

GERMAN ARBITRATION DIGEST

GAD No.:	GAD 2025, 3	Decision date:	26 February 2024	Res judicata: No, appeal pending before the BGH (I ZB 22/24)
Court:	Higher Regional Court of Frankfurt (OLG Frankfurt)			
Case No.:	26 SchH 7/23 Case No.(s) other instances: I ZB 22/24 (German Federal Court of Justice, BGH)			
Keywords:	Arbitration agreement, partial invalidity, partnership disputes, severability clause			
Key legal provisions:	Section 1032(2) German Code of Civil Procedure (ZPO) Section 1062(1) No 2 German Code of Civil Procedure (ZPO) Section 139 German Civil Code (BGB)			

OLG Frankfurt confirms enforceability of partially invalid arbitration agreements in partnership disputes

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On 26 February 2024, the Higher Regional Court of Frankfurt (OLG Frankfurt) ruled that the partial invalidity of an arbitration agreement does not render the entire agreement unenforceable. The court emphasized the principle of severability and clarified that an arbitration agreement remains enforceable for disputes that are arbitrable, even if certain claims fall outside its scope.

Facts

The dispute arose between a law firm organized as a partnership with limited professional liability and one of its former partners, who had been excluded by a partner resolution. The partnership agreement included an arbitration agreement that broadly covered "all disputes arising out of or in connection with the partnership agreement."

The applicant sought a declaration from the OLG Frankfurt confirming the validity of the arbitration agreement in relation to disputes concerning defective resolutions. The applicant contended that the arbitration agreement was severable and enforceable for disputes permissible under the law. The excluded partner, on the other hand, challenged the applicability of the arbitration agreement to disputes concerning defective resolutions, a category of disputes deemed non-arbitrable under German law. The respondent argued that the arbitration agreement should be declared entirely invalid, citing the principle under Section 139 of the German Civil Code (BGB) constituting the invalidity of a contract if one part of it is unenforceable and the remainder cannot reasonably be upheld.

Both parties also raised arguments regarding procedural implications, particularly regarding the potential fragmentation of jurisdiction between state courts and arbitral tribunals. This issue arose because some disputes, such as claims based on defective resolutions, must be adjudicated before state courts, while others could be resolved through arbitration.

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Key findings

The OLG Frankfurt emphasised that the severability clause within the arbitration agreement demonstrated the parties' intent to arbitrate disputes to the maximum extent. The court clarified that the partial invalidity of an arbitration agreement does not undermine the enforceability of the remaining provisions, ensuring the agreement remains effective where legally permissible. This ruling reinforces the principle that arbitration agreements, even when partially impaired, retain their operative power unless explicitly nullified.

The court also addressed the applicant's concern about the fragmentation of jurisdiction. It held that while fragmentation might create procedural inefficiencies, this issue does not justify the full invalidation of an arbitration agreement. Instead, the statutory framework accommodates such fragmentation, enabling parallel proceedings in state courts and arbitral tribunals, if necessary, thereby upholding the enforceability of the arbitration agreement for disputes that fall within their legal scope.

Comment

The decision of the OLG Frankfurt the principle of severability as a key component of arbitration agreements under German law. The court clarified that the partial invalidity of an arbitration agreement concerning disputes not subject to arbitration does not undermine the enforceability of the remaining parts of the agreement. This interpretation ensures that the parties' intent to arbitrate disputes remains effective to the greatest extent permissible under the law.

By emphasizing the significance of a severability clause, the court demonstrated its commitment to preserving arbitration as a viable mechanism for dispute resolution. This ruling is particularly relevant for complex partnership agreements where statutory limitations or procedural requirements, especially those safeguarding the right to be heard, may influence the enforceability of arbitration agreements. The court's approach reflects Germany's arbitration-friendly jurisprudence and provides legal practitioners with a clear framework for addressing issues of partial invalidity.

The decision also serves as a reminder of the importance of precise drafting in arbitration agreements. The inclusion of a severability clause can safeguard the enforceability of arbitration agreements, allowing disputes falling within their scope to be resolved through arbitration while respecting procedural safeguards. This case thereby contributes to the ongoing development of arbitration law in Germany and affirms the judiciary's supportive stance toward arbitration as a dispute resolution mechanism.