

GERMAN ARBITRATION DIGEST

GAD No.:	GAD 2025, 7	Decision date:	10 October 2024	Res judicata: Yes
Court:	German Federal Court of Justice (Bundesgerichtshof, BGH)			
Case No. :	I ZB 22/24 Case No. other instances: 26 SchH 7/23 (Higher Regional Court of Frankfurt am Main, OLG Frankfurt)			
Keywords:	Partnership company, partial invalidity of arbitration agreement, arbitrability, disputes over defects in corporate resolutions, declaratory action, determination of admissibility of arbitral proceedings, legitimate interest in legal protection, effective legal protection			
Key legal provisions:	Section 1032(2) German Code of Civil Procedure (ZPO) Articles 2(1), 20(3) German Constitution (GG) Section 307 German Code of Civil Procedure (ZPO)			

German Federal Court of Justice confirms legitimate interest in declaring partial invalidity of arbitration agreement despite opponent's acknowledgment

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In a recent decision, the German Federal Court of Justice (BGH) held that a partnership company has a legitimate interest in obtaining a declaration that an arbitration proceeding initiated by one of its partners regarding disputes over (potential) defects in corporate resolutions ("Beschlussmängelstreitigkeiten") is inadmissible, as long as the respective arbitration proceeding is still pending. This interest persists even if the partner who initiated the arbitration has already acknowledged the partial invalidity of the arbitration agreement and has also filed an application with the competent state court to declare the arbitration proceedings inadmissible.

Facts

The applicant is a limited liability partnership. The three partners entered into a partnership agreement in 2016. At the same time, they concluded an arbitration agreement. When they entered into the agreements, all three partners were aware that the arbitrability of disputes over (potential) defects in corporate resolutions was in dispute and, to the extent permissible, subject to strict requirements (see regarding corporations BGH, 6 April 2009, II ZR 255/08, "Arbitrability II", SchiedsVZ 2009, 233; followed by BGH, 6 April 2017, I ZB 23/16, "Arbitrability III", SchiedsVZ 2017, 194 regarding partnerships).

Various disputes among the partners arose, and in July 2023, two of the partners voted to exclude the third partner, the respondent, from the partnership with immediate effect. The respondent initiated legal proceedings before both state courts and an arbitral tribunal, seeking to invalidate the exclusion decision and also pursuing other claims. The applicant applied to the Higher Regional Court of Frankfurt am Main (OLG Frankfurt) to seek a judicial declaration pursuant to Section 1032(2) German Code of Civil Procedure (ZPO) that, inter alia, the arbitration agreement was invalid in its entirety and that arbitration proceedings were therefore inadmissible. The respondent acknowledged the applicant's claim insofar as it concerned the inadmissibility of arbitration proceedings over (potential) defects in corporate resolutions but disagreed with the applicant's view that the arbitration agreement was invalid in its entirety. The respondent even filed an

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own application with the OLG Frankfurt, requesting that the arbitration agreement be declared invalid insofar as it aims to cover disputes over defects in corporate resolutions.

The OLG Frankfurt dismissed the applicant's request. It found that the applicant had no legitimate interest ("Rechtsschutzbedürfnis") for a declaration of inadmissibility of arbitration proceedings regarding defects in corporate resolutions because the respondent had insofar acknowledged the invalidity of the arbitration agreement. The court applied the ratio of Section 307 ZPO, according to which a party that acknowledges a claim asserted against it is to be sentenced in accordance with this acknowledgment.

The OLG Frankfurt further found, however, that the partial invalidity of the arbitration agreement did not affect its overall validity. Based on a prior decision of the BGH (see BGH, 23 September 2021, I ZB 13/21, "Arbitrability IV", SchiedsVZ 2022, 86), it held that an arbitration agreement covering all disputes arising from the corporate relationship, in cases of doubt, indicates the parties' intent to preserve the agreement in the event of partial invalidity, rather than abandoning it entirely. The OLG Frankfurt did not find any clear evidence that the partners, if aware of the partial invalidity of the arbitration agreement, would have preferred to submit all their disputes to one and the same competent state court.

Key findings

The BGH held that, contrary to the OLG Frankfurt's findings, the applicant retained a legitimate interest in seeking a formal judicial declaration regarding the partial invalidity of the arbitration agreement. The respondent's acknowledgment did not bind the arbitral tribunal, which retained autonomy in determining its jurisdiction.

The BGH emphasized the right to effective legal protection, which is rooted in Articles 2(1), 20(3) German Constitution (GG) and encompasses the right to a binding judicial decision in cases of uncertainty. The applicant could only effectively prevent the arbitral tribunal from proceeding with its case and ultimately issuing an arbitral award by presenting a judicial decision under Section 1032(2) ZPO. Without such a declaration, the arbitration proceedings could continue and potentially lead to a binding arbitral award.

Beyond that, the BGH rejected the applicant's complaint as inadmissible. Although it did not address the OLG Frankfurt's reasoning, the BGH thereby implicitly confirmed the OLG Frankfurt's view that the partial invalidity of the arbitration agreement did not render it invalid in its entirety. This underlines the parties' presumed intent to maintain arbitration to the extent legally permissible, even though this may lead to divided jurisdiction and procedural complexity (see above, "Arbitrability IV").

Comment

The BGH's decision underscores the high value of effective legal protection in the context of Section 1032(2) ZPO. By reinforcing the strict standard for denying a legitimate interest, the BGH affirms the right to seek a formal declaration of partial invalidity of an arbitration agreement. At the same time, the BGH highlights that declarations made by a party in state court proceedings do not affect the arbitration, and the arbitral tribunal remains free in determining its own jurisdiction.