

Overview on the execution of arbitral awards, ADR settlements and lawyer and notary settlements

under German law, with some remarks on EU law

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§ 794 ZPO (Zivilprozessordnung = German Code of Civil Procedure)* Further enforceable legal documents

“1) Compulsory enforcement may furthermore be pursued:

[...]

4a. Based on **decisions declaring arbitration awards as enforceable**, provided that the decisions are final and binding or have been declared provisionally enforceable;

5. Based on **records or documents** that have been recorded in accordance with the requirements as to form by a German court or **by a German notary** within the bounds of his official authority, provided that the record or document has been recorded regarding a claim that can be provided for by a settlement, that is not directed at obtaining a declaration of intent, and that does not concern the existence of a tenancy relationship for residential spaces, and furthermore provided that the debtor has subjected himself, in the record or document, to immediate compulsory enforcement of the claim as specified therein;”

§ 796a ZPO

Prerequisites for the settlement reached among attorneys to be declared enforceable

- “(1) A **settlement reached by attorneys** on behalf of the parties they represent, upon having been correspondingly authorised, **shall be declared enforceable**, upon corresponding application being made by a party, if the debtor has subjected himself in such settlement to immediate compulsory enforcement and the settlement has been deposited, specifying the date on which it was reached, with a local court (Amtsgericht, AG) in the district of which one of the parties had its general venue at the time the settlement was reached.
- (2) Subsection (1) shall not apply should the settlement be directed at the issuance of a declaration of intent or should it concern the existence of a tenancy relationship for residential premises.
- (3) The declaration of enforceability shall be refused to be issued if the settlement is invalid or if its recognition would violate public order.”

Declaration of enforceability and enforcement of arbitral awards

§ 1061 ZPO – foreign arbitration awards

“(1) The recognition and enforcement of foreign arbitration awards is governed by the Convention of 10 June 1958 on the recognition and enforcement of foreign arbitral awards (published in Federal Law Gazette (Bundesgesetzblatt, BGBl.) 1961 II page 121). The stipulations of other treaties concerning the recognition and enforcement of arbitration awards shall remain unaffected hereby. [...]”

§ 1060 ZPO – domestic arbitration awards

“(1) Compulsory enforcement is an available remedy provided the arbitration award has been declared enforceable.

(2) The petition for a declaration of enforceability to be issued is to be denied, while reversing the arbitration award, if one of the grounds for reversal designated in section 1059 (2) is given. [...]”

Remedies against enforcement Domestic arbitration awards

§ 1060 (2) & § 1059 (2) ZPO>

"(2) An arbitration award may be reversed [or refused enforcement]* only if:

1. The petitioner asserts, and provides reasons for his assertion, that:

a) One of the parties concluding an arbitration agreement pursuant to sections 1029 and 1031 did not have the capacity to do so pursuant to the laws that are relevant to such party personally, or that the **arbitration agreement is invalid** under the laws to which the parties to the dispute have subjected it, or, if the parties to the dispute have not made any determinations in this regard, that it is invalid under German law; or that

b) He has not been properly notified of the appointment of an arbitral judge, or of the arbitration proceedings, or that he was **unable to assert the means of challenge or defence** available to him for other reasons; or that

c) The arbitration award concerns a dispute not mentioned in the agreement as to arbitration, or not subject to the provisions of the arbitration clause, or that it contains decisions that are above and **beyond the limits of the arbitration agreement**; however, where that part of the arbitration award referring to points at issue that were subject to the arbitration proceedings can be separated from the part concerning points at issue that were not subject to the arbitration proceedings, only the latter part of the arbitration award may be reversed; or where the petitioner asserts, and provides reasons for his assertion, that

d) The **formation of the arbitral tribunal or the arbitration proceedings** did not **correspond to a provision of this Book or to an admissible agreement between the parties**, and that it is to be assumed that this has had an effect on the arbitration award; or if

2. The court determines that

a) the subject matter of the dispute is **not eligible for arbitration** under German law; or

b) The recognition or enforcement of the arbitration award will lead to a **result contrary to public order.**"

Remedies against enforcement

Foreign arbitration awards

Art. V New York Convention

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

(a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said **agreement is not valid** under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was **otherwise unable to present his case**; or

(c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters **beyond the scope** of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(d) The composition of the arbitral authority or the arbitral procedure was **not in accordance with the agreement of the parties**, or, failing such agreement, was not in accordance with the **law of the country where the arbitration took place**; or

(e) The award has **not yet become binding on the parties, or has been set aside** or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

(a) The subject matter of the difference is **not capable of settlement by arbitration** under the law of that country; or

(b) The recognition or enforcement of the award would **be contrary to the public policy of that country**.

In particular: The award by consent

§ 1053 ZPO

„Insofar as, in the course of the arbitration proceedings, the parties to the dispute reach a settlement regarding the dispute, the arbitral tribunal shall terminate the proceedings. Upon corresponding application being made by the parties, it shall record the settlement in the form of an arbitration award, the wording of which has been agreed by the parties, **provided that the content of the settlement does not violate public order.**

(2) An arbitration award, the wording of which has been agreed by the parties, is to be delivered pursuant to section 1054 and must specify that it is an arbitration award. Such an arbitration award has the same effect as any other arbitration award regarding the dispute.

(3) Insofar as declarations must be recorded by a notary in order to be effective, this requirement shall be replaced by an arbitration award in which the declarations of the parties are included by way of the parties agreeing on its wording.

(4) Provided that the parties consent to this being done, an arbitration award, the wording of which has been agreed by the parties, **may also be declared enforceable by a notary** having his official residence in the district of the court that is competent for the declaration of enforceability pursuant to section 1062 subsections (1) and (2). The notary shall refuse to make such a declaration of enforceability where the prerequisites of subsection (1), second sentence, have not been met.”

ADR/Mediation settlements

- Not enforceable as such, no specific rules on enforcement
- Result/settlement may be laid down as
 - Notary deed/record
 - Lawyer settlement
 - arbitral award by consent
 - court record (in particular in court mediation)

Enforcement of notary deeds/records

- Prerequisites:
 - Laid down by notary in his/her competence
 - In form of a notary record
 - Capacity of parties
 - Sufficient specification of the claim
 - Materially valid subjection to immediate compulsory enforcement
- Procedure:
 - Issue of enforceable execution copy (§ 797 (2) ZPO) and execution
- Remedies against enforcement/execution

§ 797 ZPO

Procedure pursued in the case of enforceable records or documents

- (1) The enforceable execution copy of court records or documents will be issued by the records clerk of the registry of the court in the safekeeping of which the record or document has remained.
- (2) The enforceable execution copy of notarial records or documents will be issued by the notary in whose safekeeping the record or document has remained. Should the record or document have remained in the safekeeping of a public authority, the latter is to issue the enforceable execution copy.
- (3) The decision regarding objections that concern the admissibility of the court certificate of enforceability and the admissibility of issuing a further enforceable execution copy will be taken, where court records or documents are involved, by the court in the safekeeping of which the record or document has remained, and, where notarial records or documents are involved, by that local court (Amtsgericht, AG) in the district of which the notary in the safekeeping of whom the record or document has remained has his official residence, or in the district of which the public authority in the safekeeping of which the record or document has remained has its official seat. [...]
- (4) The limiting rule set out in section 767 (2) is not to be applied to the assertion of objections concerning the claim as such.
- (5) That court with which the debtor has his general jurisdiction in Germany, and otherwise that court with which an action may be brought against the debtor pursuant to section 23, shall have jurisdiction for actions brought for the issuance of a court certificate of enforceability, or for actions by which the objections concerning the claim as such are asserted, or by which the occurrence of the prerequisite for the issuance of the court certificate of enforceability is disputed.
- (6) Subsections (2) to (5) shall apply mutatis mutandis to orders pursuant to section 796c.

Enforcement of extra-judicial titles within the EU

- Some remarks on obtaining a declaration of enforcement of extrajudicial titles under the Brussels-Ia-Regulation (EU Nr. 1215/2012) (§§ 1110 et seq. ZPO)
- Some remarks on a certification of enforcement under the Regulation (EC) No 805/2004 creating a European Enforcement Order for uncontested claims (§§ 1079 et seq. ZPO)