

GERMAN ARBITRATION DIGEST

GAD No.:	GAD 2025, 29	Decision date:	25 July 2025	Res judicata: No complaint pending – BGH, I ZB 72/25
Court:	Highest Regional Court of Bavaria (BayObLG)			
Case No. :	101 SchH 48/25 e Case No.(s) other instances: I ZB 72/25 (German Federal Court of Justice, BGH)			
Keywords:	Domestic arbitral proceedings, court proceedings to determine admissibility or inadmissibility of arbitral proceedings, arbitrability, arbitration clause in partnership agreement, assignment of arbitration clause, scope of arbitration clause			
Key legal provisions:	Sections 1030, 1031, 1032 German Code of Civil Procedure (ZPO)			

Highest Regional Court of Bavaria affirms validity and arbitrability of broad arbitration clause in medical partnership dispute

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The Highest Regional Court of Bavaria (BayObLG) dismissed the applicant's request to declare arbitration proceedings inadmissible that were brought against the applicant by her former medical partnership and its partners. The court dismissed the application as it found the arbitration agreement to be valid and sufficiently broad.

Facts

The case before BayObLG concerned an application in accordance with Section 1032(2) German Code of Civil Procedure (ZPO) by a former partner of a medical partnership ("Kooperations- und Organisationsgemeinschaft niedergelassener Ärzte") to declare inadmissible a pending arbitration that was initiated against the applicant by her former partnership and its partners.

The partnership agreement contained an arbitration clause for ad hoc arbitration proceedings under the rules of the ZPO for "all differences and disputes in connection with this contractual relationship" which may also involve "the validity of the contracts".

The applicant was working initially for the partnership as an employed doctor. She joined the partnership when she acquired half of the shares from a retiring partner (the other half of the shares went to another newly joining partner). The applicant agreed to a purchase and assignment agreement regarding half of the retiring partner's shares as well as a contract to enter into the partnership.

Every partner in the partnership must hold an individual license to act as a self-employed medical practitioner. The partnership therefore successfully applied with the Bavarian Medical Licensing Board ("Zulassungsausschuss Ärzte Bayern") to amend the applicant's medical license accordingly. The Board also recorded the applicant's entry into the partnership.

The applicant's refusal to admit new partners to the partnership when an older partner wished to retire led to conflicts with the other partners. The other partners therefore issued a resolution to exclude the applicant

English summaries of relevant German court decisions on Arbitration Law

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from the partnership. The applicant did not dispute her exclusion from the partnership before the Bavarian Medical Licensing Board, which therefore recorded her removal from the partnership.

However, the applicant did not cooperate to document her removal from the partnership in the local partnership register. She also did not submit an application to the Bavarian Medical Licensing Board to release her medical license and initiate a proceeding that would allow for a re-allocation of her medical license ("Nachbesetzungsverfahren"), possibly to a new partner in the partnership. The partnership and the partners therefore commenced an arbitration against the applicant based on the arbitration clause in the partnership agreement to arbitrate these two disputes.

Key findings

The BayObLG dismissed the application to declare the arbitration proceedings inadmissible.

Under Section 1032(2) ZPO, the state court determines if a valid and enforceable arbitration agreement exists and whether the dispute is covered by it. The application was admissible because the arbitral tribunal had not been fully constituted when it was filed because the arbitral tribunal's president had not yet been appointed.

But the BayObLG dismissed the application on the merits. The court confirmed the formal validity of the arbitration agreement. Generally, joining a partnership requires all partners' consent and the arbitration agreement must therefore fulfill the formal requirements in Section 1031(1)-(3) ZPO. However, the BayObLG noted that if a partner joins through an assignment agreement, the arbitration agreement in the written partnership contract is automatically transferred to the new partner without needing a separate arbitration agreement in any specific form.

The BayObLG further ruled that the arbitration agreement was not invalid. The court found that the strict requirements for a valid arbitration agreement for shareholder (partner) resolution disputes ("Beschlussmängelstreitigkeiten") do not apply in the present case. The court explained that under the partnership agreement, partner resolution claims need to be brought against all other partners instead of the partnership. In that scenario, since all partners are defendants in the arbitration, there is no risk that partners are bound by an arbitral award against the partnership without a right to participate in the proceedings.

The court found that both disputes are covered by the arbitration agreement, noting its broad language covers all claims under the partnership agreement. The BayObLG further clarified that the agreement applies to disputes with current and also former partners, as well as the partnership itself. This broad interpretation aligns with the parties' intent to resolve all internal disputes through arbitration.

Finally, the BayObLG held that both disputes are arbitrable under Section 1030(1) ZPO. This provision states that all claims involving an economic interest are arbitrable. It extends the scope of arbitrability to include claims that can be settled by the parties involved, meaning that only claims for which the state has retained a "decision monopoly" ("Entscheidungsmonopol") are not arbitrable. The court determined that the (potential contractual) obligation to register a change in the partnership is a claim involving an economic interest due to its economic impact on the applicant. Regarding the applicant's duty to release her medical license, the court did not decide if this constitutes a claim involving an economic interest, but noted that the law does not grant exclusive jurisdiction to state courts over such matters.

Comment

The BayObLG's decision confirms the broad construction of broadly worded arbitration agreements in partnership agreements and their validity even if the disputed obligations in the end concern administrative actions by a former partner (here before the partnership registry and the Bavarian Medical Licensing Board). The BayObLG applies the case law of the Federal Court of Justice (BGH) regarding the strict requirements for a valid arbitration agreement to cover shareholder resolution disputes (BGH, 23 September 2021, I ZB 13/21, SchiedsVZ 2022, 86 "Schiedsfähigkeit IV"). It is still an open development, however, which issues within a partnership are subject to these strict requirements imposed by the BGH.