



## **Nothing ventured, nothing gained: Federal Ministry of Justice announces reform of the German Arbitration Law**

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News from the Federal Ministry of Justice (FMJ): Yesterday, the FMJ published its long awaited [paper](#) on the reform of the German Arbitration Law. The planned reform is part of the FMJ's comprehensive efforts to strengthen Germany as a hub for commercial disputes.

Since the 1997 German Arbitration Act (set out in [Sections 1025 et seq. of the German Code of Civil Procedure](#)) has proven itself over the last 25 years, the FMJ intends a minimally invasive reform.

### **Concretely, the FMJ has identified the following twelve key reform projects:**

1. Form-free arbitration agreements: In commercial transactions, parties should be able to conclude arbitration agreements orally (as also provided for in Option II for Article 7 [UNCITRAL Model Law](#) since 2006).
2. Multi-party arbitration: The FMJ seeks to introduce a (dispositive) rule on the appointment of arbitrators in multi-party arbitration proceedings, which provides, among other things, for a replacement appointment if the parties on one side cannot agree on an arbitrator.
3. Judicial review of negative decisions on jurisdiction: Parties should not only be able to have positive but also negative decisions by the arbitral tribunal on jurisdiction reviewed by the competent state court at the place of arbitration.
4. Digitalisation: Arbitral tribunal should be entitled to hold oral hearings by video conference as long as the parties have not agreed otherwise. In addition, the recording of such video conferences should also to be regulated.
5. Publication of arbitral awards: The publication of arbitral awards with the consent of the parties should be regulated in order to promote transparency and the development of the law.
6. English as the language of the proceedings: Arbitral awards and other documents from the arbitration proceedings should be allowed to be submitted without translation in annulment and enforcement proceedings as well as in judicial support proceedings.

7. Commercial courts: The federal states that introduce commercial courts should also be allowed to entrust them with jurisdiction over annulment and enforcement proceedings. Proceedings before the commercial courts should be conducted entirely in English with the consent of the parties.
8. Integrity: The FMJ intends to create an appeal mechanism against final domestic arbitral awards for cases where an action for restitution pursuant to § 580 of the German Code of Civil Procedure would be available against a German state court judgement.
9. Interim relief: Provisional measure may be enforced in Germany even if the place of arbitration is located in another country.
10. Determination of the existence/validity of the arbitration agreement: In the case of applications for the determination of the admissibility or inadmissibility of an arbitration, the court should also be able to make a final decision on the existence or validity of the arbitration agreement.
11. Renvoi: The FMJ intends to clarify that also if a court rejects a request for enforceability and sets aside the arbitral award is set aside, it may refer the matter back to the arbitral tribunal at the request of a party which, in case of doubt, also reinstates the arbitration agreement with regard to the subject matter of the dispute.
12. Ex parte orders: The admissibility of orders of the presiding judge of a civil division without hearing the opposing party shall be limited to orders in urgent cases.

**In addition, the FMJ intends to further examine four other topics:**

1. Emergency arbitrators: The FMJ intends to further examine whether to regulate the use of emergency arbitrators and/or the enforcement of interim measures ordered in an emergency arbitration with a foreign seat.
2. Dissenting opinions: Furthermore, the FMJ intends to further examine whether to clarify the admissibility of dissenting opinions.
3. Joint senates of higher regional courts in arbitration cases: The FMJ will further examine whether to also foresee such joint senates across the borders of the German federal states.
4. Judicial support proceedings: The FMJ will finally examine whether the jurisdiction for such proceedings should be transferred from the district courts to the higher regional courts at the place of arbitration.

**Commentary**

The present paper is clearly characterised by the following three efforts:

- the implementation of the 2006 reform of the UNCITRAL Model Law;

- the safeguarding of the digital achievements during the COVID-19 pandemic; and
- the strengthening of Germany's legal position in international competition.

Indeed, the present paper is not the first of its kind by the FMJ this year. In January 2023, the FMJ had already published another [paper](#) on the introduction of commercial courts in Germany. With the latter paper, the BMJ seeks to achieve that in the future specialised chambers of certain regional courts or senates of certain higher regional courts and the German Federal Court of Justice will be able to conduct commercial disputes entirely in English.

With yesterday's paper, the FMJ now seeks to link and jointly optimise state justice and arbitration. That is to be welcomed. However, it remains to be seen whether the legislator will walk the FMJ's talk.

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