolution and arbitration during her studies.

Contact: Binder Grösswang
Sterngasse 13, A-1010 Vienna, Austria
T: +43 (1) 534 80
F: + 43 (1) 534 80 8
E: sesser@bindergroesswang.at
www.bindergroesswang.at

Anke Sessler is widely recognized as one of Germany's leading litigators, with extensive experience in international and domestic arbitration and litigation proceedings. She represents industrial enterprises and financial service providers in disputes relating to supply contracts, joint ventures and sale purchase agreements, and in shareholder litigation and disputes relating to corporate boards.

Dr. Sessler joined Skadden as a partner in 2014. From 2008 to 2014 she was chief counsel litigation at Siemens AG in Munich. Prior to joining Siemens, she was a partner at another top international law firm in Frankfurt for more than 10 years.

Dr. Sessler is a member of various arbitral institutions such as the DIS Advisory Board, the ICC Commission on Arbitration, the ICC National Committee Germany, and the AAA and ASA boards. She served on the ICSID Panel of Conciliators for Germany until 2013. In 2014, Dr. Sessler was appointed to the governing board of the ICCA. She is also a CEDR accredited mediator.

Contact: Skadden, Arps, Slate, Meagher & Flom LLP
An der Welle 3, D-60322 Frankfurt am Main, Germany
T: +49 69 74220 0
E: anke.sessler@skadden.com
www.skadden.com

Alfred Siwy is a partner of zeiler.partners Rechtsanwälte GmbH since 2014. He focuses on international commercial arbitration and litigation and investment arbitration. Alfred Siwy frequently acts as counsel and arbitrator under the ICC, Vienna and UNCITRAL Rules.

He obtained his law degrees from the University of Vienna (Master's degree 2003, doctorate 2011) and King's College London (LL.M. 2006).

Contact: zeiler.partners Rechtsanwälte GmbH
Stubenbastei 2, A-1010 Vienna, Austria
T: +43 18901087-84
E: alfred.siwy@zeiler.partners
www.zeiler.partners

Sherlin Tung is a Senior Associate with CMS Hasche Sigle in Hong Kong where she is a member of the international disputes practice group. With a focus on international commercial arbitration, Sherlin has experience advising on disputes in jurisdictions around the world including Asia, Europe and North America.

Before joining CMS, Sherlin was the Litigation & Arbitration Counsel for Semperit AG Holdings, an international conglomerate specialized in rubber medical and industrial products in its headquarters of Vienna, Austria. During her time with Semperit, Sherlin oversaw a number of complex international disputes and provided legal support for special projects including multi-million dollar international business transactions.

Prior to Semperit, Sherlin was a Deputy Counsel with the Secretariat of the ICC Court of Arbitration where she had the unique opportunity to work in both its then-existing satellite offices in Hong Kong and New York. During her time with the ICC, Sherlin supervised over 300 international arbitration matters and represented the ICC Court in speaking engagements worldwide.

Sherlin began her career in international arbitration in Zurich, Switzerland, where she worked under the direct supervision of Dr. Pierre A. Karrer and acted as Tribunal Secretary in complex international arbitration matters.

Sherlin is a licensed attorney in the states of New York and California and holds degrees from the University of California Los Angeles, University of San Diego School of Law, and Stockholm University. Sherlin is fluent in English and Mandarin Chinese and is proficient in Spanish and German.

Contact: CMS Hasche Sigle, Hong Kong LLP
27/F, 8 Queen's Road Central, Hong Kong
T: +852 3758 2215
E: sherlin.tung@cms-hs.com
www.cms.law/en/HKG

Bianca Vogt is senior associate at Hengeler Mueller, Frankfurt. Bianca's practice covers a broad spectrum of commercial litigation, arbitration and alternative dispute resolution. She focuses on disputes in the fields of banking liability, capital market law, corporate law, commercial law (including investor claims and post-M&A matters) and pharmaceutical law.

She advises corporates and investors in all fields of corporate law with a focus on corporate governance, compliance and directors' liabilities issues. Her practice also covers advising clients on internal investigations.

In addition, Bianca advises on all aspects of intellectual property law.

Contact: **Hengeler Mueller**
Bockenheimer Landstraße 24,
D-60323 Frankfurt am Main, Germany
T: +49 69 1 70 95-409
F: +49 69 725773
E: bianca.vogt@hengeler.com
www.hengeler.com

Lukas Wedl is an Associate at TORGGLER Rechtsanwälte GmbH. He focuses on international arbitration and litigation. Lukas has experience as counsel and tribunal secretary in institutional and ad-hoc arbitration proceedings under various arbitration rules.

Before joining TORGGLER Lukas interned with the arbitration practice group of Wilmer Cutler Pickering Hale and Dorr in London. Lukas studied Business Law at the Vienna University of Economics and Business (LL.B. 2012, LL.M. 2014).

Contact: TORGGLER Rechtsanwälte GmbH
Universitätsring 10/5, A-1010 Vienna, Austria
T: +43 1 532 31 70 – 79
E: l.wedl@torggler.at
www.torggler.at

Kay-Jannes Wegner is a senior member of Kim & Chang's International Arbitration & Cross-Border Litigation Practice Group and Engineering & Construction Practice Group, and is leading Kim & Chang's European Arbitration Desk.

Mr. Wegner represents clients in international arbitration disputes arising out of wide ranging subject matters including telecommunications, pharmaceuticals, construction and joint ventures. Mr Wegner is German and English qualified and appointed to the KCAB and the SHIAC panel of international arbitrators as well as to the HKIAC list of Arbitrators.

He is further appointed as Trustee to the Board of Directors of the European Chamber of Commerce in Korea and to the KCAB's Council for International Arbitration. In March 2017, he was awarded a Commendation by the Minister of Justice of the Republic of Korea in recognition of his service to the promotion of the arbitration industry in Korea.

Mr. Wegner is a member of the Chartered Institute of Arbitrators and President of the Korea chapter. Mr Wegner serves on the ITA Board of country reporters as a reporter for Korea and contributes summaries of Korean court decisions and other developments that are published on Kluwer Arbitration.

Contact: Kim & Chang
39, Sajik-ro 8-gil, Jongno-gu, KOR-03170 Seoul,
Republic of Korea
T: +82 2 3703 1367
F: +82 2 737 9091/9092
E: kayjannes.wegner@kimchang.com
www.kimchang.com

Irene Welser is partner at CHSH Cerha Hempel Spiegelfeld Hlawati Rechtsanwälte GmbH and heads the Contentious Business Department of the firm, a team of 20 lawyers. She has been practising law for more than 25 years and has been acting as an arbitrator and as parties' counsel in more than 50 international and national arbitrations, mainly under the ICC, Vienna and UNCITRAL Rules. As of 2015, she has become the first female board member of the Vienna International Arbitral Centre (VIAC). Irene is also a passionate litigator and advises domestic and international clients in commercial and civil law. Construction and building law, liability law, M&A disputes, contract law, aviation law, insurance, energy law and oil and gas disputes are key areas of her practice. She is also general counsel to corporate clients and so combines her litigation and arbitration skills with a firm understanding of how to avoid or settle disputes.

Irene Welser was admitted to the Vienna Bar in 1992. She holds a Doctor's degree and in 2003 became the youngest Honorary Professor at the University of Vienna, lecturing in business and civil law and arbitration. She frequently speaks at seminars and conferences and has been co-organising the Vienna Arbitration Days. Her first main publication, *Warranties in Contracts on Works and Services* (1989), has become a standard text in this field. She is co-editor of the Austrian Yearbook on International Arbitration and author and co-author of several further books and publications dealing with contract law, warranty and liability questions as well as arbitration issues, and has published more than 100 articles in Austrian and International law magazines. She is an examiner for the Bar Exam at the Vienna Bar and an IBA member. Irene is on the list of arbitrators of the VIAC and is also member of ASA, LCIA, Arbitral Women and is member of the board of the Chinese European Legal Association. The last years have seen her lecturing on international arbitration in Istanbul, California, Hong-Kong, Beijing, Seoul and Tokyo, in Brussels, Romania, Slovakia and at the Düsseldorf Arbitration School as well as at the Austrian Arbitration Academy and in the LL.M Programme "International Dispute Resolution" of Danube University Krems.

Just recently, Irene has been elected Global Chair of the Litigation Arbitration Dispute Resolution Section of Lex Mundi, the world's leading Association of Independent Law Firms.

Irene Welser speaks German, English, French and Italian.

Contact: CHSH Cerha Hempel Spiegelfeld Hlawati Rechtsanwälte GmbH
Parkring 2; A-1010 Vienna, Austria
T: +43 1 514 35-121
F: +43 1 514 35-37
E: irene.welser@chsh.com
www.chsh.com

Venus Valentina Wong joined Wolf Theiss as Counsel in 2016 and specialises in international arbitration. She has acted as counsel, arbitrator (sole arbitrator, co-arbitrator and chairperson) and administrative secretary in approx. 70 arbitrations and other ADR cases under the major arbitration rules, including ICC, LCIA, VIAC, DIS, Swiss Rules, CCIR, CAS and UNCITRAL. She has experience in particular with parties from the CEE/SEE region, Turkey as well as from PR China and Hong Kong.

Valentina studied in Vienna, Amsterdam and Taipei and obtained degrees in law (Mag. iur., Dr. iur.) and sinology (Bakk.phil.). She served as a university assistant at the Vienna University of Economics and, after her court practice, worked for two boutique law firms in Vienna. She was admitted to the Vienna Bar in 2007.

Valentina completed internships with CIETAC in Beijing and the ICC International Court of Arbitration in Paris. She is a lecturer at the Faculty of Law of the University of Vienna, a regular speaker at international conferences, author of numerous publications on various topics of international arbitration as well as an official translator of several institutional arbitration rules (VIAC, CIETAC, LAC). Valentina was the YIAG Regional Representative for CEE in 2010/2011. She served as member of the YAAP Advisory Board from 2008 to 2017 and Co-chair in 2016/2017. Her working languages are German, English, Chinese (Mandarin and Cantonese) and French.

Contact: WOLF THEISS Rechtsanwälte GmbH & Co KG
Schubertring 6, A-1010 Vienna, Austria
T: +43 1 51510 5755
E: valentina.wong@wolftheiss.com
www.wolftheiss.com

Gerold Zeiler's practice focuses on International Commercial Arbitration, Investment Arbitration and International Litigation.He regularly sits as arbitrator and acts as counsel of parties in both ad hoc arbitration proceedings as well as administered arbitration proceedings, including proceedings under the VIAC, ICC, UNCITRAL and ICSID Rules.

Gerold Zeiler is a partner of zeiler.partners Rechtsanwälte GmbH. He obtained his doctorate in law from the University of Vienna (1996). He is a Fellow of the Chartered Institute of Arbitrators (FCIArb) and a member of the ICC Commission on Arbitration.

In addition to his arbitration and litigation practice, Gerold Zeiler is the author of numerous articles and books on international litigation and arbitration, including Pre-emptive Remedies in International Litigation (Internationales Sicherungsverfahren, 1996), The Brussels and Lugano Convention (Die Übereinkommen von Brüssel und Lugano, 1997, co-editor), Arbitration in the Infrastructure Sector (Schiedsverfahren im Infrastrukturbereich, in: Liberalisierung österreichischer Infrastrukturmärkte 2003, co-author), and A Basic Primer to Arbitration in Austria (2nd edition, 2007, co-author). He is also the author of the first commentary on the new Austrian Arbitration law (Arbitration [Schiedsverfahren] 2nd ed. 2014).

Contact: zeiler.partners Rechtsanwälte GmbH
Stubenbastei 2, A-1010 Vienna, Austria
T: +43 1 890 1087 80
E: gerold.zeiler@zeiler.partners
www.zeiler.partners

Arbitration Of Foundation And Trust Disputes In Liechtenstein

Johannes Gasser/Michael Nueber

I. Introduction

Liechtenstein has a long standing tradition as one of the major financial centers across the globe. This is, inter alia, owed to the fact that the Principality has a well-functioning court system, involving both lay and professional judges. In average, civil- and criminal proceedings do not take longer than two years and go through three instances. In addition, there always exists the possibility to submit appeals against arbitrary decisions to the Constitutional Court. However, according to its own definition the Constitutional Court does not serve as fourth instance.[1])

In general, parties value the increased legal certainty provided by the above court system. However, since Liechtenstein foundations, trusts and establishments are popular means for both UHNWI/HNWI[2]) as well as institutional investors, discretion and speed are crucial when solving disputes in these areas. The commonly known set of advantages of arbitration particularly applies to the realm of asset protection and estate planning, which is still an important line of business of Liechtenstein fiduciaries.

In order to meet the above needs, Liechtenstein decided a few years ago to adjust its arbitration legislation to international standards instead of concluding multiple recognition- and enforcement treaties on a bilateral level. Accordingly, the Principality joined the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (NYC) in 2011.[3]) In this context it is noteworthy that Liechtenstein has issued a reservation of reciprocity and only recognizes and enforces arbitral awards rendered in the territory of another member state of the NYC. However, different to the USA or China Liechtenstein has not declared a reservation to recognize and enforce arbitral awards in commercial matters only.[4])

---

[1]) Constitutional Court Liechtenstein, docket no. 2008/82, 2010/057.

[2]) Ultra High Net Worth Individual: investable assets of at least $ 30 million/ High Net Worth Individual: investable assets of at least $ 1 million.

[3]) LGBl 2011/325.

[4]) Johannes Gasser, *Das neue Schiedsverfahren in Liechtenstein und die Auswirkungen auf die Stiftungspraxis,* PSR 109, 111 (2012).

In a second step Liechtenstein amended its arbitration law pursuant to the UNCITRAL Model Law on International Commercial Arbitration as well as the Austrian example.[5])

Finally, the Liechtenstein Chamber of Industry and Commerce issued arbitration rules ("Liechtenstein Rules") which serve as an addition to the country's modern legislation.

II. Liechtenstein Arbitration Act 2010

A. Introduction

The present section serves the purpose to provide an overview about Liechtenstein arbitration law. The declared goal of the 2010 reform was to strengthen the Principality's position as place for international arbitration. In this respect the legislator explicitly referred to the combination of Liechtenstein's liberal corporate law and the newly established modern and internationally harmonized arbitration law.[6])

Notably, the total revision of Austria's arbitration law in 2006 had a trigger function for reforms in Liechtenstein. Those who are familiar with conducting arbitration proceedings in Austria will swiftly recognize the similarities between both legislations.[7]) Due to these similarities jurisprudence and literature on Austrian arbitration law can easily be consulted in Liechtenstein as well.[8])

B. Arbitrability

According to § 599(1) Liechtenstein Code of Civil Procedure (*Zivilprozessordnung*, LCCP) any claim involving an economic interest and lying within the jurisdiction of (state) courts can be subject to an arbitration agreement. Similar to Austria the notion "economic interest" has to be interpreted broadly.[9]) According to Austrian judicature the economic nature of a claim has to be assessed based on its material content,[10]) resulting in the

[5]) *Id.* at 111.

[6]) Bericht und Antrag der Regierung an den Landtag des Fürstentums Liechtenstein betreffend die Totalrevision des schiedsrichterlichen Verfahrens vom 28. 10. 2008, Nr 151/2008, 9.

[7]) Michael Nueber, *Schiedsfähigkeit stiftungsrechtlicher Streitigkeiten – Zugleich eine Besprechung von FL OGH 05 HG.2011.28*, PSR 10 (2012).

[8]) Gasser, *supra* note 4, at 111.

[9]) For Austria: Paul Oberhammer, Entwurf Eines Neuen Schiedsverfahrensrechts 40 (2002); for Liechtenstein: Gasser, *supra* note 4, at 112.

[10]) Austrian Supreme Court, docket no. 6 Ob 521/91.

inheritable nature of such claims.[11]) In addition, claims not involving an economic interest are only arbitrable if the parties are entitled to settle the underlying dispute.

Similar to Austria family law matters but also certain corporate law matters (*e.g.* company- and land register matters) are not arbitrable. § 599(2) LCCP indicates that proceedings which are initiated *sua sponte* or involve the mandatory competence to supervise corporations are not arbitrable.[12]) However, legal scholars nevertheless consider the dismissal of organs, the challenge of resolutions and the extraordinary appointment of auditors to be arbitrable.[13])

C. Arbitration Agreement

The capacity to conclude arbitration agreements under Liechtenstein law derives from the capacity to independently act before courts (*Prozessfähigkeit*).[14])

Furthermore, § 600 LCCP stipulates that arbitration agreements must be concluded in written form. This includes two (or more) parties signing the same document or the exchange of written documents, emails etc. However, since this form requirement has a purely evidential function the lack of written form can be healed if not objected in time. Additionally, the Austrian Supreme Court recently decided that a signature is not necessary in case of the exchange of documents.[15])

In this context it is noteworthy that the Liechtenstein Arbitration Act 2010 abolished the requirement to publicly record an arbitration agreement providing for the jurisdiction of an arbitral tribunal seated abroad.[16])

D. Relationship Between Courts And Arbitral Tribunals

The Liechtenstein Arbitration Act 2010 also changed the relationship between arbitral tribunals and courts. The main principle in this respect constitutes the priority of an arbitration agreement towards the initiation of state court proceedings. In line with international standards arbitral tribunals have the "competence-competence" to decide on their own jurisdiction. In

---

[11]) Austrian Supreme Court legal holding RS0007110; *cf.* Michael Nueber *in,* JN/ZPO-PRAXISKOMMENTAR § 582 mn 3 (Höllwerth & Ziehensack eds., to be published 2018).

[12]) *Cf.* further IV.C.

[13]) Gasser, *supra* note 4, at 112.

[14]) Michael Nueber, *supra* note 11, at § 582 mn 21.

[15]) Austrian Supreme Court, docket no. 18 OCg 1/15v.

[16]) Gasser, *supra* note 4, at 115.

order to effectively object to an arbitral tribunal's jurisdiction a party must raise a respective objection in time, *i.e.* with the first plea in the proceedings. Otherwise the lack of jurisdiction is deemed to be healed. § 601 LCCP governs how to deal with the competing jurisdiction of an arbitral tribunal and state courts in additional situations.

However, as it happens from time to time that state courts conduct proceedings parallel to already pending arbitrations, it is noteworthy that an arbitral award has *res iudicta*-effect only between the parties of the arbitration but not towards third parties who haven't been involved in the arbitral proceedings.[17]) What is more, state courts in subsequent proceedings are only bound by the verdict but not by the reasoning and findings of the arbitral tribunal.[18])

E. Interim Measures

Parties to arbitration proceedings can submit applications for interim measures both to an arbitral tribunal and to a state court. However, arbitral tribunals are entitled to render interim measures only if the other party to the proceedings has been heard (prohibition of ex-parte measures). Of course, since the jurisdiction of the arbitral tribunal is based on the arbitration agreement, interim measures by the same have effect only between the parties of the proceedings.[19])

If the parties decide to apply for interim measures to a state court, the Landgericht Vaduz would be the competent venue. The latter also has jurisdiction regarding requests from arbitral tribunals seated abroad.

F. Annulment Claims

In contrast to Austrian law that provides for a three-month period to challenge an arbitral award, parties in Liechtenstein only have four weeks to submit a respective claim to the Court of Appeal (*Obergericht*), which functions as the first and last instance in challenge proceedings as well as proceedings involving declaratory claims regarding the existence or non-existence of an arbitral award. By the Constitutional Court's own definition and as already mentioned above the possibility to raise a claim against arbitrary decisions does not constitute another procedural instance and thus the Court of Appeal is the only instance in above mentioned proceedings.[20])

---

[17]) Liechtenstein Supreme Court, docket no. 05 CG.2001.384.

[18]) Liechtenstein Supreme Court, docket no. CG.2008.251.

[19]) Gasser, *supra* note 4, at 117.

[20]) Michael Nueber, *OGH als einzige Instanz in Verfahren zur Aufhebung von Schiedssprüchen (rechts)politisch möglich?*, ZfRV 73, 76 (2013).

G. Miscellaneous

Especially in Liechtenstein, where usually parties domiciled abroad are involved in court proceedings, security deposits for court fees are common practice. However, Liechtenstein law does not provide for the same in respect to arbitration proceedings. In order to benefit from security deposits in arbitration proceedings an explicit agreement between the parties would be necessary.[21]) In this respect the application of the Liechtenstein Rules might be of advantage.[22])

H. Liechtenstein Arbitration Act 2017

In 2013 the Austrian Supreme Court[23]) decided that the consumer protection provisions of § 617 Austrian Code of Civil Procedure (*Zivilprozessordnung,* ACCP) are also applicable to shareholders who qualify as consumers. Since § 617 ACCP rules out arbitration proceedings with consumers this decision has been considered to be catastrophic for the arbitration of corporate disputes in Austria.[24])

The Liechtenstein Arbitration Act 2010 introduced a parallel provision to § 617 ACCP into Liechtenstein law. § 634 LCCP in the version before the Liechtenstein Arbitration Act 2017[25]) stipulated that the conclusion of arbitration agreements with consumers are only valid if a dispute has already arisen. Furthermore, an arbitration agreement had to be included in a separate document. In the light of these provisions and the unlucky decision of the Austrian Supreme Court, arbitration clauses in articles of association or foundation deeds seemed to be massively endangered.

The Liechtenstein legislator reacted swiftly and introduced amendments to § 634 LCCP, which have come into force on 1 August 2017. Now, the new § 634 LCCP captures only natural persons and explicitly permits arbitration clauses in statutes, articles of associations and foundation- and trust deeds.

It is noteworthy that the Liechtenstein Arbitration Act 2017 contains specific transitional provisions, which declare newly concluded arbitration clauses or arbitration clauses concluded before 2010 to be valid regardless of the involvement of a consumer. The same does not apply to arbitration agreements concluded between 2010 and 2017. The defective arbitration clause is deemed to be healed in these case only if the consumer invokes the jurisdiction of the

---

[21]) Gasser, *supra* note 4, at 118.
[22]) *See* III.
[23]) Austrian Supreme Court, docket no. 6 Ob 43/13m.
[24]) Michael Nueber, *OGH 16. 12. 2013, 6 Ob 43/13m:Cui Bono?,* wbl 194 (2014).
[25]) LGBl 2017/170.

arbitral tribunal. It might therefore be necessary to re-negotiate arbitration clauses concluded in the latter period of time.[26])

Another major reform concerned a requirement stipulated by § 1008 Liechtenstein Civil Code (*Allgemeines Bürgerliches Gesetzbuch,* LCC) according to which a special power of attorney had been necessary in order to conclude a valid arbitration agreement on behalf of someone else. Interestingly, the same legal situation still applies in Austria, only with the exception that according to both § 49(1) Austrian Commercial Code (*Unternehmensgesetzbuch,* ACC) and § 54(1) ACC a general proxy suffices in a commercial context.[27])

As of 1 August 2017 § 1008 LCC does not govern arbitration agreements anymore and thus no special power of attorney is required in order to conclude arbitration agreements on behalf of someone else. At the same time the Liechtenstein Commercial Code has been adjusted to Austrian standards, meaning that every proxy in a commercial context empowers to conclude arbitration agreements as well.

The recent amendments of Liechtenstein Arbitration law strengthen the country's position as preferred venue for the arbitration of corporate disputes. Especially in combination with the Rules of Arbitration of the Liechtenstein Chamber of Industry and Commerce ("Liechtenstein Rules") the Principality provides the ideal environment to discreetly deal with foundation- and trust disputes where usually – next to significant amounts in dispute – a variety of conflicting interests are involved.

III. Liechtenstein Rules

After the establishment of the Liechtenstein Arbitration Association (*Liechtensteinischer Schiedsverein,* LIS) the Liechtenstein Chamber of Commerce and Industry introduced its own arbitration rules, the "Liechtenstein Rules". Although the rules have predominantly been drafted in line with the UNCITRAL Arbitration Rules, they also reflect amendments of the Swiss Rules as well as developments in international arbitration in general.

The present section serves the purpose to briefly outline the benefits of conducting foundation- and trust-related arbitrations under the Liechtenstein Arbitration Act and the Liechtenstein Rules. Since according to § 611 LCCP the parties are basically independent in deciding how to conduct their proceedings, the application of the Liechtenstein Rules can be agreed both in advance but also after the dispute has arisen.

It is noteworthy that from time to time the authors witness arbitration clauses referring to the application of Liechtenstein arbitration law, regardless

[26]) Dietmar Czernich, 43. Liechtensteinischer Rechtsprechtag, September 19, 2017, University of Liechtenstein.

[27]) Michael Nueber, *supra* note 11, § 583 mn 15.

of the fact that the seat of the arbitral tribunal is located in Liechtenstein.[28]) Such referral is usually redundant because already §§ 594(1) and 612 LCCP provide for the application of Liechtenstein arbitration law if the arbitral tribunal is seated in the Principality.

A. Confidentiality

One of the major milestones of the Liechtenstein Rules is the increased confidentiality obligation of all involved actors. According to Art 29 all parties to the arbitration but also all arbitrators, witnesses and experts are bound by a strict confidentiality obligation. A violation of this obligation will be executed by a fine of CHF 50,000.- and – in case of a damage – by subsequent damage proceedings. In this context it is also noteworthy that Art 18(2) gives the parties the right to request that certain documents and other means of evidence may only be inspected by the counterparty at the seat of the tribunal or at another appropriate place. Especially in regard to arbitrations involving sensible – family-related – documents this provision might be crucial.

Another measure to increase the confidentiality of proceedings under the Liechtenstein Rules can be found in Art 6(1) according to which only persons underlying a confidentiality duty stipulated by law can be appointed as arbitrators, *e.g.* attorneys at law, trustees and accountants.

In practice the increased confidentiality under the Liechtenstein Rules plays a significant role which is owed to the fact that many of the currently pending arbitrations involve matters in the realm of the Liechtenstein fiduciary business.[29])

B. Procedure

The conduct of the proceedings under the Liechtenstein Rules has been regulated in quite some detail. The Rules provide for a time limit of 30 days to submit an answer to a claim, which can include a counterclaim as well as objections to the arbitral tribunal's jurisdiction.

Another specialty of the Liechtenstein Rules concerns the application for interim relief. According to Art 17 parties can only address requests for interim relief to the arbitral tribunal and not a state court. A violation might result in a breach of the above described confidentiality obligation and further trigger damage claims pursuant to Art 29(7).

[28]) *See also* Bericht und Antrag 55.
[29]) Gasser, *supra* note 4, at 121.

Furthermore, Art 27(1) contains the "costs-follow the event"-rule which is well-known in international arbitration. Interestingly, arbitrations under the Liechtenstein Rules are up to 15% cheaper than under the Swiss Rules.[30])

Upon claimant's request the arbitral tribunal can order the respondent to deposit a security for the costs of the proceedings. In this context it has to be borne in mind that the Liechtenstein Supreme Court decided that in case of impecunious respondents the arbitration agreement is deemed to be repealed and the way to Liechtenstein courts stands open.[31])

Finally, the Liechtenstein Rules foresee a special appointing authority in case the parties omit or the arbitrators cannot agree to appoint an arbitrator. So-called Commissioners (*Kommissäre*) will be appointed by the Secretariat of the Liechtenstein Chamber of Commerce and Industry for a specific arbitration. The decision of the Commissioners is final and binding.

IV. Foundation Disputes

A. Introduction

After having established that Liechtenstein's legal framework is ideal to handle disputes where both efficiency and confidentiality is crucial, a closer look on foundation- and trust disputes appear to be appropriate.

Liechtenstein foundations are a success story of international dimension. This is also reflected by the fact that Austria, Jersey, Panama and others have implemented the Liechtenstein foundation law into their legislation.[32]) In respect to foundations but also to trusts[33]) it is immanent that conflicting interests – quite often concerning sensitive family matters – and a significant amount of assets are at stake before a court or an arbitral tribunal.

B. Admissibility Of Arbitration Clauses In Foundation Deeds

Recent trends show that foundations deeds quite often contain arbitration clauses. However, form an arbitration practitioner's point of view quite a few of these clauses would need to be re-drafted in order to be valid in an international context.[34])

[30]) *Id.* at 121 with further references.

[31]) Liechtenstein Supreme Court, docket no. CG.2008.251.

[32]) Johannes Gasser, Liechtensteinisches Stiftungsrecht 6 (2013).

[33]) *See* V.

[34]) For Model Arbitration Clauses and substantial deliberations on dispute resolution involving Liechtenstein foundationas and Austrian private foundations *see* Matthias Gass & Michael Nueber, Konfliktlösung in Privatstiftungen (to be published 2018).

In general, arbitration clauses in foundation deeds are permitted according to § 598(2) LCCP. The situation is similar to Austria where legal scholars advocated in this respect already before the Austrian Arbitration Act 2006 came into force.[35])

However, according to Art 114(2) Liechtenstein Company Law (*Personen- und Gesellschaftsrecht,* PGR) and a line of decisions of the Liechtenstein Supreme Court[36]) arbitration clauses do not govern disputes between a corporation and its members regarding their membership status. These disputes have to be mandatorily submitted to the state court located at the corporation's seat. Nevertheless, in later decisions the Liechtenstein Supreme Court[37]) qualified such disputes to be arbitrable by arguing that Art 114 PGR does not address arbitration as a question of substantive law. Accordingly, the Supreme Court qualified Art 114(2) PGR as provision solely dealing with the forum in state court proceedings.

Finally, in a recent decision the Liechtenstein Supreme Court decided in favor of the invalidity of clauses providing for the loss of a beneficiary's claim in case of the latter initiating arbitral proceedings (so-called *kassatorische Klausel*).[38])

C. Arbitrability Of Foundation Disputes[39])

§ 599 LCCP considers all claims of an economic nature to be arbitrable. Legal scholars thus advocate in favor of the arbitrability of all corporate disputes.[40]) In regard to the comparable Austrian legal situation it has been put forward that foundation-related disputes are generally arbitrable.[41]) These disputes, inter alia, concern claims of beneficiaries against the foundation or damage claims against members of the foundation council as well as actions claiming that certain resolutions are void.[42])

However, in a recent decision the Liechtenstein Supreme Court decided that arbitration clauses can never result in the exclusion of the state courts supervisory function in respect to foundations.[43]) In other words: despite the

[35]) Hans Fasching, Schiedsgericht und Schiedsverfahren im österreichischen und im internationalen Recht 50 (1973).

[36]) Liechtenstein Supreme Court, LES 1981, 174.

[37]) LES 1982, 16; LES 1987, 14, LES 2012, 122.

[38]) Liechtenstein Supreme Court, CG.2008.251.

[39]) For a detailed analysis of the arbitrability of all potential foundation-related claims *see* Matthias Gass & Michael Nueber, *supra* note 34.

[40]) Gasser, *supra* note 4, at 112.

[41]) Nueber, *supra* note 11, § 582 mn 12.

[42]) Georg Kodek, *Schiedsvereinbarungen bei Privatstiftungen – Möglichkeiten und Grenzen, in* Liber Amicorum Waldemar Jud 351, 358 (2012); Michael Nueber, *Die Privatstiftung als Partei vor „österreichischen" Schiedsgerichten,* GesRZ 339, 341 (2012).

[43]) Liechtenstein Supreme Court, docket no. 05 HG.2011.28.

existence of an arbitration clause beneficiaries still have the right to request the dismissal of a member of the foundation council before a state court. The Supreme Court's decision has subsequently been confirmed by the Constitutional Court.[44]) Unfortunately and despite criticism of both Liechtenstein and Austrian scholars,[45]) the Liechtenstein legislator recently confirmed this perception by amending § 599(3) LCCP. The new provision refuses the arbitrability of proceedings which can be initiated *sua sponte*. However, the Liechtenstein Supreme Court clarified that this restriction of arbitrability only comprises matters in the competence of the supervisory authority, *i.e.* the competent state court, but not other issues in regard to Liechtenstein foundations.[46])

Austrian scholars have correctly put forward that despite the mandatory jurisdiction of state courts in the above matters, arbitral tribunals could decide preliminary questions and an arbitral award would bind the state court in subsequent supervisory proceedings.[47]) In the authors' opinion the same considerations apply under Liechtenstein law.

In sum, Liechtenstein courts decided the following matters to be arbitrable:

- Information rights of beneficiaries[48])
- Interpretation of foundation deeds[49])
- Claims by the foundations against its organs[50])

In addition, it can be assumed in the light of § 599 LCCP that all other foundation disputes are of an economic nature and therefore arbitrable as well.

The Liechtenstein Supreme Court made only two exceptions from the previous rule:

- Dismissal of Members of the Foundation Council[51])
- Declaration of the invalidity of a resolution by the foundation council[52])

---

[44]) Liechtenstein Constitutional Court, docket no. 2011/181.

[45] Gasser, *supra* note 4, at 113; Michael Nueber, *Schiedsfähigkeit stiftungsrechtlicher Streitigkeiten – Zugleich eine Besprechung von FL OGH 05 HG.2011.28*, PSR 10 (2012).

[46]) Liechtenstein Supreme Court, docket no. 05 HG.2015.123.

[47]) Michael Nueber, *Schiedsklauseln in Stiftungsurkunden*, *in* Konfliktlösung in Privatstiftungen (Gasser & Nueber eds., to be published 2018) with further references.

[48]) Liechtenstein Court of Appeal, LJZ 2012, 67; Constitutional Court, docket no. 2012/94.

[49]) Liechtenstein Supreme Court, docket no. 04 CG.2008.14.

[50]) Liechtenstein Supreme Court, LES 2012, 122.

[51]) Liechtenstein Supreme Court, docket no. 05 HG2011.28; *see* in detail already above.

[52]) Liechtenstein Supreme Court, docket no. 05 HG.2015.123.

D. Scope Of The Arbitration Clause

It is commonly recognized in (international) arbitration that an arbitration clause constitutes an agreement between the parties to establish the jurisdiction of an arbitral tribunal for present and/or future disputes.[53])

Although not based on an agreement between the parties, § 598(2) LCCP explicitly permits arbitration clauses in articles of association, *e.g.* foundation deeds. The relevant legal issue in this context is how to deal with the fact that beneficiaries of a foundation have not (explicitly) consented to submit to the jurisdiction of an arbitral tribunal stipulated in the foundation deed.

In Austria this issue has raised concerns regarding the binding effect of such "unilateral" arbitration clauses on so-called non-signatories. Whereas the binding effect of an arbitration agreement towards the foundation and the council members has been affirmed, Austrian scholars differentiate between discretionary beneficiaries and those who have an enforceable claim against the foundation.[54]) It has been advocated that only for the latter group an arbitration clause in the foundation deed can have binding effect, whereas in all other cases beneficiaries must expressly submit to arbitration.[55])

It is obvious that the situation under Austrian law results in legal insecurity. However, in Liechtenstein the Court of Appeal – in its function as last instance in annulment proceedings – clarified that arbitration clauses in foundation deeds have binding effect also on so-called non-signatories, regardless whether they have submitted to arbitration or not.[56]) According to the court it would be contradictory to claim as beneficiary for a distribution but at the same time refuse to accept the jurisdiction of an arbitral tribunal stipulated in the foundation deed.

The same reasoning has been applied by the Austrian Supreme Court in an early decision dealing with an arbitration clause in a contract to the benefit of a third party.[57]) It thus that Austrian legal scholars advocate in favor of applying this principle to arbitration clauses in foundation deeds as well.[58]) So far, Austrian courts have not decided in this respect, which is why Liechtenstein provides for more security regarding the validity of arbitration clauses in foundation deeds.

---

[53]) Nueber, *supra* note 11, § 581 mn 7.

[54]) Nueber, *supra* note 47.

[55]) *Ibid.*

[56]) Liechtenstein Court of Appeal, docket no. 05 HG.2011.172; Liechtenstein Court of Appeal, docket no. 02 CG.2012.367; *see also* Liechtenstein Constitutional Court, docket no. 2012/94.

[57]) Austrian Supreme Court, docket no. 4 Ob 533/95.

[58]) Andreas Reiner, *Schiedsverfahren und Gesellschaftsrecht,* GesRZ 151 (2007); Michael Nueber, *supra* note 7, at 11; Katharina Müller *in* Stiftungsmanagement mn 50 (Müller ed., 2014); Michael Nueber, *supra* note 47.

E. Consumer Protection

As already briefly outlined above § 617 ACCP and the accompanying judicature of the Austrian Supreme Court constitute potential obstacles for the arbitration of corporate disputes in Austria.[59])

Furthermore, the Austrian Supreme Court – by the way of an obiter dictum – held that a foundation can be considered as consumer pursuant to § 617 ACCP.[60]) The Austrian Supreme Court's derived its perception from the fact that both under Austrian and Liechtenstein law foundations are prohibited to run a business in a commercial sense.[61]) This obiter dictum by the Austrian Supreme Court could result in an end of arbitration clauses in foundation deeds.[62])

However, the Liechtenstein legislator swiftly reacted and in the course of the Liechtenstein Arbitration Act 2017 amended § 634 LCCP accordingly. As of 1 August 2017 the consumer protection provisions of § 634 LCCP are only applicable to natural persons and arbitration clauses in foundation- and trust deeds have been declared permissible.

V. Trust Disputes

Liechtenstein is the only civil law country having implemented the common law trust into its legislation. Accordingly, Liechtenstein trust law adheres to the common law model.[63]) Indeed, provisions on the trust have already been contained in the original version of the PGR back in 1926.

Since Liechtenstein trusts and foundations are similar legal institutions – and foundation law complementarily applies to trusts as well – the considerations in respect to the arbitration of foundation disputes can be applied to the arbitration of trust disputes as well. However, it is noteworthy that in contrast to foundations, Liechtenstein trust law permits parties to agree on another supervisory authority, *i.e.* an arbitral tribunal.[64]) Thus, in relation to the Liechtenstein trust even claims for the dismissal of trustees can be subject to an arbitration agreement. Thus, the vast majority of trust disputes in Liechtenstein are internal disputes that involve controversies between the settlor, the trustees, the protectors and the beneficiaries.[65]

---

[59]) II.H.

[60]) Austrian Supreme Court, docket no. 6 Ob 43/13m.

[61]) § 1(2) Austrian Foundation Act (*Privatstiftungsgesetz*, PSG); Art 552 § 1(2) PGR.

[62]) Michael Nueber, *supra* note 25.

[63]) Stefan Wenaweser, *Liechtenstein*, *in* International Trust Disputes para. 29.01 (Collins et al. eds., 2012).

[64]) Art 929(1) PGR.

[65]) Gasser/Saurer, *Trust Arbitration in Liechtenstein and Austria, in* arbitration of trust disputes para. 18.76 (Strong ed., 2016).

In regard to a trust established under foreign law, Art 931(2) PGR provides that disputes between trustees, the settlor or beneficiaries shall be mandatorily submitted to arbitration. There exists, however, no judicature on this provision. In the authors' opinion and from a teleological point of view, Art 931(2) PGR can only aim to submit all disputes regarding a trust established under foreign law to arbitration. However, since no permanent arbitration institution has been established in Liechtenstein parties would have to separately agree to submit their dispute to arbitration. Despite the noble goal to promote arbitration in these matters, it is uncertain whether such provision can be deemed to be valid in consideration of Art 6 ECHR.[66]) This is so, because – as already indicated above – arbitration is based on the parties' free will to submit their disputes out of or in connection with a certain (contractual) relationship to arbitration.

However, since the benefits of arbitration particularly prevail in disputes concerning trusts established under foreign law, Art 931(2) PGR has no practical effect at all. In fact, almost all trust deeds contain arbitration clauses and the possibility to appoint arbitrators from different legal backgrounds ultimately makes the case for arbitration.

VI. Outlook

Liechtenstein's liberal corporate law together with its up to date arbitration legislation makes it an ideal venue to arbitrate foundation and trust disputes. The positive legal framework has already been recognized by international clients and the past years have shown a significant rise in the number of arbitrations in Liechtenstein.

As it is particularly typical for foundation and trust disputes, confidentiality is of utmost importance. It is thus up to the parties to agree on the application of the Liechtenstein Rules which provide as much discretion as possible.

Considering the current trend of the (relatively young) Liechtenstein arbitration market, the future developments can be expected with substantial interest.

[66]) *Cf.* as regards the binding effect of arbitration clauses towards third parties Herbert Batliner & Johannes Gasser, *Sind Schiedsklauseln zulasten Dritter gemäss Art. 6 EMRK zulässig?*, *in* Liber Amicorum Baudenbacher 13 (2007).