

AGREEMENT BETWEEN
THE AUSTRIAN FEDERAL GOVERNMENT
AND
THE PERMANENT COURT OF ARBITRATION
ON THE LEGAL STATUS OF
THE PERMANENT COURT OF ARBITRATION IN AUSTRIA

Preamble

The Austrian Federal Government (hereinafter referred to as the “Government”) and the Permanent Court of Arbitration (hereinafter referred to as the “PCA”)

CONSIDERING that

International arbitration is a preferred means for the peaceful resolution of international disputes;

The PCA was established by the 1899 Convention for the Pacific Settlement of International Disputes (the “1899 Convention”) at the first Hague Peace Conference, which was convened “with the object of seeking the most objective means of ensuring to all peoples the benefits of a real and lasting peace”;

The 1899 Convention was revised by the 1907 Convention for the Pacific Settlement of International Disputes (the “1907 Convention”), adopted at the second Hague Peace Conference;

In the 1899 and 1907 Conventions, the Contracting Parties undertook to maintain the PCA accessible at all times, as a global institution for the settlement of international disputes through third-party intervention;

To further the objectives of the 1899 and 1907 Conventions, it is material that Member States in all regions of the world enjoy access to international dispute resolution services provided by the PCA;

The Republic of Austria is a Contracting Party to the 1899 and 1907 Conventions, and the Secretary-General of the PCA has invited the Republic of Austria to become a host country for arbitration, mediation, conciliation, and fact-finding commissions of inquiry administered by the PCA and of an office of the PCA in Vienna; and

The Government has accepted the invitation of the Secretary-General of the PCA;

HAVE AGREED as follows:

Article 1 Definitions

For the purpose of this Agreement:

- (a) “Authorities” means such federal, regional, municipal or other authorities in the Republic of Austria as may be appropriate in the context, and in accordance with the laws and customs applicable in the Republic of Austria;
- (b) “Head of the Office” means the head of the office of the PCA in Vienna;
- (c) “Officials of the PCA” means all members of the staff of the PCA, except those who are both locally recruited and assigned to hourly rates;
- (d) “PCA Adjudicator” means any arbitrator, mediator, conciliator, or member of a commission of inquiry taking part in a hearing, meeting, or other activity in relation to PCA Proceedings;
- (e) “PCA Proceedings” means any dispute resolution proceedings administered by or under the auspices of the PCA, whether or not pursuant to the 1899 or 1907 Convention or any of the PCA’s optional rules of procedure;
- (f) “Participant in Proceedings” means any person (whether natural or legal person) taking part in a hearing, meeting, or other activity in relation to PCA Proceedings, including but not limited to a witness, expert, counsel, party, agent or other party representative, interpreter, translator, court reporter or any person appointed to assist PCA Adjudicators such as tribunal assistant, secretary or registrar.

Article 2 Legal Capacity

The Government recognizes the legal capacity of the PCA, in particular its capacity to contract, to acquire and dispose of immovable and movable property, to institute and respond to legal proceedings and to take such other action as may be necessary or useful for its purpose and activities.

Article 3 Premises

- (1) The premises of the office of the PCA in Vienna shall comprise the land, installations and offices that the PCA occupies for its activities. Its area shall be defined by common understanding between the Government and the PCA.
- (2) Any further office and conference premises in or outside of Vienna used with the agreement of the Government for meetings convened by the PCA shall be deemed temporarily to form part of the premises.
- (3) The Authorities shall exercise due diligence to ensure that the security of the PCA office is not impaired by any person or group of persons attempting unauthorised entry.

Article 4
Inviolability of the premises

- (1) The premises of the PCA shall be inviolable. No officer or official of the Republic of Austria, or other person exercising any public authority within the Republic of Austria, may enter the premises to perform any duties except with the consent of, and under conditions approved by, the Head of the Office. However, in the event of fire or other such emergency, such consent shall be deemed to have been given if immediate protective measures are required.
- (2) Except as otherwise provided in this Agreement and subject to the power of the PCA to make regulations, the laws and regulations of the Republic of Austria shall apply within the premises.
- (3) Instruments issued by Authorities may be served at the premises.

Article 5
Immunity from jurisdiction and other actions

- (1) The PCA shall enjoy immunity from jurisdiction and enforcement, except:
 - (a) to the extent that the PCA shall have expressly waived such immunity in a particular case;
 - (b) in the case of civil action brought by a third party for damage resulting from an accident caused by a motor vehicle belonging to, or operated on behalf of, the PCA, or in respect of any infringement of laws and regulations governing the keeping, operation and use of motor vehicles;
 - (c) in the case of attachment, pursuant to a decision by the judicial authorities, of the salary, emoluments or indemnities owed by the PCA to an employee of the PCA, unless the PCA informs the Authorities within 14 days of the date on which it is notified of said decision by the Authorities that it does not waive its immunity.
- (2) Without prejudice to paragraph 1, the property and assets of the PCA, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.
- (3) Unless an alternative dispute settlement mechanism has been agreed, any dispute between the PCA and a private party that might otherwise be brought before Austrian courts shall be settled by final and binding arbitration in accordance with the PCA Optional Rules for Arbitration Involving International Organizations and Private Parties, as in force on the date of signature of this Agreement. The number of arbitrators shall be one. The Vienna International Arbitral Centre of the Austrian Federal Economic Chamber shall act as appointing authority. The tribunal shall decide a dispute in accordance with such rules of law as may be agreed by the parties. In the absence of such agreement, the tribunal shall apply such rules of international law and general principles of law as may be applicable. Employment disputes shall not be within the competence of the tribunal. Employment disputes between the PCA and its employees shall be settled by an effective dispute resolution mechanism that protects the rights

of the employees in accordance with the European Convention on Human Rights, pursuant to the PCA's internal regulations.

Article 6 **Inviolability of archives**

The archives of the PCA, and in general all documents belonging to it or held by it, shall be inviolable, wherever located.

Article 7 **Communications**

(1) The Government shall ensure that the PCA is able to send and receive communications in connection with its official activities without censorship or other interference.

(2) The PCA shall enjoy in the Republic of Austria, for its official communications and the transfer of all its documents, treatment not less advantageous to the PCA than the most favourable treatment accorded by the Republic of Austria to any international organization, in the matter of priorities, rates and surcharges on all forms of communication.

(3) The PCA shall have the right to use codes and to dispatch and receive correspondence by courier or in sealed bags, which shall have the same immunities and privileges as diplomatic couriers and bags.

Article 8 **Freedom from taxation and customs duties**

The PCA, its assets, income and other property shall be exempt:

- (a) from all direct taxes; it is understood, however, that the PCA shall not claim exemption from taxes which are in fact no more than charges for public utility services;
- (b) from all indirect taxes included in the prices of goods or services supplied to the PCA; these taxes shall be refunded to the PCA insofar as Austrian law makes provision to that effect for foreign diplomatic missions;
- (c) from customs duties and other charges provided these are not simply charges for public utility services and prohibitions and restrictions on imports and exports in respect of articles, including motor vehicles and spare parts thereof, imported or exported by the PCA for its official use; it is understood, however, that articles imported under such exemption shall not be ceded or transferred by the PCA to third parties in the Republic of Austria within two years of their importation or acquisition;
- (d) from all customs duties and quantitative restrictions on imports and exports in respect of its publications;
- (e) from all taxes, recording charges and court fees in respect of all transactions to which the PCA is a party and all documents recording such transactions;

- (f) from the obligation to pay employer's contributions to the Family Burden Equalization Fund or an instrument with equivalent objectives.

Article 9 Financial facilities

Without being restricted by financial controls, regulations or moratoria of any kind:

- (a) the PCA may hold funds, currency of any kind, or other assets and operate accounts in any currency;
- (b) the PCA shall be free to transfer its funds, currency, and assets to, from, or within the Republic of Austria and to convert any currency held by it into any other currency.

Article 10 Social security

- (1) The PCA and Officials of the PCA who are members of the staff of the office of the PCA in Vienna shall be exempt from all compulsory contributions to any social security scheme in the Republic of Austria.
- (2) Officials of the PCA under paragraph 1 shall have the right to participate in any branch of the social insurance (health, accident and pension insurance) as well as in the unemployment insurance. This insurance shall have the same legal effect as a compulsory insurance.
- (3) Officials of the PCA under paragraph 1 may avail themselves of the right under paragraph 2 by submitting a written declaration within three months after entry into force of this Agreement or within three months after taking up their assignment with the PCA.
- (4) Insurance under paragraph 2 in the selected branch shall take effect with the date of taking up the assignment with the PCA, provided the declaration is submitted within seven business days after entry into force of this Agreement or after the date of taking up the assignment, otherwise on the day following the day of submission of the declaration.
- (5) Insurance shall cease on the date on which the assignment with the PCA terminates.
- (6) Throughout the duration of the insurance, Officials of the PCA shall be responsible for the payment of the entire contributions to Österreichische Gesundheitskasse.
- (7) The declarations required to be made by an Official of the PCA under paragraph 3 shall be transmitted by the PCA on behalf of the Official of the PCA to Österreichische Gesundheitskasse. Upon request, the PCA shall provide Österreichische Gesundheitskasse with the information necessary for the implementation of the insurance.

Article 11
Transit and residence

(1) The Government shall take all necessary measures in accordance with Austrian law to facilitate the entry into, and sojourn in, the Republic of Austria of the persons listed below, shall allow them to leave the Republic of Austria without interference and shall ensure that they can travel unimpeded to or from the premises, affording them any necessary protection when so travelling:

- (a) Officials of the PCA and members of their family forming part of their household;
- (b) PCA Adjudicators in proceedings that take place in the Republic of Austria;
- (c) Participants in Proceedings that take place in the Republic of Austria.

(2) Visas which may be required by persons referred to in paragraph 1 shall be granted free of charge and as promptly as possible, in accordance with Austrian law.

(3) No activity performed by any person referred to in paragraph 1 in their official capacity with respect to the PCA shall constitute a reason for preventing their entry into, or departure from, the Republic of Austria.

(4) The Republic of Austria shall be entitled to require reasonable evidence to establish that persons claiming the rights granted by this Article fall within the categories described in paragraph 1, and to require compliance in a reasonable manner with quarantine and health regulations.

Article 12
Officials of the PCA

(1) Officials of the PCA who are members of the staff of the office of the PCA in Vienna shall enjoy the following privileges and immunities:

- (a) in respect of words spoken or written and acts done by them in the course of the discharge of their duties, immunity from legal process of every kind. This immunity from legal process shall continue to be accorded, even after the person has ceased to exercise his or her functions in connection with the PCA;
- (b) immunity from the seizure of their personal and official baggage;
- (c) inviolability of all official documents, data and other material;
- (d) exemption from taxation in respect of salaries and emoluments including allowances, remunerations, indemnities and pensions paid to them by the PCA in connection with their service with it. This exemption shall extend also to assistance given to the families of Officials of the PCA;
- (e) exemption from any form of taxation on income derived by them and by members of their families forming part of their household from sources outside the Republic of Austria;

- (f) exemption from inheritance and gift taxes, except with respect to immovable property located in the Republic of Austria, insofar as such arise solely from the fact that Officials of the PCA or members of their families forming part of their household reside or maintain their usual domicile in the Republic of Austria;
 - (g) exemption from immigration restrictions and from registration formalities for themselves and members of their families forming part of their household;
 - (h) freedom to acquire or maintain within the Republic of Austria foreign securities, foreign currency accounts, other movable property and, under the same conditions as Austrian nationals, immovable property;
 - (i) the right to import for personal use, free of duty and other charges, provided these are not simply charges for public utility services, and exempt from economic import prohibitions and restrictions on imports and exports:
 - (i) their furniture and effects in one or more separate consignments when taking up their assignment, and necessary additions to the same within six months thereafter;
 - (ii) one motor vehicle every four years;
 - (j) the same protection and repatriation facilities with respect to themselves and members of their families forming part of their household as are accorded in time of international crises to members, having comparable rank, of the staffs of chiefs of diplomatic missions accredited to the Republic of Austria.
- (2) Officials of the PCA and the members of their families living in the same household to whom this agreement applies shall not be entitled to payments out of the Family Burden Equalization Fund or an instrument of the Republic of Austria with equivalent objectives. This provision shall not apply to Austrian nationals, to persons of other nationality granted equivalent status by European Union legislation, or to stateless persons with permanent residence in the Republic of Austria.
- (3) Other Officials of the PCA shall enjoy with regard to the discharge of their duties the privileges and immunities specified under Article 15 paragraphs 1, 2 and 5.

Article 13 **Head of the Office**

In addition to the privileges and immunities specified in Article 12, the Head of the Office as well as, during his or her absence from duty, the Official of the PCA acting on behalf of the Head of the Office, shall be accorded the privileges and immunities, exemptions and facilities accorded to heads of diplomatic missions, provided they are not Austrian nationals or permanent residents of the Republic of Austria.

Article 14
Secretary-General of the PCA

For the duration of his or her official business, the Secretary-General of the PCA shall be accorded the privileges and immunities, exemptions and facilities accorded to heads of diplomatic missions, provided they are not Austrian nationals or permanent residents of the Republic of Austria.

Article 15
PCA Adjudicators and Participants in Proceedings

(1) PCA Adjudicators and Participants in Proceedings shall enjoy immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in the course of their participation in PCA Proceedings. This immunity shall continue in perpetuity.

(2) Furthermore, PCA Adjudicators and Participants in Proceedings shall enjoy the following privileges and immunities if the proceedings take place in the Republic of Austria:

- (a) immunity from personal arrest or detention;
- (b) immunity from the seizure of their personal and official baggage;
- (c) inviolability of all official documents, data and other material;
- (d) the exchange facilities necessary for the transfer of their emoluments and expenses;
- (e) for purposes of their communications in relation to PCA Proceedings, the right to receive and send papers and documents in whatever form by courier or in sealed bags;
- (f) exemption from immigration restrictions or alien registration when they travel for purposes of their participation in PCA Proceedings.

(3) With regard to proceedings that take place in the Republic of Austria, the PCA shall provide PCA Adjudicators and Participants in Proceedings with a document certifying that their participation is required by the PCA and specifying a time period during which such participation is necessary. This document shall be withdrawn prior to its expiry if their appearance in PCA Proceedings or their presence within the Republic of Austria is no longer required.

(4) Except where specified otherwise in a document under paragraph (3), the privileges and immunities referred to in paragraphs (1) and (2) shall cease to apply after fifteen consecutive days following the date on which the presence of the PCA Adjudicator or Participant in Proceedings concerned is no longer required by the PCA, provided he or she had an opportunity to leave the Republic of Austria during that period.

(5) Where the incidence of any form of taxation depends upon residence, periods during which PCA Adjudicators and Participants in Proceedings may be present in the Republic of Austria for the discharge of their duties shall not be considered as periods of residence. In particular, PCA Adjudicators and Participants in Proceedings shall be exempt from taxation on their emoluments and expenses paid by the PCA during such periods of duty.

Article 16
Notification and identity cards

(1) The PCA shall communicate to the Authorities a list of the Officials of the PCA who are members of the staff of the office of the PCA in Vienna and shall revise such list from time to time as may be necessary.

(2) The Government shall issue to such Officials of the PCA and members of their families forming part of their household an identity card bearing the photograph of the holder in accordance with Austrian law. This card shall serve to identify the holder vis-à-vis the Authorities.

Article 17
Austrian nationals and permanent residents of the Republic of Austria

Austrian nationals and persons who are permanently resident in the Republic of Austria shall enjoy only the privileges and immunities specified in Article 10, Article 12 (1) (a), (b), (c), (d) and Article 15 (1), (2) (a), (b), (c) and (e).

Article 18
Purpose of privileges and immunities

(1) The privileges and immunities provided for in this Agreement are not designed to give personal advantages to the persons to whom they are accorded. They are granted solely to ensure that the PCA is able to perform its official activities unimpeded at all times and that the persons to whom they are accorded have complete independence. The PCA engages to encourage its officials to comply with their legal obligations.

(2) The PCA shall waive immunity where it considers that such immunity would impede the normal course of justice and that it can be waived without prejudicing the interests of the PCA.

Article 19
Settlement of Disputes

(1) Any dispute among the Parties to the present Agreement that is not settled by negotiation shall be settled by final and binding arbitration in accordance with the PCA Optional Rules for Arbitration Involving International Organizations and States as in force on the date of signature of this Agreement. The number of arbitrators shall be one. The Vienna International Arbitral Centre of the Austrian Federal Economic Chamber shall be the appointing authority. Each Party may however request the Vienna International Arbitral Centre of the Austrian Federal Economic Chamber to immediately appoint such an arbitrator to examine a request for provisional measures to protect its rights under the present Agreement. The place of arbitration shall be Vienna and the language to be used in the proceedings of the tribunal shall be English.

(2) In any such arbitration proceedings, the registry, archive, and secretariat services of the PCA, referred to in Article 1, paragraph 3, and Article 25, paragraph 3, of the Rules, will not

be available, and the PCA shall not be empowered to request, hold, or disburse deposits of costs as provided for in Article 41, paragraph 1, of the Rules.

Article 20
Most-favoured organization

If and to the extent that the Government shall enter into any agreement with a comparable intergovernmental organization having its seat in the Republic of Austria containing terms or conditions more favourable to that organization than similar terms or conditions of this Agreement, the Government shall extend such more favourable terms or conditions to the PCA, by means of a supplemental agreement.

Article 21
Entry into force and duration of the Agreement

- (1) This Agreement shall be concluded for an indefinite period. It shall enter into force on the first day of the third month after the Government and the PCA have informed each other of the completion of the procedures required, for each of them, to be bound by it.
- (2) The provisions of the present Agreement shall take effect as of 1 January 2023.
- (3) This Agreement may be terminated by either Party by giving notice to the other. It shall cease to be in force one year after the date of receipt of such notice.
- (4) With the entry into force of this Agreement, the Regulation of the Federal Government on the Status of the Permanent Court of Arbitration in Austria, Federal Law Gazette II No. 273/2014, shall cease to be in force.

Done in Vienna, on 22 December 2022 in two copies, in the German and English languages, each text being equally authentic.

**FOR THE AUSTRIAN FEDERAL
GOVERNMENT**

Peter Launsky –Tieffenthal, ad ref.

**FOR THE PERMANENT COURT
OF ARBITRATION**

Marcin Czepelak