

**EUROPEAN FEDERATION OF FOUNDATION CONTRACTORS**

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**Dispute resolution / Austria**

**Out of court dispute resolution in construction**

The extra-judicial dispute resolution relies on the voluntary action of the parties involved, because there is no legal regulation. The following are possibilities for extra-judicial dispute resolution:

* Direct negotiations between the parties involved in the dispute
* Negotiations under supervision of a third, neutral party, to reach an agreed solution (mediation)
* Negotiations, where an arbitrator is presenting a draft dispute settlement

**Arbitration procedure**

Parties to the contract have the possibility to submit themselves, in the case of a dispute, to a settlement by arbitration, upon signing the contract. This means:

In the case of disagreement between the parties, the constitution of the court of arbitration will be set up by an impartial body. If there is no arbitration contract this body is the court of competent jurisdiction.

The court of arbitration is, in accordance with the rules, not bound to the applications of the parties. A binding can be agreed.

The arbitration procedure opens the way to a faster and, compared to court ruling if you make use of reasonable referee fees, a more cost advantageous solution.

The decision of the court of arbitration has the same effect as a final judgement (i.e. it is not subject to appeal)

Referees may only be appointed with the agreement of both parties. Those qualified as arbitrators must have the capacity to sue and negotiate - active professional judges are excluded. Arbitrators with specific knowledge may be assigned.

The procedure is non-public, unless agreed otherwise in the arbitration contract.

The agreement of the arbitration and negotiation rules of the International Court of Arbitration of the Chamber of Commerce Vienna leads to application of Austrian law.

Differences between Juridical Resolution and Arbitration

Procedure is focused on the Code of Civil Procedure

All parties have to produce evidence to support their case

Legal proceedings can involve three instances (Regional court, Higher Regional Court, OGH - Federal Court of Justice) and can be very expensive and extremely time consuming

In most cases the court does not have the specific knowledge and relies on the opinion of experts during the trial

The procedure is public