February 2026

Federal Ministry of Justice submits new draft bill on modernizing arbitration law

Careful revisions to successful regulations to increase Germany's attractiveness as a venue for arbitration proceedings

In January 2026, the German Federal Ministry of Justice once again presented a draft bill to reform the law of arbitration. This draft follows on from a previous legislative attempt in 2024, which, despite widespread support, failed due to that parliament being dissolved early. The new draft contains many similar rules, making minor tweaks to adapt German arbitration law to modern (technical) circumstances and better align arbitration and the new German Commercial Courts, established in 2025.

I. Minor updates, not radical reform

In its new draft bill to reform arbitration law (published in German only unlike the predecessor draft), the Federal Ministry of Justice (*Bundesministerium für Justiz und Verbraucherschutz, BMJV*) emphasizes that German arbitration law's "high-quality" and "internationally competitive" system has proven itself. "Against this background, there is no reason for a fundamental reassessment of German arbitration law." Instead, the ministry proposes "selective changes" at most "to adapt this area of law to the needs of today, increase its efficiency, and strengthen Germany's attractiveness as a location for arbitration." Here, the draft once again highlights the need to keep up with legal developments in neighboring countries such as Austria, France, and Switzerland, who have all recently reformed their arbitration law.

II. Close integration with the new commercial courts

A particular focus of the draft reform is to increase integration with the new Commercial Courts, which were introduced in April 2025 as part of a large-scale campaign to increase Germany's attractiveness as a forum. The states (*Länder*), which under German law organize much of the judiciary, are empowered to transfer the jurisdiction of the Higher Regional Courts for arbitration-related matters to the newly established Commercial Courts in order to draw on their expertise in large commercial disputes. Proceedings may be conducted entirely in English be-

fore the Commercial Courts if the parties either explicitly agree or do not object. If the proceedings are conducted solely in English, the decision will also be issued in English, but with an "inseparable" translation into German. Moreover, under the draft even in German-language proceedings submissions of German translations of English-language documents will no longer typically be required.

III. Reduced formalities requirements for arbitration agreements

Similar to the 2024 draft, the new reform proposal also intends to relax the formal requirements for concluding arbitration agreements. While the 2024 reform sought to dispense entirely with formalities requirements in a business context, which was controversial in view of difficulties related to proof and the potential for abuse (see also German Bar Association (DAV) Position Paper on the Draft Bill to Modernise German Arbitration Law of 01 February 2024), the current draft only modifies existing formalities requirements. Under the new proposal, arbitration agreements can be concluded in writing or "by any other means of communication that allows information to be accessed again later." This technology-neutral term, which draws on Article 7 (3) of the 2006 version of the UNCITRAL Model Law on International Commercial Arbitration, is intended to future-proof German arbitration law while granting greater flexibility.

IV. Modifications to the forum determination procedure

Moreover, the procedure under sec. 1032 (2) of the Code of Civil Procedure (*Zivilprozessordnung, ZPO*), which allows for early determination of forum (discussed eg in Steinbrück/Krahé, Arbitration International 2024, 375 ff) will also be modified slightly. This legal remedy allows the parties to apply to the state courts for a determination of the admissibility or inadmissibility of arbitration proceedings, clarifying a central question early in their dispute while incurring only limited cost. To date, however, such a court determination related only to the admissibility (or inadmissibility) of a specific dispute, and did not have binding effect concerning the existence and validity of the arbitration agreement even where the court's assessment required an in-depth analysis of that point. This caused problems particularly where arbitration proceedings continue and there is a risk for inconsistent decisions on the arbitral tribunal's jurisdiction between arbitral tribunals and the State courts. On application, a Higher Regional Court hearing a request under sec. 1032 (2) ZPO can now make a binding and final determination of the validity or invalidity of the arbitration agreement itself.

V. Possibility of challenge in the event of a negative declaration of jurisdiction by the arbitral tribunal

In line with several smaller bug fixes, the draft also provides for challenges to decisions by arbitral tribunals declining their jurisdiction. The law as it stands provides for challenge only on the basis that an arbitral tribunal incorrectly found itself to *have* jurisdiction, not where an arbitral tribunal incorrectly *declined* jurisdiction. The draft bill removes this asymmetry and also allows judicial challenge and annulment of "negative" decisions on jurisdiction.

VI. Changes to appointment of arbitrators in multi-party proceedings

In addition, the draft changes the procedure for appointment of arbitrators in cases where, in multi-party arbitration proceedings, the parties on one side cannot agree on a joint arbitrator appointment and the institutional arbitration rules make no further provision. These cases arise not only from a genuine conflict of interest, but are also sometimes used tactically. In the future, the courts will have the choice of appointing only the arbitrator on the multi-party side or both party arbitrators in order to prevent one party from having a greater influence on the formation of the arbitral tribunal than the other. This change brings German law into line with e.g. Swiss and Austrian law. Preventing an imbalance in the tribunal's constitution can be particularly important if recognition and enforcement abroad are likely; in a seminal decision in 1992, the Paris *Cour de Cassation* set aside an arbitral award because the claimant had chosen its own arbitrator, while a respondent did not agree with the arbitrator on the respondent's side.

VII. Improved enforcement of interim measures by arbitral tribunals

In addition, the draft bill aims to improve the enforcement of interim measures by arbitral tribunals in state courts. Interim measures by arbitral tribunals seated abroad must now also be recognized and enforced in Germany if none of the limited grounds to refuse enforcement exist. In addition to the grounds that would justify set-aside proceedings under German law, an application for enforcement shall only be rejected if corresponding measures have already been applied for in Germany, security demanded by the arbitral tribunal has not been provided, or the measure has been set aside or suspended by the arbitral tribunal itself.

VIII. Publication of arbitral awards

Moreover, the draft aims to provide for greater transparency. Post-M&A disputes in Germany are resolved almost entirely in arbitration, since both parties usually have a vested interest in confidential proceedings that do not provide unnecessary information to competitors. While this is an understandable concern, it also means that there has been very little case-law on the legal questions that typically arise from the sale of companies. The draft therefore allows the arbitral tribunal to publish (partially anonymized/pseudonymized) versions of the award with the consent of the parties; consent is deemed to have been given after three months without objection if the party has been informed of this consequence. However, the scope of application of this new provision is likely to remain limited because institutional arbitration rules often already contain provisions on this issue. For example, para 59 of the ICC Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration stipulates that the parties may, at any time prior to publication, object to publication or require that any award and related documents be anonymized or pseudonymized in whole or in part. Art. 41 of the VIAC Rules of Arbitration and Mediation 2021 in the version of 01 January 2025 states that anonymized summaries or extracts of awards may not be published if a party has objected to publication within 30 days upon receipt of the award, while Art. 44.3 of the DIS Rules 2018 provides that the DIS may publish awards only with the prior written consent of all of the parties. In the remaining cases, particularly ad hoc proceedings, there is a high probability that one of the parties will refuse to consent to publication.

IX. Dissenting opinions

The draft also clarifies that dissenting opinions on arbitral awards do not make the award subject to challenge. This removes the uncertainty created by an obiter dictum of the Frankfurt Higher Regional Court (Frankfurt Higher Regional Court, order of January 16, 2020 – docket no.: 26 Sch 14/18, BeckRS 2020, 4606 para. 206). In view of the limited significance of dissenting opinions in (German) arbitration, this is more of a clarification with little practical impact.

X. Clarifying and supplementary provisions

Finally, the draft bill makes a number of minor amendments that are not intended to have a major impact on arbitration practice. This is partly because the law recognizes what is already common practice, primarily clarifying matters and updating them for ad hoc arbitration. For example, video hearings in arbitration proceedings will now be expressly permitted, reflecting their prevalence in practice. In the interests of further digitalization, the draft bill also provides for electronic-only arbitral awards, although most parties will still want a paper copy. The draft also introduces a new remedy for cases of serious irregularity leading to an arbitral award.

XI. A welcome update to a successful system

Overall, the draft bill contains largely minor adjustments rather than fundamental redrafting. This is in line with German arbitration law's strong track record, which has proved fit for purpose despite not having been updated for several decades. The greatest individual change is the increased integration with the new Commercial Courts that were established in April 2025. Together, these provide for several attractive options to resolve disputes in Germany and demonstrate an increased awareness by the legislator that dispute resolution is a service that has to appeal to its users. Overall, the draft bill is therefore unlikely to affect Germany's position as an

arbitral seat in a major way; instead, it makes the updates necessary to ensure that Germany remains an attractive location for alternative dispute resolution.

This client information contains only a non-binding overview of the subject matter addressed herein. It does not replace legal advice. The following persons are available as contact persons for this client information and for your consultation:

Prof. Dr. Ben Steinbrück, MJur (Oxford)
Rechtsanwalt | Partner
Litigation & Arbitration | Corporate Law | Commercial

T +49 621 4257 219
E Ben.Steinbrueck@sza.de

Dr. Stefan Zeyher
Rechtsanwalt | Partner
M&A | Corporate Law | Commercial | Litigation & Arbitration

T +49 621 4257 331
E Stefan.Zeyher@sza.de

Dr. Justin Friedich Krahé, LL.B. (UCL)
Rechtsanwalt | Associate
Litigation & Arbitration

T +49 699769601 503
E Justin.Krahe@sza.de