



**CHAMBERS**  
Global Practice Guides

# International Arbitration

Poland – Law & Practice  
Contributed by  
Kubas Kos Gałkowski

2017

# POLAND

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## **LAW AND PRACTICE:**

**p.3**

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The 'Law & Practice' sections provide easily accessible information on navigating the legal system when conducting business in the jurisdiction. Leading lawyers explain local law and practice at key transactional stages and for crucial aspects of doing business.

# Law and Practice

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## CONTENTS

<b>1. General</b>	<b>p.4</b>	<b>7. Procedure</b>	<b>p.8</b>
1.1 Prevalence of Arbitration	p.4	7.1 Governing Rules	p.8
1.2 Trends	p.5	7.2 Procedural Steps	p.8
1.3 Key Industries	p.5	7.3 Legal Representatives	p.8
1.4 Arbitral Institutions	p.5	<b>8. Evidence</b>	<b>p.9</b>
<b>2. Governing Law</b>	<b>p.6</b>	8.1 Collection and Submission of Evidence	p.9
2.1 Governing Law	p.6	8.2 Rules of Evidence	p.9
2.2 Changes to National Law	p.6	8.3 Powers of Compulsion	p.9
<b>3. Arbitration Agreement</b>	<b>p.6</b>	<b>9. Confidentiality</b>	<b>p.9</b>
3.1 Enforceability	p.6	<b>10. The Award</b>	<b>p.9</b>
3.2 National Courts' Approach	p.6	10.1 Legal Requirements	p.9
3.3 Validity	p.6	10.2 Types of Remedies	p.9
<b>4. The Arbitral Tribunal</b>	<b>p.6</b>	10.3 Recovering Interest and Legal Costs	p.9
4.1 Limits on Selection	p.6	<b>11. Review of an Award</b>	<b>p.10</b>
4.2 Challenge and Removal of Arbitrators	p.7	11.1 Grounds for Appeal	p.10
4.3 Arbitrator Requirements	p.7	11.2 Excluding/Expanding the Scope of Appeal	p.10
<b>5. Jurisdiction</b>	<b>p.7</b>	11.3 Standard of Judicial Review	p.10
5.1 Matters Excluded from Arbitration	p.7	<b>12. Enforcement of an Award</b>	<b>p.10</b>
5.2 Challenges to Jurisdiction	p.7	12.1 New York Convention	p.10
5.3 Timing of Challenge	p.8	12.2 Enforcement Procedure	p.10
5.4 Standard of Judicial Review for Jurisdiction /Admissibility	p.8	12.3 Approach of the Courts	p.11
5.5 Breach of Arbitration Agreement	p.8		
5.6 Third Parties	p.8		
<b>6. Preliminary and Interim Relief</b>	<b>p.8</b>		
6.1 Types of Relief	p.8		
6.2 Role of Courts	p.8		
6.3 Security for Costs	p.8		

# POLAND LAW AND PRACTICE

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## 1. General

### 1.1 Prevalence of Arbitration

Generally speaking, in Poland arbitration is becoming an increasingly popular method of dispute resolution as evidenced by recent research in that field. According to a study prepared by the European Commission entitled 'Business-to-Business Alternative Dispute Resolution in the EU', based on 500 interviews with Polish businesspeople, 15% of them have already used arbitration, which gave Poland second place, tied with Italy, in the whole of the European Union.

According to the latest research from 2015, 75% of businesses which were already engaged in arbitration expressed their willingness to use this method of dispute resolution in the future.

As of 1 January 2016 significant changes have been introduced into Polish law regarding arbitration as well as post-arbitral proceedings (shortening of deadlines, a decrease in the number of court instances, the transfer of some cases to the court of appeals acting as the court of the first instance, aimed at speeding up and simplifying the post-arbitral pro-

ceedings, and – what follows – increasing the popularity and attractiveness of arbitration as a method for dispute resolution). The purpose of this amendment is also to increase the guarantee of the impartiality and independence of arbitrators. The new law on insolvency and restructuring also derogates the controversial provisions of the Polish insolvency statute which had prescribed that an arbitration agreement made by an insolvent company loses its legal power and ongoing arbitration proceedings should be discontinued.

Data from the International Chamber of Commerce in Paris ('ICC') sheds some light on the prevalence of international arbitration in Poland. According to that data, amongst the 160 countries in the world which use the services of the ICC Court of Arbitration, Poland ranked close to the top ten. Similarly, Warsaw is not far behind the top ten places of arbitration in the world.

### 1.2 Trends

As of 2016, the most important arbitration trend in Poland concerns the simplification of post-arbitral proceedings, ie proceedings before state courts after issuance of an arbitral award, for example related to enforcement of the award or setting it aside. The new law, in force since 1 January 2016, aims to limit the length of the post-arbitral proceedings in at least two ways; firstly, by shortening the period for filing a motion for the setting aside of an arbitral award issued in Poland, and secondly, by shortening proceedings for the setting aside of an arbitral award before state courts to only one court instance. In this way, Polish lawmakers intended to preserve the most important advantage of arbitration over the state court system – ie efficiency and speed of dispute resolution.

Arbitration institutions themselves are also working on the rationalisation of costs of arbitration proceedings in cases where they are a relatively moderate amount of the dispute, and special simplified arbitration procedures for non-complicated matters.

Furthermore, the European Parliament and Council adopted Directive 2013/11/UE of 21 May 2013 on alternative dispute resolution for consumer disputes. Poland is obliged to implement this Act into its legal system, as with every other EU directive. Consequently, the government filed a draft bill of an Act on Alternative Dispute Resolution for Consumer Disputes ("ADR Act") on 14 June 2016.

At the time of preparing the present study the legislative process was not yet concluded and the final version of provisions has not yet been agreed upon. However, we are of an opinion that the main features of the new ADR Act should nonetheless be presented to foreign entities doing business in Poland:

- Scope of the ADR Act – the Act will apply to disputes between consumers residing in the European Union and business entities which have their seat in Poland. It will apply to consumer disputes, ie proceedings which allow parties to be brought together with the aim of resolving a dispute, or to propose a solution or to resolve a dispute by imposing a solution. The Act does not apply eg to B2B disputes or disputes pertaining to health and education services.
- Reinforcement of the out-of-court dispute resolution – the ADR Act prescribes rules for establishing entities which are responsible for resolving consumer disputes. Their aim is to make out-of-court ADR disputes effective and quick (they should end, in principle, in a maximum of 90 days).
- Pro-consumer approach to consumer disputes – the ADR Act contains certain provisions of a pro-consumer nature. For example, both the ADR entities and business entities have certain information duties in favour of consumers. The proceedings should, in principle, be free or cheap and available to everyone.
- Obligatory ADR in certain fields of business – the ADR Act sets forth new rules on obligatory ADR in certain fields, eg energy, rail or telecommunication.
- Changes in arbitration law – the ADR Act also amends the Code of Civil Procedure's part on arbitration. It introduces a rule that an arbitration agreement concluded with a consumer can be concluded only after the dispute emerges and only in writing (just as in a labour dispute). The agreement also has to contain a declaration that the parties are aware of the consequences of arbitration, in particular the binding effect of an arbitral award.
- Furthermore, an arbitral award cannot deprive consumers of the rights granted on the basis of a binding provision of the applicable law. If it does, that award can be set aside or refused enforcement and recognition by the state court *ex officio*.

### 1.3 Key Industries

Arbitration remains the most popular method of dispute resolution in services (including financial services), construction, and sales disputes. This trend will very probably continue in the future.

### 1.4 Arbitral Institutions

The most popular domestic arbitration institution in Poland, the Court of Arbitration at the Polish Chamber of Commerce in Warsaw, typically accepts between 400 – 500 arbitration cases a year. International disputes constitute approximately 20% of the disputes heard by this court. The second most widely used arbitration institution is the Lewiatan Court of Arbitration in Warsaw. Cases involving Polish parties are often examined in the international arena by such institutions as the Court of Arbitration of the International Chamber of Commerce in Paris and the Vienna International Arbitration Centre. Since 2015, the Court of Arbitration of the Interna-

tional Chamber of Commerce was the most popular court amongst Polish businesses who engaged in international arbitration. The London Court of International Arbitration was the second most popular.

## 2. Governing Law

### 2.1 Governing Law

Polish arbitration law is made up of three major acts.

Firstly, the Code of Civil Procedure ('CCP'); in 2005, the Polish legislature amended the CCP by adopting a vast majority of rules from the UNCITRAL Model Law, but only from its 1985 version. The latest amendment to the CCP, concerning mostly post-arbitral proceedings, came into force on 1 January 2016.

Secondly, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958 ('the New York Convention'). The New York Convention is applicable to arbitral awards made in the territory of a state other than the state in which the recognition and enforcement of such awards are sought, ie to international arbitrations.

Thirdly, the European Convention on International Commercial Arbitration of 21 April 1961 ('the Geneva Convention'). The Geneva Convention applies only to disputes arising from international trade; however, the number of issues which are regulated by the Geneva Convention is much broader when compared with the New York Convention.

### 2.2 Changes to National Law

Since 1 January 2016 significant changes have been introduced into Polish law regarding arbitration as well as post-arbitral proceedings (shortening of deadlines, a decrease in the number of court instances, the transfer of some cases to the court of appeals acting as the court of the first instance, aimed at speeding up and simplifying the post-arbitral proceedings, and – what follows – increasing the popularity and attractiveness of arbitration as a method for dispute resolution). The purpose of this amendment is also to increase the guarantee of the impartiality and independence of arbitrators. The new law on insolvency and restructuring also derogates the controversial provisions of the Polish insolvency statute which had prescribed that an arbitration agreement made by an insolvent company loses its legal power and on-going arbitration proceedings should be discontinued.

## 3. Arbitration Agreement

### 3.1 Enforceability

Polish law prescribes formal and substantive requirements for the arbitration agreement. With regard to the form, un-

der Article 1162.1 of the CCP, the arbitration agreement must be made in writing. However, under Article 1162.2 of the CCP this requirement is also fulfilled when the agreement is included in letters or recordable communications exchanged between the parties. Moreover, the requirement of a written form is also satisfied if, in a contract between them, parties refer to a document containing a clause with a decision to resolve their dispute in arbitration, provided that such a contract is made in writing and the reference incorporates that clause into the contract.

As regards the content of the arbitration agreement, under Article 1161.1 of the CCP, the arbitration agreement must specify the matter of the dispute or the legal relationship from which a dispute arose or could arise, ie the scope of the dispute. In the case of labour disputes, under Article 1164 of the CCP, a written agreement may be concluded only after the dispute has already emerged.

### 3.2 National Courts' Approach

If a case covered by an arbitration agreement is brought before a state court, the defendant can request that the court refer parties to arbitration by rejecting the statement of claims filed with the state court, under Article 1165.1 of the CCP. However, even if such a request is made, the court will still examine the arbitration agreement to confirm that it is valid, effective, enforceable, has not expired or whether an arbitral tribunal has already declined its jurisdiction (Article 1165.2 of the CCP). What is important is that, under Article 1165.3 of the CCP, initiating a case before a state court does not impede the possibility of the arbitral proceedings taking place.

Polish courts have a strict approach both to the form and to the substantive requirements of arbitration agreements; yet there is no problem in enforcing an arbitration agreement as long as it is not defective.

### 3.3 Validity

Polish law explicitly adopted the so-called "doctrine of separability", under which the fact that the contract in which the arbitration agreement is contained is invalid does not invalidate the arbitration clause itself – this is confirmed by Article 1180.1 of the CCP.

## 4. The Arbitral Tribunal

### 4.1 Limits on Selection

According to Article 1170.1 and 2 of the CCP, any natural person, irrespective of their nationality, with full capacity to perform acts in law can be an arbitrator, except for judges on duty. This means that, unless parties provide for special characteristics of arbitrators (eg nationality, fields of expertise, language), they are free to choose whomever they see fit. However, it should be remembered that the rules of particu-

lar arbitral institutions usually specify further limitations in this regard, eg that the presiding arbitrator has to be chosen from a list of suggested arbitrators.

#### **4.2 Challenge and Removal of Arbitrators**

As far as challenging arbitrators is concerned, parties may file a motion for the removal of an arbitrator from the tribunal within a mutually agreed procedure. If a tribunal or arbitral institution does not exclude an arbitrator within one month from the day on which a party requested that exclusion, the requesting party has two more weeks in which to petition a state court with a motion for the removal of an arbitrator.

In cases in which parties did not agree on a procedure for the challenge of arbitrators or it is not contained in the rules of a given arbitral institution, the party that seeks to exclude an arbitrator should notify all arbitrators and the other parties. If the arbitrator does not resign or the remaining parties do not agree to a joint motion for exclusion within two weeks, the party may also petition the court with a motion to exclude the arbitrator; this follows from Article 1176 of the CCP.

As regards removal of arbitrators, under Article 1177.2. of the CCP, an arbitrator may be removed by a state court if it is evident that they will not perform their actions in due time or if they delay the performance of their activities without due cause.

State courts can intervene in the process of selection of arbitrators. Under Articles 1171.2 and 1172 of the CCP, if the sole arbitrator, any of the party-appointed arbitrators, or the presiding arbitrator were not appointed in due time, any of the parties concerned may file a motion to the state court to appoint an arbitrator. The court can also appoint a new arbitrator upon the request of a party if an arbitrator appointed by one of the parties resigns or is dismissed twice by the parties or by the court.

#### **4.3 Arbitrator Requirements**

According to the new wording of Article 1174.1 of the CCP which was amended on 1 January 2016, a person appointed as an arbitrator submits a written statement of his or her impartiality and independence to both parties. A person appointed as an arbitrator has an obligation immediately to disclose any circumstances that could raise doubts as to his or her impartiality or independence to the parties. This was already a prevalent practice in Polish arbitral institutions even before the amendment.

## **5. Jurisdiction**

### **5.1 Matters Excluded from Arbitration**

Under Article 1157 of the CCP, parties may bring to arbitration disputes involving property rights or disputes involving non-property rights which can be resolved by a court settlement, except for maintenance (alimony) cases. There is no statutory list of cases in which parties can conclude a settlement. In some cases, a settlement is inadmissible, eg in social insurance cases, cases involving unfair contract terms, divorce and certain other family cases.

Apart from these, a vast majority of typical disputes is arbitrable in Poland. Nevertheless, parties have to be careful when submitting, for example, bankruptcy claims and consumer disputes to arbitration (an arbitration clause in a contract between an entrepreneur and a consumer, if it was not individually negotiated, may be treated as an unfair contract term).

It is controversial whether corporate disputes are arbitrable – this especially concerns challenging the resolutions of corporate bodies. The courts still hold that such disputes are not arbitrable. However, at the same time, there is a lot of debate in that regard amongst legal scholars. The adoption of the arbitrability of corporate disputes – for example in the manner provided for in the case law of the German Bundesgerichtshof – would surely have a positive influence on the development and popularity of arbitration.

### **5.2 Challenges to Jurisdiction**

Polish arbitration law recognises the tribunal's authority to decide on its own jurisdiction in Article 1180.1 of the CCP (competence-competence rule). However, this decision can be challenged before a state court. When an arbitral tribunal decides that it has jurisdiction, each party can ask a state court to verify this decision (and therefore rule on the issue of tribunal's jurisdiction) within two weeks counting from the date of service of the tribunal's decision (Article 1180.3 of the CCP).

A Polish state court can decide on jurisdiction of the arbitral tribunal in two other cases.

Firstly, when a dispute brought before a court is covered by an arbitration agreement and the respondent asks the court to refer parties to arbitration. In such a case, the court examines the arbitration agreement to determine whether it is valid, effective, enforceable, and has not expired, or whether an arbitral tribunal has already declined its jurisdiction.

Secondly, in post-arbitral proceedings the lack of tribunal's jurisdiction is one of the reasons to set the award aside and to refuse the recognition or enforcement of an arbitral award.

### 5.3 Timing of Challenge

In principle, parties should already have raised the charge of lack of tribunal's jurisdiction at the beginning of arbitration, or at the latest in reply to the statement of claims (Article 1180.2. of the CCP). In such a case, the tribunal may at its discretion issue a decision in which it declares that it has jurisdiction. As explained above, parties may challenge that decision in a state court. Furthermore, the absence of tribunal's jurisdiction may constitute the grounds for the setting aside of an award once it is made or for refusal of its recognition or enforcement.

### 5.4 Standard of Judicial Review for Jurisdiction/ Admissibility

Polish courts review an arbitral tribunal's decisions on its jurisdiction *de novo*, examining the whole of the evidentiary material.

### 5.5 Breach of Arbitration Agreement

Polish courts enforce effective arbitration agreements when, after the commencement of court proceedings, an appropriate charge of existing arbitration agreement is made. If a Polish court finds that a fully binding and effective arbitration agreement exists, it is statutorily obliged to refer parties to arbitration and to discontinue its own proceedings (Article 1165.1 of the CCP).

### 5.6 Third Parties

There is one important situation under which Polish arbitration law binds non-signatories with an arbitration agreement. According to Article 1163.1, if an arbitration agreement is contained in company's by-laws or its articles of association, it is binding upon every shareholder of the company, even if they did not sign the original document, for instance because they entered the company at some later stage after its establishment.

With respect to other instances, it is not clear whether Polish law allows for the extension of the arbitration agreement to non-signatories. The courts and tribunals would probably not assume jurisdiction in this regard.

## 6. Preliminary and Interim Relief

### 6.1 Types of Relief

Under Polish arbitration law, a party can file a motion for the securing of claims. Such a motion can be heard by an arbitral tribunal or a state court.

Consequently, unless parties have agreed otherwise, a party can request that the arbitral tribunal secure all types of claims, provided that any such claim was made plausible, in a manner that the tribunal deems appropriate. The tribunal can make the enforceability of its decision conditional

upon providing appropriate security (Article 1181.1 of the CCP). The decision on securing claims can be changed or repealed during the course of proceedings (Article 1181.3 of the CCP).

### 6.2 Role of Courts

In some circumstances, state courts are responsible for the enforcement of interim relief granted by an arbitral tribunal. Furthermore, Article 1166 of the CCP expressly allows the state court to secure claims even if the parties have concluded an arbitration agreement and irrespective of the jurisdiction of the tribunal. The state court will secure the claim if a party makes the existence of the claim plausible and asserts that without securing the claim, enforcement of the award will be impossible or difficult or that the purpose of the proceedings will be impossible or difficult to achieve (Article 730 of the CCP).

### 6.3 Security for Costs

It is not clear whether the court or arbitral tribunal may order the securing of the costs of the arbitral proceedings. However, there are arguments for granting this, as even the CCP, in terms of state court proceedings for securing claims, allows 'predicted costs of the proceedings', amongst others, to be secured (Article 736.3 of the CCP).

## 7. Procedure

### 7.1 Governing Rules

The arbitral proceedings in Poland are governed by the CCP, mostly in Articles 1183-1193. The majority of these provisions are not mandatory; parties are even invited to shape their own procedural scheme (Article 1184.1 of the CCP).

### 7.2 Procedural Steps

In principle, to initiate the proceedings, a claimant has to file a request for arbitration, which follows from Article 1186 of the CCP. Subsequently, the parties file a statement of claim and a reply to the statement of claim (Article 1189 of the CCP). However, quite often, procedural rules of arbitral institutions require only the statement of claim and the reply.

### 7.3 Legal Representatives

There are two main legal professions in Poland: attorneys and legal counsels. Both are organised in bars, which have detailed codes of conduct. The rules contained therein are the same for all kinds of proceedings, including arbitration. What is important is that, in principle, those rules are binding only for members of Polish bars and not for foreign lawyers who participate in arbitral proceedings in Poland and are not members of the Polish bar associations.



## 8. Evidence

### 8.1 Collection and Submission of Evidence

Parties and the arbitral tribunal are free to shape the evidentiary proceedings as they see fit and use any means of evidence they deem appropriate, provided only that the principle of equality of the parties – also in terms of the presenting of evidence – is observed. Under Article 1191.1 of the CCP, the arbitral tribunal may question witnesses and experts, and make an examination of a scene or use any other means of evidence. The tribunal cannot, however, exercise means of compulsion for the presentation of evidence, for example, impose a fine on a witness for non-appearance before the tribunal; in that regard, the arbitral tribunal must seek assistance from a state court.

It has become common practice in Polish arbitral institutions, however, to rely to a certain degree on the International Bar Association's Rules on Taking Evidence in International Arbitration.

In principle, before Polish state courts – similarly to many other countries of Continental Europe – there is no discovery or disclosure (at least to the extent known in the common law countries) and witness examination is not done by cross-examination. Written witness statements are not used before Polish state courts but are accepted in arbitration cases.

In Poland, attorney-client privilege applies.

### 8.2 Rules of Evidence

The evidentiary rules are subject to the agreement of the parties or reference to arbitral rules. Under Article 1184.2 of the CCP, the arbitral tribunal can, in principle, shape the procedure as it deems appropriate and it is not bound by the provisions on the proceedings before a state court.

### 8.3 Powers of Compulsion

According to Polish arbitration law, tribunals are not allowed to use means of compulsion. The tribunal has no coercive measures to apply to witnesses; in particular, it may not force a witness to appear at a hearing, nor may it swear in a witness. The tribunal itself relies on parties to co-operate in evidentiary proceedings. However, under Article 1192 of the CCP, the tribunal may request the state court to assist it in evidentiary proceedings or in any other activities that the tribunal is unable to perform (Article 1192 of the CCP).

If asked for assistance, the state court may apply disciplinary measures, eg to bring a witness to court. It may also request parties to produce documents under procedural rules applicable in state court proceedings.

In accordance with the general Polish legal tradition, a party may not, in principle, be subject to means of compulsion in production of evidence; a court may draw adverse inferences only if a party refuses to present certain evidence. Accordingly, in principle, a Polish court will not use means of compulsion against a party to the arbitral proceedings when assisting the tribunal.

## 9. Confidentiality

There is no legal provision regulating confidentiality of arbitration in Poland, although some scholars claim that it is confidential by nature. Any state court proceedings referring to arbitration (in particular post-arbitral proceedings) are not confidential and are open to the public. Anonymised judgments made in such proceedings are in the public domain. Entities with shares traded on a public market have statutory obligations to provide information to important court and arbitral proceedings. In addition, relying on information obtained in arbitral proceedings is not prohibited by the law. Nevertheless, parties are free to agree on the confidentiality of arbitration.

## 10. The Award

### 10.1 Legal Requirements

The formal requirements for an arbitral award are set forth in Article 1197 of the CCP; the award should be made in writing, contain the reasoning of the tribunal and, in principle, be signed by all the arbitrators; there is, however, no need to sign every page of the award. It should also contain reference to the arbitration agreement, identify both parties and arbitrators, and specify the date and place of issuance.

### 10.2 Types of Remedies

Polish arbitration law does not explicitly stipulate limits in terms of particular damages. Tribunals should nonetheless be bound by the limits of public policy, as an award contrary to Polish public policy may be set aside and its recognition or enforcement may be denied. Despite the narrow interpretation of public policy, it may limit remedies awarded in arbitration. For example, in a recent case involving the enforcement of a foreign state court judgment, the Supreme Court firmly explained that a judgment awarding punitive damages may not be enforced in Poland, as it contradicts public policy.

### 10.3 Recovering Interest and Legal Costs

There are no legal rules pertaining to the costs of arbitral proceedings. There is no prevailing practice in this regard; however, some tribunals follow the rules of the CCP, which in principle uses the 'costs follow the event' doctrine, ie the

party losing the case reimburses the costs incurred by the other party.

### 11. Review of an Award

#### 11.1 Grounds for Appeal

All parties are free to agree on an appellate arbitration procedure, ie to have their case examined by an arbitral tribunal of first instance, followed by an arbitral tribunal of second instance. The Lewiatan Court of Arbitration in Warsaw introduced such optional appellate procedures to its rules.

A final arbitral award issued in Poland may be challenged in a state court by a motion for setting aside (Article 1206 of the CCP), provided that:

- there was no arbitration agreement, the agreement is not valid, ineffective, or has lost its effectiveness;
- the party was not given proper notice of the appointment of an arbitrator, of the arbitral proceedings or was otherwise unable to present its case;
- the arbitral award deals with a dispute not covered by or beyond the scope of the arbitration agreement;
- the composition of the arbitral tribunal or the fundamental rules of arbitral procedure were violated;
- the award was obtained by way of a crime or the award was issued on the basis of a forged or falsified document;
- a final court judgment has already been made in the same case between the same parties; the dispute is not arbitrable under statutory law; or
- the award is contrary to the fundamental principles of public policy.

Significant changes were introduced with respect to the “setting aside” procedure by the amendment of the CCP that entered into force on 1 January 2016. The motion for setting the award aside has, in principle, to be filed to the court of appeals as the court of first instance, within two months from the date on which the party was served the award. What is new is that the court applies *mutatis mutandis* provisions for appellate proceedings to the proceedings for setting aside an award and the motion for setting the award aside should conform to the prerequisites prescribed for an appeal. The court does not, however, hear the case again nor does it re-examine the facts of the case (no *de novo* standard of review). If the party does not raise the reasons mentioned above, the court cannot set the award aside on the basis of these reasons (except for non-arbitrability of the dispute and violation of public policy). As of 1 January 2016, parties cannot appeal against the judgment of the court of first instance. Parties are only allowed to file an extraordinary means of challenge – a cassation complaint to the Supreme Court (Articles 1205 – 1211 of the CCP).

#### 11.2 Excluding/Expanding the Scope of Appeal

The scope of the basis for the setting aside of an award is not subject to parties’ agreement.

#### 11.3 Standard of Judicial Review

The arbitral awards review standard in proceedings for the setting aside of an award provided for in Polish arbitration law resembles the deferential standard.

The Polish court will examine only whether the preconditions for the setting aside of an arbitral award listed above exist. The state court does not examine the case *de novo*.

### 12. Enforcement of an Award

#### 12.1 New York Convention

Poland is a party to the New York Convention. It has made reservations restricting the application of the Convention to commercial cases and to awards made in the territory of another contracting state. The convention takes precedence over the national law. Poland has also signed the Geneva Convention.

#### 12.2 Enforcement Procedure

Significant changes in the procedure for the recognition and enforcement of an arbitration award were introduced by the amendment to the CCP that entered into force on 1 January 2016. To recognise or enforce an award, a party must file a motion to a state court – the court of appeals, which is a novelty, and append it with the original or a certified copy of the award and the arbitration agreement, along with translations into Polish, if these documents were drafted in a foreign language.

What is also new is that the proceedings for the recognition and enforcement of an arbitration award are conducted under the rules for appellate proceedings (*mutatis mutandis*), not under the rules of procedure for the court of first instance.

The decision of the court of appeals on the recognition or enforcement, concerning an award or settlement made before a Polish arbitral tribunal can be challenged only by a complaint filed in the so-called “parallel instance”, ie not to a higher court but to another ruling bench of the same court of appeals. There is no right to file a cassation complaint in such cases.

In the case of foreign awards, the decision of the court of appeals on the recognition or enforcement of an arbitration award can only be challenged by means of an extraordinary challenge – a cassation complaint to the Supreme Court (Articles 1212 – 1217 of the CCP).

If the New York Convention does not apply, under the CCP, the court can refuse recognition or enforcement of an arbitral award issued in Poland (Articles 1214 – 1215 of the CCP) only if the dispute is not arbitrable or if it would be contradictory to the fundamental principles of public policy.

Recognition or enforcement of a foreign arbitral award can also be refused upon a motion of a party if:

- there was no arbitration agreement, the agreement is not valid, is ineffective, or has lost its effectiveness;
- the party was not given proper notice of the appointment of an arbitrator, or of the arbitral proceedings, or it was otherwise unable to present its case before the arbitral tribunal;
- the arbitral award deals with a dispute not covered by or beyond the scope of the arbitration agreement;
- the composition of the arbitral tribunal or the arbitral procedure was violated; or
- the arbitral award has not yet become binding for the parties or has been set aside or the enforceability thereof has

been suspended by the court in which, or under the law of which, the award was made.

### 12.3 Approach of the Courts

There is no specific practice of Polish courts in terms of recognition and enforcement of arbitration awards; such cases are conducted by state courts in a professional and unbiased manner.

With respect to the issue of public policy, the concept of public policy does not have a legal definition, but it pertains to the most fundamental principles of Polish law. These principles are established in case law, eg the compensation cannot exceed the actual damage, the liquidated damages (contractual penalties) cannot be excessive, and the statutory prohibition of set-offs cannot be violated. Whilst examining the compliance of the award with public policy, the court should not judge the evaluation of the fact of the case. Therefore, in principle, public policy should be interpreted narrowly. However, due to the lack of any definition, the courts' interpretation in this regard can be somewhat broader.

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