

GERMAN ARBITRATION DIGEST

GAD No.:	GAD 2026, 11	Decision date:	12 March 2026	Res judicata: Yes
Court:	Highest Regional Court of Bavaria (Bayerisches Oberstes Landesgericht, BayObLG)			
Case No. :	101 SchH 122/25			
Keywords:	Concrete dispute requirement under Section 1032(2) ZPO; non-signatories bound by arbitration agreement; general partner; assignee			
Key legal provisions:	Section 1032(2) German Code of Civil Procedure (ZPO) Sections 126, 161(2) German Commercial Code (HGB)			

The Highest Regional Court of Bavaria refines the requirements for a request under Section 1032(2) ZPO and reinforces the binding effect of arbitration agreements

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On 12 March 2026, the Highest Regional Court of Bavaria (BayObLG) held that a request for declaration of the (in)admissibility of arbitration proceedings under Section 1032(2) does not require the commencement of arbitral proceedings where a concrete legal dispute is already in prospect and an arbitration agreement is alleged between the parties. On the merits, the court rejected the request and confirmed that an arbitration agreement concluded by a limited partnership ("Kommanditgesellschaft" or KG) binds the personally liable general partner under Sections 126, 161(2) German Commercial Code (HGB), and, in line with established case law, also binds an assignee.

Facts

The applicant was the general partner of a German limited partnership which concluded a contract with D-GmbH. The contract, which was subject to D-GmbH's standard terms, contained a DIS arbitration clause with Munich as the place of arbitration. D-GmbH assigned its claims to the respondent. In 2024, the respondent filed a request for arbitration against the KG and against a company whose name resembled the applicant's; the respondent had wrongly identified that company as the KG's general partner. The respondent later abandoned the intended substitution of that company with the applicant and continued the arbitration only against the KG. The arbitral tribunal was constituted on 25 May 2025. The applicant, still not a party to the arbitration, filed a request under Section 1032(2) ZPO on 18 August 2025 to prevent arbitration against itself.

Key findings

The BayObLG deemed the request to determine the inadmissibility of the arbitration proceedings admissible under Section 1032(2) ZPO. The central question was the legitimate interest ("Rechtsschutzbedürfnis") of the applicant. The German Federal Court of Justice (BGH) has left open how far in advance of a concrete arbitration a request may be filed (BGH, 27 July 2023, I ZB 74/22, paras. 48 and 49).

The BayObLG required a concrete legal dispute in prospect. The court held that this was met here. The respondent had intended to bring the applicant before the arbitral tribunal; the mistaken identification of a

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different company with a similar name as general partner in the request for arbitration was evidence of this intent. The respondent's decision to continue the pending arbitration only against the KG did not deprive the applicant of a legitimate interest in a request under Section 1032(2) ZPO; only an unconditional and procedurally binding waiver by the respondent would have done so.

The application was ultimately unsuccessful on the merits. The court deemed the arbitration clause valid. An arbitration clause in standard terms in commercial dealings satisfies Sections 1029(2), 1031(1), (3) ZPO and does not constitute an unfair detriment under Sections 307 et seq. German Civil Code (BGB) (see BGH, 9 January 2025, I ZB 48/24, paras. 23 and 31). Under the doctrine of separability (Section 1040(1) sentence 2 ZPO), the validity of the underlying contract is irrelevant: alleged breaches of the German Legal Services Act (RDG) and the Tax Advisory Act (StBerG) do not affect the arbitration clause.

Regarding the personal scope of the arbitration agreement, the BayObLG held that neither party to the proceedings was a signatory to the arbitration clause, which D-GmbH and the KG had concluded.

The court decided that the applicant was bound as general partner. Sections 126, 161(2) HGB justify an exception to the rule that an arbitration clause binds only its parties: the general partner's personal liability mirrors the partnership's debt and extends to an obligation to arbitrate (see BGH, 12 November 1990, II ZR 249/89, NJW-RR 1991, 423). The BayObLG adhered to this line, recently confirmed by the BGH (see BGH, 9 March 2023, I ZB 33/22, para. 66), despite doctrinal criticism.

The court further held that the respondent was bound as assignee. Under established case law, the arbitration agreement passes with the assigned claim, without a separate accession in the form of Section 1031 ZPO (see BGH, 2 October 1997, III ZR 2/96, para. 9). The confidentiality clause in the underlying contract does not undermine this binding effect; the court noted that arbitral proceedings are not public.

Comment

The requisite degree of concreteness of a legal dispute in prospect has previously been the subject of case law. The Higher Regional Court of Frankfurt a. M. (OLG Frankfurt) held that no formal initiation of arbitration is required if a legally protected interest exists (OLG Frankfurt, 10 June 2014, 26 SchH 2/14, SchiedsVZ 2015, 47 paras. 21–22; though in that case a document already on file was treated as initiating arbitration). In contrast, the Higher Regional Court of Munich (OLG Munich) refused abstract clause review before constitution of the arbitral tribunal and required at least a concrete legal dispute in prospect; it expressly saw no conflict with the OLG Frankfurt, as the Frankfurt case rested on a concrete starting point (OLG Munich, 26 August 2015, 34 SchH 2/14, paras. 20 and 21). The BayObLG decision follows the OLG Munich line: The threshold lies below an already commenced arbitration but above pure abstract clause review; the state courts thereby retain meaningful control over the scope of arbitration agreements. A party allegedly drawn to baseless arbitration may invoke the provision with low procedural hurdles.

Further aspects of the decision confirm established case law. The arbitration agreement extends to the general partner via Sections 126, 161(2) HGB and to the assignee of the disputed claim; doctrinal criticism has not prevailed in the jurisprudence. In addition, the doctrine of separability is reaffirmed: alleged violations of the RDG or the StBerG affect only the underlying contract and do not impair an arbitration clause contained in standard terms.