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(Best) Practices in Arbitration

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All contributions in this book are subject to academic review.

List of Abbreviations

ADR	Alternative Dispute Resolution
AIFC	Astana International Financial Centre
BILOS	Brazilian Institute for the Law of the Sea
BRI	China's Belt and Road Initiative
CIETAC	China International Economic and Trade Arbitration Commission
CISG	United Nations Convention on Contracts for International Sale of Goods
COVID-19	Coronavirus disease 2019
DIS	German Arbitration Institute
FDI	Foreign direct investment
FIDIC	International Federation of Consulting Engineers
GDP	Gross Domestic Product
HKIAC	Hong Kong International Arbitration Centre
IBA	International Bar Association
ICA CCI	International Court of Arbitration in Affiliation with the Chamber of Commerce and Industry of the Kyrgyz Republic in Kyrgyzstan
ICC	International Chamber of Commerce
ICSID	International Centre for Settlement of Investment Disputes
ISTAC	Istanbul Arbitration Centre
k.c. [POL]	Polish Civil Code of 23 May, 1964, published in: Dziennik Ustaw [*Journal of Laws*] 1964, No. 16, item 93, as amended
k.p.c. [POL]	Polish Code of Civil Procedure of 17 November, 1964, published in: Dziennik Ustaw [*Journal of Laws*] 1964, No. 43, item 296, as amended
LCIA	London Court of International Arbitration
PETs	Privacy enhancing technologies

PSSP [POL]	Polish Arbitration Association based in Warsaw
RAA	Russian Arbitration Association
SCAI	Swiss Chambers' Arbitration Institution
SCC	Arbitration Institute of the Stockholm Chamber of Commerce
SIAC	Singapore International Arbitration Centre
SIDRC	Seoul International Dispute Resolution Centre
TIAC	Tashkent International Arbitration Centre
UNCITRAL	United Nations Commission on International Trade Law
UNIDROIT	The International Institute for the Unification of Private Law
UPIC	Principles of International Commercial Contracts
USLU	Ural State Law University
VIAC	Vienna International Arbitral Centre
WTO	World Trade Organization

Articles

Marek Topór | Kamil Zawicki

In Search of Perfect Procedure - Best Practices in Arbitration

Key words:
seat(s) of arbitration | best practices | arbitration law | procedural public policy | due process | fair process | convergence of proceedings

Abstract *| One of the most essential problems of international commercial arbitration is the issue of the influence of the seat of arbitration on proceedings before a court of arbitration. This is manifested in the form of three grave issues, namely: 1) the question of potential interaction of the arbitration court or parties to the arbitration agreement with the court of the country of the place of the proceedings, 2) the question of mandatory rules of proceeding binding the court of arbitration, 3) the question of a potential limited control of the proceedings before the arbitration tribunal by a common court at the stage of the proceedings to the complaint for the setting aside of the arbitral award or recognition or enforcement thereof. The issue of the place of arbitration proceedings (seat of arbitration) is one of the most crucial issues at assessing legal risks of conducting an arbitral dispute, all the more so that parties may choose a seat of arbitration at the stage of concluding an arbitration covenant. Identifying the best Polish practices in commercial arbitration will allow parties concluding an arbitration covenant to vest the arbitration agreement with a form shaped to include solutions contributing to increasing the predictability as well as time- and cost-effectiveness of arbitration while preserving the party's right to a due and fair trial. It substantiates the relevance of the subject of this study for users of arbitration as an effective legal dispute resolution method. Although in a long-time perspective using the best arbitration practices by the arbitration community leads to standardisation of the arbitral proceedings, it is worth mentioning that it is a natural manifestation of the arbitration*

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evolution process, facilitating its flexible adaptation to the changing legal and economic reality. The best practices in arbitration proceedings encompass a set of rules and techniques used and recommended at the stage of 1) initiating the proceedings, 2) preparing for a hearing, 3) conducting a hearing, 4) taking evidence, as well as 5) concluding the proceedings. This publication constitutes a presentation of selected best standards and techniques, as well as the manner in which to incorporate them in the parties' agreement.

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I. Introduction

4.01. Arbitral proceedings pending in Poland have been regulated in Part V of the Code of Civil Procedure which entered into force in 2005 by virtue of the Act[1] of 28 July 2005 and, with certain exceptions, is based on the UNCITRAL Model Law.[2]

4.02. As regards the issue of the seat of arbitration, three main views are distinguished in terms of the significance of the place of arbitral proceedings. The seat of arbitration theory where the seat is indicated,[3] which – traditionally – grants fundamental significance to the seat of arbitration, holding that proceedings are conducted compliant to the procedural rules in force in the seat of arbitration. There is also a delocalisation theory,[4] which in its extreme version leads to the conclusion that arbitration is not seated anywhere and therefore no connection between arbitration and the law of the seat of arbitration exists. Finally, there is a third moderate approach where decisive significance is given to the autonomy of will. Therefore, each time in a situation necessitating an interaction[5] between parties (or the court of

[1] Act of 28 July 2005 on amendment of the Code of Civil Procedure, (178) Journal of Laws, item 1478, in force from 17 October 2005.

[2] Polish arbitration law applies to all arbitration proceedings when the seat of the arbitration is in Poland.

[3] Filip De Ly, *The place of arbitration in the conflict of laws of international commercial arbitration: an exercise in arbitration planning*, 12(1) NEW YORK: JURIS INTERNATIONAL LAW & BUSINESS 61 (1991-1992).

[4] Ahmed Masood, *The influence of the delocalisation and seat theories upon judicial attitudes towards international commercial arbitration*, 77(4) ARBITRATION: THE INTERNATIONAL JOURNAL OF ARBITRATION, MEDIATION AND DISPUTE MANAGEMENT 406-422 (2014); JACEK ZRAŁEK, ZNACZENIE MIEJSCA ARBITRAŻU W ERZE GLOBALIZACJI POSTĘPOWANIA ARBITRAŻOWEGO, Warszawa: C.H.BECK (2017), et. 61-69, and the literature quoted thereby. The author comes to the apt conclusion that the denationalisation of arbitration proceedings is illusory when contact with a state court occurs.

[5] It may occur, e.g. in a situation of a need to hear a specific evidence by a common court by way of a legal assistance given to the motion of a court of arbitration before which the proceedings are pending, or in the case of an appointment or exclusion of an arbitrator by a common court. Pursuant to Article 1192(1) of the k.p.c. [POL], a court of arbitration may petition an appropriate Polish district court to take evidence

arbitration) and the common court, one of three options is possible, namely: 1) when parties indicate the seat of arbitration, 2) when the seat of arbitration is determined by an arbitral tribunal or a common court, or 3) when it is assumed that a seat of arbitration is unspecified.

4.03. Without delving into a more extensive analysis of arguments presented by advocates of the above-indicated theories, bearing in mind the subject matter of this study, it should be indicated that the Polish legislator opted for the third variant, granting the decisive significance to the autonomy of parties to an arbitration agreement. Under Article 1154 of the k.p.c. [POL], the provisions of Part V of the Polish Code of Civil Procedure apply when the seat of proceedings before a court of arbitration is located in the territory of Poland, while in cases expressly specified in the Act, also when the seat of proceedings before a court of arbitration is located outside of Poland or is unspecified.

4.04. Hence, it is fully justified to say that as far as the rules of proceedings are concerned, Poland is an arbitration-friendly country,[6] while provisions of the k.p.c. [POL] attribute dominant significance to the will of parties to an arbitration agreement,[7] also as regards choosing the seat of arbitration. Parties may indicate the seat of proceedings before a court of arbitration. If no such an indication was made – it is determined by the court of arbitration with taking into account the object of the proceedings, circumstances of the case, and convenience of the parties.[8] Moreover, if the seat of proceedings before a court

or perform another act which a court of arbitration may not perform. This regulation also applies when the seat of arbitration is located outside of Poland or is unspecified. Moreover, pursuant to the Regulation of the Council (EC) No. 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters where evidence needs to be taken abroad, a court of arbitration may petition a Polish common court to prepare a motion for taking evidence abroad. The common court may not refuse the court of arbitration the legal assistance if only it has the territorial competence and the action to be taken may not be performed by the court of arbitration itself while it falls within the scope of procedural acts performed by courts in examination proceedings. 'Acts which an arbitral tribunal may not undertake' are, e.g. imposing a fine on a witness in the event of their unjustified absence or ordering a compulsory appearance of a witness. More in Justyna Szpara, Maciej Łaszczuk, *Uwagi o zakresie pomocy udzielanej sądowi polubownemu przez sąd państwowy na podstawie art. 1192 k.p.c.*, 53(9-10) PALESTRA 27-35 (2008).

[6] As the Polish Supreme Court stated in the decision of 13 October 2017 (file reference No. I CSK 33/17), and then also in the decision of 01 December 2017 (file reference No. I CSK 170/17), the postulate for the arbitration covenant to be interpreter *in favorem iurisdictionis arbitrii* is correct in particular in cases between entrepreneurs in international commercial transactions.

[7] The view that the freedom of the parties to an arbitration agreement to shape the arbitration proceedings is due to the fact that the arbitration itself is the result of the will of the parties should be recognised as correct, thus, see also Andrzej Szumański, *Problem dopuszczalności modyfikacji treści umowy w wyroku sądu arbitrażowego w* świetle *prawa polskiego* in KSIĘGA PAMIĄTKOWA 60-LECIA SĄDU ARBITRAŻOWEGO PRZY KIG W WARSZAWIE, Warszawa: Sąd Arbitrażowy przy Krajowej Izbie Gospodarczej (2010), et. 321.

[8] Therefore, the Polish legislator extended the premises set forth in Article 20 of the UNCITRAL Model Law under which parties to proceedings determine the seat of arbitration while in the absence of such an arrangement, it is determined by the court of arbitration which considers the circumstances of the case, and in particular convenience of the parties.

of arbitration is not specified in the manner given above, it is considered that the seat of such proceedings was located in the territory of Poland when the award concluding the proceedings in the case was issued in this territory (Article 1155(2) of the k.p.c. [POL]).[9] Therefore, the seat of arbitration is understood to be a fictitious location of the proceedings chosen to establish a conflict-of-laws link between arbitral proceedings and the legal system concerned.[10] A state court also may determine the seat of arbitration if it is necessary for establishing its jurisdiction in a given case.

4.05. We understand the Polish best practices in arbitration to be such methods of proceeding before a court of arbitration which are firstly compliant with Polish arbitration law, and secondly, are oriented towards increasing time - and the cost - effectiveness of arbitration. Although the world of arbitration speaks of the international standards of arbitral proceedings,[11] shaped by such institutions as the ICC (*International Chamber of Commerce*), SIAC (*Singapore International Arbitration Centre*), LCIA (*London Court of International Arbitration*), or UNCITRAL (*United Nations Commission on International Trade Law*),[12] they are always applied in a specific legal and cultural context depending on the region of the world where the proceedings are taking place. Moreover, the national provisions of both the arbitration and civil law also affect the standards of arbitral proceedings.[13]

II. Convergence of Arbitral Proceedings and Proceedings before a Common Court

4.06. Presently, we are witnessing a peculiar phenomenon of the convergence of arbitral proceedings and proceedings before common courts. In the outcome of this process, the

[9] In turn, Article 31.3 of the UNCITRAL Model Law indicates that the seat of arbitration should be indicated in the arbitral award and where the arbitral tribunal desists from such a determination, the place of rendering the award is located at the seat of arbitration.

[10] It is the legal seat of arbitration which must be distinguished from the actual place where the acts in the arbitral proceedings are performed. The notion of the 'seat of arbitration' must be distinguished from the notion of the 'place where hearings in arbitration are to be held'. Oftentimes these are identical places, yet it is the seat of arbitration that determines the law applicable to the arbitral proceedings.

[11] Nathalie Voser, *Harmonization by Promulgating Rules of Best International Practice in International Arbitration*, 3(3) SCHIEDSVZ 113-118 (2005).

[12] Actions aimed at harmonising the international commercial arbitration in the scope of arbitral proceedings assume three forms: 1) model acts are created, 2) guides and manuals are developed, and 3) rules of arbitration are published. All these so-called soft law standards constitute a resultant of certain up-to-date tendencies in international commercial arbitration.

[13] Marc Blessing, *Mandatory Rules of Law versus Party Autonomy in International Arbitration*, 14(4) JOURNAL OF INTERNATIONAL ARBITRATION 23-26 (1997).

arbitral proceedings are subject to judicialization,[14] whereas the proceedings before the common court are becoming 'increasingly more arbitration-like'.

4.07. As substantiation of the thesis above, one should invoke the last reform[15] of the k.p.c. [POL] in the scope of proceeding before common courts which assumes: 1) introduction of the statutory regulation for the *Written Statements* institution. Under Article 271^1 of the k.p.c. [POL], the witness submits testimony in writing if the court so decides. In such a case, the witness shall take an oath by signing the text of the oath. The witness is obligated to submit the text of the testimony in court within the time limit specified by the court; 2) the regulation in Article 205^5-205^{12} of the k.p.c. [POL] of an additional stage of preliminary proceedings before the common court which constitutes a peculiar statutory regulation of the Terms of Reference institution, well-known in the world, in the course of which the so-called Hearing Plan containing, among others, precisely defined demands of parties, points of contention, parties' findings in terms of evidence necessary to be taken in the case, and dates of subsequent sessions, is developed. Another institution related to the preliminary proceedings is also procedural preclusion because a replica to the statement of claims must be sent before the first hearing while participation in the preliminary proceedings is obligatory. In the course of such proceedings, all statements and evidence should be presented. Disputes regarding individual issues covered by the Hearing Plan are settled by the judge presiding over the court. Parties to the proceedings sign the Hearing Plan, alternatively a refusal to append a signature by a party is recorded; 3) the institution of abuse of procedural right from Article 4^1 of the k.p.c. [POL] under which parties and participants to the proceedings may not make use of the right provided for in the rules of proceeding in a manner non-compliant with the objective it was laid down

[14] As regards the judicialization of arbitral proceedings, see also Leon E. Trakman, Hugh Montgomery, *The 'Judicialization' of International Commercial Arbitration: Pitfall or Virtue?*, 30(2) LEIDEN JOURNAL OF INTERNATIONAL LAW 405-434 (2017); ŁUKASZ BŁASZCZAK, WYROK SĄDU POLUBOWNEGO W POSTĘPOWANIU CYWILNYM, Warszawa: Wolters Kluwer Polska (2010), et. 141. The author aptly found that the autonomy of parties' will not allow them to take advantage of the benefits offered by arbitration and prosecute the arbitral proceedings according to the rules of proceeding before the common court. Importantly, the empirical research did not confirm the thesis regarding the incidence of this phenomenon, see also Remy Gerbay, *Is The End Nigh Again? An Empirical Assessment of The 'Judicialization' of International Arbitration*, 25(2) AMERICAN REVIEW OF INTERNATIONAL ARBITRATION 223-227 (2014).

[15] See also the Act of 04 July 2019 on Amendment of Code of Civil Procedure Act and Certain Other Acts (Journal of Laws of 2019, item 1469) which introduced into the Polish legal system a range of legal institutions oriented at streamlining the proceedings before common courts. Undoubtedly, they are inspired by good practice, typical of arbitral proceedings.

for;[16] 4) introduction into the Polish civil procedure in Article 458[9] of the k.p.c. [POL] of regulation of the evidence agreement consisting in the parties' ability to arrange for specific evidence to be excluded from the proceedings in the case from a specific legal relationship emergent under the agreement.

4.08. The above-given revolutionary changes to the provisions on proceedings before common courts are undoubtedly an indication for users of arbitration in terms of the streamlining of the examination proceedings acceptable for the Polish legal system. Moreover, they constitute a substantial motivation for Polish arbitration institutions to offer even better and further-reaching solutions oriented at increasing time- and cost-effectiveness of arbitration which as a private dispute resolution method falls within competition mechanisms.[17]

III. Limits of Freedom of the Parties to Arbitration in Shaping Arbitration Proceedings and Applying Methods Increasing Its Effectiveness

4.09. In connection with the above-described phenomena as well as the constantly increasing deficit of Polish society's trust to the judiciary and the dynamic economic growth, arbitration – similarly as other ADR methods – is flourishing. It influenced the shaping of specific good practices and techniques in the scope of arbitral proceedings (Polish law as *lex loci arbitri*),[18] oftentimes inspired by achievements of international commercial arbitration.

4.10. Due to the fact that the principle of freedom of contract of the parties in the aspect of arbitration procedure (Article 353[1] of the k.c. [POL] in conjunction with Article 1184(1) of the k.p.c. [POL]) is binding in the Polish legal system, into their arbitration, the parties may incorporate any solutions, including those constituting best practices. The freedom of a party to an agreement in shaping the content of an arbitration agreement covers the majority of procedural issues and, in

[16] On the issue of the essence and manifestations of abuse of procedural law in arbitral proceedings, instead of many, see also ŁUKASZ BŁASZCZAK, NADUŻYCIE PRAWA PROCESOWEGO W POSTĘPOWANIU ARBITRAŻOWYM, Warszawa: C.H. BECK (2018), et. 87-131.

[17] See Peter B. Rutledge, *Convergence and Divergence in International Dispute Resolution. Symposium*, 2012(1) JOURNAL OF DISPUTE RESOLUTION (2012), et. 49-61. The author illustratively compares arbitration to an entrepreneur operating in a competitive market, who has to reorganise himself to remain an attractive alternative to court proceedings. Moreover, he sees the hope for the development of arbitration as strengthening the advantages in terms of choosing the law – both substantive and procedural.

[18] More on this notion, see also Alastair Henderson, *Lex Arbitri, Procedural Law and the Seat of Arbitration – Unravelling the Laws of the Arbitration Process*, 26 SINGAPORE ACADEMY OF LAW JOURNAL (SPECIAL ISSSUE) 886-910 (2014).

particular, the initiation of the proceedings, language in which the proceedings will be conducted, time limits, examination at hearings, discontinuation of proceedings, and taking evidence.[19] The freedom of parties to an arbitration agreement is limited by 1) specificity (nature) of a legal relationship, 2) *ius cogens* (mandatory) provisions, as well as 3) principles of social coexistence.

4.11. Furthermore, the parties entertain priority in the shaping of rules and principles of arbitral proceedings, including the content of procedural standards, which will apply to the manner of proceeding.[20] Only in a situation of the lack of an arrangement between parties may the arbitral tribunal prosecute the proceedings in a manner it deems appropriate. Importantly, an arbitral tribunal is not bound by provisions on proceeding before common courts (Article 1184(2) of the k.p.c. [POL]).

4.12. All the more so because in international commercial arbitration, aspects of the dispute resolution procedure, based on the principle of freedom of contract, take precedence over the provisions of mandatory law, operating on the principle of limited control.[21] Determination of the scope in which a court of arbitration is bound by mandatory provisions of procedural law is essential since violating them may lead to the setting aside or refusal of recognition or enforcement of the arbitral award.[22]

4.13. Therefore, each good practice in arbitration should correspond with the fundamental procedural rules of Polish public policy[23] (procedural public policy), which include: 1) the principle of equality of arms (Article 1161(2) of the k.p.c. [POL]), manifest in the rule of equal treatment of parties in the same circumstances (Article 1183 of the k.p.c. [POL]),[24] 2) the

[19] See also Andrzej Kąkolecki, Piotr Nowaczyk, *Postępowanie przed sądem polubownym,* in Andrzej Szumański, ARBITRAŻ HANDLOWY, Warszawa: Wydawnictwo C.H. Beck (2015), in Stanisław Włodyka, SYSTEM PRAWA HANDLOWEGO, Warszawa: Wydawnictwo C.H. Beck (2015), et. 82.

[20] See also Łukasz Błaszczak, *Kilka uwag na temat dopuszczalności zawarcia ugody arbitrażowej i jej natury prawnej,* in Mariusz Jabłoński, KSIĘGA JUBILEUSZOWA NA SIEDEMDZIESIĘCIOLECIE WYDZIAŁU PRAWA, ADMINISTRACJI I EKONOMII UNIWERSYTETU WROCŁAWSKIEGO, Wroclaw: Wydawnictwo Uniwersytetu Wrocławskiego (2015), et. 420-421.

[21] Which in practice do not have to be applied by the court of arbitration as long as they do not constitute the fundamental principles of the Polish public policy and provisions of private international law (*overriding mandatory rules*).

[22] Under Article 1212(2) of the k.p.c. [POL], an award of a court of arbitration or a settlement concluded before it, regardless of the state where they were rendered, are subject to recognition or ascertainment of enforceability under principles set forth in the k.p.c. [POL].

[23] This comes down to providing an answer to the question if in a given case such a violation of the rules of procedure occurred before a court of arbitration which constitute the fundamental principles of the Polish public policy. See also Andrzej Kubas, Kamil Zawicki, *The scope of mandatory provisions of procedural and substantive law*, 3 CZECH & CENTRAL EUROPEAN YEARBOOK OF ARBITRATION 19-20 (2013).

[24] See also Andrzej W. Wiśniewski, *Zasada równości stron w umowie o arbitraż oraz w procesie powołania zespołu orzekającego: art. 1161(2) oraz art. 1169(3) k.p.c.*, in KSIĘGA PAMIĄTKOWA 60-LECIA SĄDU ARBITRAŻOWEGO PRZY KIG W WARSZAWIE, Warszawa: Sąd Arbitrażowy przy Krajowej Izbie Gospodarczej (2010), et. 333-346. Whereby the principle of equality of arms of parties to arbitral proceedings

principle of availability[25] (Article 1184 of the k.p.c. [POL]) and contradictoriness,[26] 3) the principle of ensuring equal influence of the parties on the arbitrator selection procedure, 4) the principle of the right of defence,[27] 5) the principle of arbitrator neutrality, 6) the principle of just (fair) trial, 7) the principle of the autonomy of the parties in shaping the fundamental (for the parties) rules of arbitral proceedings, or also 8) the principle of prohibiting a court of arbitration to rule beyond the demand of the statement of claims (*ne eat iudex ultra petita partium*).

IV. Standards Suggested by the Polish Arbitration Association

4.14. An outcome of the works aimed at identifying the Polish best standards and techniques in terms of managing arbitral proceedings is the Arbitrator's Pledge developed by the Polish Arbitration Association (*Polskie Stowarzyszenie Sądownictwa Polubownego – PSSP*).[28] It constitutes a set of principles published on the PSSP's website to be adhered to by arbitrators to prosecute arbitral proceedings fairly and effectively. They constitute a certain minimum that a person fulfilling or intending to fulfil the role of arbitrator adopts an obligation to comply with.[29] The standards and techniques included in the Arbitrator's Pledge in

in the meaning of Article 1161(2) of the k.p.c. [POL] should be referred to the very content of the arbitration covenant, while not to the general rules of functioning of a permanent court of arbitration, cf. decision of the Supreme Court of 19 October 2012, (file reference No. V CSK 503/11).

[25] A negative rule is also derived from it, according to which the law and rules applicable in national courts or in proceedings before national courts shall not apply, unless the parties agree otherwise, see also MATTI S. KURKELA, SANTTU TURUNEN, DUE PROCESS IN INTERNATIONAL COMMERCIAL ARBITRATION, New York: Oxford University Press (2005), et. 47.

[26] Pursuant to the judgment of the Polish Supreme Court of 06 March 2008, (file reference No. I CSK 445/07) – the principles of contradictoriness and availability also apply in arbitral proceedings, and the parties should be given the opportunity to present all claims and evidence and, within the framework of their equal treatment, to respond to the claims and evidence submitted by the opposing party.

[27] See also decision of the Polish Supreme Court of 28 March 2007 (file reference No. II CSK 533/06).

[28] The Arbitrator's Pledge prepared by the PSSP; available at: https://polisharbitration.pl/deklaracja-arbitra/ (accessed on 16 November 2020).

[29] Moreover, a person who joins the Arbitrator's Pledge is entered on the list of signatories published on the PSSP's website. They also pledge that, being one of several arbitrators in the case, they will encourage the other arbitrators to use the principles set forth in the Arbitrator's Pledge.

no way interfere with further-reaching practices stemming from the rules of procedure of the permanent court of arbitrations.

4.15. The rules and techniques included in the Arbitrator's Pledge may be grouped based on the criterion of the principal goal of the individual best practices:

1) practices intended to increase the speed of proceedings;
2) methods oriented at limiting the probability of emergence of a conflict of interests;
3) practices related to supporting parties in an amicable conclusion of proceedings.

4.16. Practices aimed at increasing the speed of proceedings encompass the most extensive set of methods:

1) Before accepting an appointment as an arbitrator, the proposed arbitrator should make sure that she or he has sufficient time to conduct the arbitral proceedings efficiently (cf. Principle 1 of the Arbitrator's Pledge).
2) The proceedings should start by holding a case management conference.[30]
3) The Arbitrator should consult with the parties about the essential issues regarding the management of arbitral proceedings so that the proceedings are conducted properly, efficiently and in line with the legitimate expectations of the parties (cf. Principle 3 of the Arbitrator's Pledge), the arbitrator should become familiarized with the parties' submission as soon as they are submitted and discuss the submissions with the other members of the arbitral tribunal (cf. Principle 10 of the Arbitrator's Pledge).
4) After consulting with the parties, the arbitrator should issue procedural order number one[31] (cf. Principle 6 of the Arbitrator's Pledge) which includes the rules and time limits, consistently adhered to and deviated from only for an important reason (cf. Principle 8 of the Arbitrator's Pledge). The arbitrator should also notify the parties that an infringement of the procedural rules or dishonest tactics may result in the allocation of the

[30] Unless the nature of the case renders a conference unnecessary, see also Principle 4 of the Arbitrator's Pledge.

[31] This decision should specify, in particular: 1) the timetable of proceedings, 2) the order of letters to be submitted by the parties in the course of the case, 3) the time limits by which the parties may submit new statements and evidence, 4) the consequences of the parties' failure to comply with the time limits, 5) the principles of service, including the regulation that letters and orders are to be served in electronic form, 6) the method of taking evidence. Not only the mere fact of the obligation to issue a procedural order, but also the minimum content that it should contain, should be positively assessed.

costs of the arbitration regardless of the outcome of the case (cf. Principle 9 of the Arbitrator's Pledge).

5) An arbitral award should be rendered no later than 12 months after the case management conference (cf. Principle 7 of the Arbitrator's Pledge).
6) After consulting the parties, the precise timetable of a hearing should be agreed upon unless the character of the case renders it unnecessary. If the hearing requires more than one day efforts will be made to fix the hearing for the consecutive days (cf. Principle 13 of the Arbitrator's Pledge). The hearing may be adjourned only for important reasons (cf. Principle 14 of the Arbitrator's Pledge) and the arbitrator should strive to render the award no later than two months after the hearing or two months after the day of the parties' last written submissions (cf. Principle 15 of the Arbitrator's Pledge).
7) The Arbitrator shall consider issuing a partial award if it turns out that some of the parties' claims are ready to be decided without further evidence (cf. Principle 11 of the Arbitrator's Pledge) in the proceedings which should be conducted so as to minimize their time and cost. In particular, the arbitrator should consider using written witness statements and reports prepared by experts appointed by the parties (cf. Principle 12 of the Arbitrator's Pledge).

4.17. Practices designed to reduce the likelihood of a conflict of interest include placing an arbitrator under an obligation to make active efforts to ensure that no conflict of interest arises at any time during the proceedings (cf. Principle 2 of the Arbitrator's Pledge). This principle should be primarily linked to a cautious and controlled implementation of a widely accepted practice of persuading parties to enter into a settlement when they may potentially try to accuse arbitrators of a lack of neutrality.[32] In particular, this may include ensuring by the arbitrator that the parties agree in writing that the arbitrator also acts as a mediator (or conciliator), or that he or she provides an early

[32] In terms of minimising conflicts of interest, Polish best techniques refer to international principles. Under Article 8.1 of the Rules of the Lewiatan Court of Arbitration, an arbitrator is and remains impartial and independent throughout the arbitration proceedings and observes the rules of ethics adopted by the Arbitration Committee. In assessing the independence and impartiality of an arbitrator, the International Bar Association (IBA) Guidelines on conflicts of interest in international arbitration shall be applied as a minimum standard.

neutral evaluation that may potentially contribute to increasing the parties' willingness to reach a settlement in the case.

4.18. The practices related to assisting the parties in amicable settlement come down to obligating the arbitrator to support the parties' efforts to reach an amicable settlement (cf. Principle 5 of the Arbitrator's Pledge). This is undoubtedly an important signal for arbitrators to remain active in this area, after all, in Polish arbitration a reasonable belief exists that the worst settlement is better than the best arbitral award.

V. Standards Proposed by the Most Popular Polish Permanent Courts of Arbitration

4.19. Due to the limited framework of this study, it is not possible to discuss in greater detail each of the best practices proposed by the regulations of the best known Polish permanent court of arbitrations. Therefore, we have made a selection and brief overview of certain typical solutions that have become well established in the Polish version of arbitration. As the analysis has shown, they are, in fact, an implementation of well-known techniques and best practices that exist in international commercial arbitration. Naturally, there are also certain tendencies which have not yet taken the form of practice, although in our opinion they may soon become a permanent feature of Polish arbitration. These include, in particular, the formalisation of 1) the use of multi-stage ADR methods in arbitral proceedings, 2) the use of practices aimed at increasing the diversity and equal treatment of arbitrators, in particular by introducing mechanisms to limit discrimination against arbitrators based on age, gender, or skin colour, and 3) the use of new technologies in arbitration, in particular artificial intelligence and state-of-the-art programmes based on blockchain technology.

V.1. Incorporating the Best Standards in Arbitration Agreement

4.20. When signing an arbitration covenant, the parties to the agreement, usually by referring to the rules of a permanent court of arbitration or another soft law standard, may use the best solutions, also proposed by well-established Polish arbitration institutions, contained in such regulations as the Rules of Arbitration of the Court of Arbitration at the Polish

Chamber of Commerce in Warsaw[33] or the Rules of the Lewiatan Court of Arbitration.[34]

4.21. Against the background of the application of the provisions of Polish arbitration law, a legal problem has arisen concerning the legal classification of the provisions of the rules of a permanent court of arbitration, to which the parties refer in their covenant indicating a permanent court of arbitration, and in particular whether the rules of the permanent court of arbitration constitute an element of the content of the arbitration agreement. The doctrine presents two approaches to the presented issue.

4.22. According to the first of these views[35] by making such a reference, the provisions of the Rules of Procedure of a permanent court of arbitration become an element incorporated into the parties' agreement. The main argument of the supporters of the first concept is the fact that the parties to a contractual relationship may, under the principle of freedom of contract (Article 353[1] of the k.c. [POL]), also include certain standard regulations in the content of their legal relationship. Consequently, the rules of a given arbitration institution become a part of an agreement concluded by the parties.

4.23. The second view,[36] assumes that recourse by the parties to the Rules of Procedure of the permanent court of arbitration constitutes an act of trust between the parties and the arbitration institution, authorising it to lay down rules for conducting arbitration proceedings. It is argued that an arbitration institution, by modifying its rules of procedure, may not interfere with the content of concluded agreements, all the more so since under Article 1161(3) of the k.p.c. [POL], in the absence of any agreement to the contrary, the parties are bound by the rules of the permanent court of arbitration in force on the date on which the statement of claims is lodged.[37]

4.24. The first of these views should be recognised as correct. This is supported by a host of arguments.

4.25. Firstly, by referring to the Rules of Arbitration, the parties thus shape their arbitration agreement and clarify the various key

[33] See also: The Rules of Arbitration of the Court of Arbitration at the Polish Chamber of Commerce, available at: https://sakig.pl/wp-content/uploads/2019/11/REGULAMIN-ARBITRA%C5%BBOWY-tekst-jednolity-z-X-2019.pdf (accessed on 16 November 2020).

[34] See also: Rules of the Lewiatan Court of Arbitration, available at: https://www.sadarbitrazowy.org.pl/Content/Uploaded/files/Przepisy/regulamin2017-PL-99x210-nowy.pdf (accessed on 16 November 2020).

[35] See also TADEUSZ ERECIŃSKI, KAROL WEITZ, SĄD ARBITRAŻOWY, Warszawa: LexisNexis (2008), et. 107.

[36] See also ANDRZEJ W. WIŚNIEWSKI, MIĘDZYNARODOWY ARBITRAŻ HANDLOWY W POLSCE. STATUS PRAWNY ARBITRAŻU I ARBITRÓW, Warszawa: Wolters Kluwer Polska (2011), et. 399-401.

[37] It is worth noting that under the Act of 31 July 2019 amending certain acts in order to reduce regulatory burdens (Journal of Laws of 2019, item 1495), a significant amendment was made to paragraph 3 of Article 1161 of the k.p.c. [POL], which now provides that, in the absence of a different agreement, the parties are

elements thereof, such as, e.g. the seat of the arbitration,[38] the language of the proceedings,[39] or the merging of the arbitral proceedings.[40] In professional transactions, this is a normal way for the parties to agree on certain typical elements of a contract.

4.26. Secondly, the literature of the subject accepts the existence of so-called open contracts which, when referred to the Rules of Procedure of a permanent court of arbitration (subject to change in time), make it possible to materialise the real will of the parties, in particular, in terms of trust in a given arbitration institution[41] and the best practices and techniques applied by it. This way, the arbitration covenant is adapted to current trends in the arbitration community.

4.27. Thirdly, the first view is also supported by pragmatic considerations – in the case of long-term contracts, the legal and technological environment for the dispute resolution procedure may change significantly in the period between the time of concluding an arbitration covenant and the date on which a dispute arises. It is in the interests of the parties to allow a professional arbitration body to adapt to these changes, all the more so since it is this body that will administer the dispute resolution process and, in accordance with competition rules, will adapt the provisions of the Rules of Procedure to the best practices functioning on the market.

4.28. Notwithstanding the arguments above, it is worth noting that parties who have submitted a dispute to be settled by

bound by the rules of the permanent court of arbitration in force at the date of filing the statement of claims. The previously mentioned provision regulated the binding of the parties by the rules of the permanent court of arbitration in force on the date of conclusion of the arbitration agreement, unless the parties expressly provided otherwise. Usually the rules of permanent arbitration courts provided otherwise.

[38] See also Article 16.2 of the LCIA Arbitration Rules, which expressly mentions London as the seat of arbitration; Article 18.1 of the ICC Rules of Arbitration, which provides that it is the court of arbitration which shall indicate the seat of arbitration (unless the parties agree otherwise); Article 14 of the Rules of the Court of Arbitration at the Polish Chamber of Commerce, which provides that, unless the parties have agreed otherwise, the place of proceedings shall be deemed to be the Capital City of Warsaw; Article 23 of the Rules of the Lewiatan Court of Arbitration, which provides that, unless the parties have agreed otherwise, the place of arbitration shall be deemed to be the Capital City of Warsaw, unless the Arbitral Tribunal determines, having regard to all circumstances of the case and the parties' positions, that another place is more appropriate.

[39] See also Article 13 of the Rules of the Court of Arbitration at the Polish Chamber of Commerce in Warsaw, which provides that the parties may agree on the language of proceedings. In the absence of such arrangement, the language of proceedings shall be Polish. Moreover, the Arbitral Tribunal may decide that for certain actions a different language of proceedings shall be the language of proceedings; Article 24 of the Rules of the Lewiatan Court of Arbitration, which provides that the parties may agree on the language of arbitration, and in the absence of such agreement, the language of proceedings shall be decided by the Arbitral Tribunal.

[40] See also Article 9 of the Rules of the Court of Arbitration at the Polish Chamber of Commerce in Warsaw; Article 28 of the Rules of the Lewiatan Court of Arbitration.

[41] In this respect, it can be said that both interpretative options are being reconciled, but with the explanation that the parties to the agreement do not perform 'an act of trust in the arbitration body', but within the framework of that trust – they agree to leave open the elements of the agreement that are covered by the rules of procedure of a given permanent court of arbitration. This is a realisation of the idea of a so-called self-regulatory contract.

a permanent court of arbitration according to its rules of procedure may amend the provisions of those rules (Article 1161(3) in conjunction with Article 1184(1) of the k.p.c. [POL].[42]

V.2. Early Case Management Conference, Timetable of Proceedings

4.29. Undoubtedly, it is a good practice for the courts of arbitration under consideration to take actions aimed at establishing a timetable for arbitration proceedings as soon as possible. This is a key issue, requiring a proactive role for arbitrators, who should, in a way, adapt the arbitration proceedings to the nature and size of the legal dispute underway. First of all, the court of arbitration should take into account and convince the parties to the dispute to find an agreement in this regard, and only when this is not possible should it take a procedural decision, explain its effects to the parties, and then consistently implement and enforce it. The main advantage of this stage of proceedings is the predictability of further stages of the procedure, which is of considerable importance in business. The solutions proposed in this respect by Polish permanent courts of arbitration make it possible to make arbitration a 'tailor-made' ADR tool.

4.30. Thus, under Article 31 of the Rules of the Court of Arbitration at the Polish Chamber of Commerce, as soon as possible and after consultation with the parties, the Arbitral Tribunal sets the timetable of proceedings by issuing a decision in this respect. The timetable of proceedings may indicate in particular: 1) order and dates of submission of letters by the parties, 2) dates of submission and taking of evidence, 3) dates of hearings, and 4) expected date of rendering the decision terminating the proceedings. The decision may also specify detailed rules of procedure, the manner and time limits for the preparation and presentation of written statements of witnesses and expert opinions in particular. Importantly, the Arbitral Tribunal may refrain from setting a timetable if, due to the nature of the dispute, it deems such action to be unnecessary.

4.31. The Arbitral Tribunal may order an organizational session (cf. Article 31.2 of the Rules of the Court of Arbitration at the Polish Chamber of Commerce) to discuss issues with the parties which

[42] Thus, correctly, see also the Supreme Court in its judgment of 20 March 2015 (file reference No. II CSK 352/14). Nevertheless, in extreme cases, the arbitration court may refuse to accept the case for consideration. This raises an interesting legal issue – until when the parties can establish rules of procedure. This legal problem has been addressed in the doctrine, see also Justyna Szpara, Maciej Łaszczuk, *Czy autonomia stron w ustalaniu reguł postępowania przed sądem polubownym jest ograniczona w czasie?*, in KSIĘGA PAMIĄTKOWA 60-LECIA SĄDU ARBITRAŻOWEGO PRZY KIG W WARSZAWIE, Warszawa: Sąd Arbitrażowy przy Krajowej Izbie Gospodarczej (2010), et. 281-289.

may be included in the schedule of the proceeding, as well as other issues concerning the proceedings. Furthermore, an organizational session may also be conducted using telecommunications.

4.32. As regards the implementation by the parties of the established principles and their possible use as a tool in the fight, in particular in the context of an action for setting aside an arbitral award, under Article 4.4 of the Rules of the Court of Arbitration at the Polish Chamber of Commerce (analogically in Article 35 of the Rules of Procedure of the Lewiatan Court of Arbitration), if an objection of violation of provisions of the Arbitration Rules or other rules of procedure agreed by the parties is not asserted by a party promptly, the party shall be deemed to have waived assertion of the objection.

4.33. The Rules of Procedure of the Lewiatan Court of Arbitration are slightly more extensive in the scope commented on. Apart from the regulation analogous to the one described above, under Article 26 of the Rules of the Lewiatan Court of Arbitration, as soon as it is constituted, the arbitral tribunal shall, after consultation with the parties, draw up a procedural order consisting of : 1) timetable of the arbitration[43] and 2) the rules governing the conduct of the arbitration.[44] Characteristically, however, the Rules of the Lewiatan Court of Arbitration provide for a severe sanction in the event of unjustified failure to comply with the time limits set in the procedural provision by either party. In such a case, the Arbitral Tribunal may continue the proceedings and render an award.

4.34. An early organisational meeting, during which a timetable for the proceedings is set, is undoubtedly an effective technique for improving the course of proceedings, which has been incorporated not only into arbitral proceedings but also into Polish civil procedure before common courts (see Section 1.7 above). In practice, however, its effective application depends on the arbitrators' characteristics and their ability to

[43] The timetable of the arbitration should include the following particulars: 1) the time limits for filing further written submissions; 2) the time limit for the parties to present witnesses or expert witnesses and specify the circumstances intended to be proved; 3) the time limit for the parties to submit the written testimony of witnesses; 4) the deadline for presenting new allegations and evidence; 5) the time limit for the parties to file pre-hearing briefs; 6) the date of a hearing and the manner of conducting it; 7) the time limit for filing post-hearing briefs; 8) the time limit for closing the evidentiary proceedings; 9) the time limit for issuing the award, unless, due to the nature of the dispute, the arbitral tribunal considers the aforementioned elements unnecessary.

[44] Next to the issues of identification of the parties, arbitrators, and claims, they in particular include: 1) a statement of the key disputed issues which must be clarified in order for the dispute to be settled; 2) a statement of the grounds for resolution of the dispute by the arbitral tribunal; 3) a statement that the parties are obliged to observe the timetable of the arbitration and that the written submissions of the parties which are not included in the timetable of the arbitration shall be disregarded, unless the arbitral tribunal considers that there was good cause for filing such submissions; 4) a statement on whether the parties intend to call any witnesses; 5) a statement on whether the parties intend to call their own expert witnesses.

convince the parties of the best procedural solutions, and then to implement them consistently.

V.3. Written Witness Statements

4.35. Reviewing evidence from witness statements is undoubtedly one of the most time-consuming activities. The practice of commercial arbitration has shown that witnesses repeatedly requested by the parties have no knowledge of the circumstances relevant to the resolution of the case, or taking evidence from witnesses' testimonies is otherwise pointless or difficult. The rules of permanent arbitration courts therefore allow the use of the institution of written witness evidence. All the more so because in commercial cases it is a convenience of evidentiary proceedings, which may also be used by a common court (see Section 1.7 above).

4.36. Under Article 33.8 of the Rules of Procedure of the Court of Arbitration at the Polish Chamber of Commerce, the Arbitral Tribunal decides on the manner of taking evidence and may decide that evidence from a witness shall be taken in two stages - on the basis of a written statement of the witness and then by a supplementary examination at a hearing. However, with the parties' consent, the Arbitral Tribunal may take evidence from a witness only on the basis of the witness's written statement. Therefore, the Rules of Procedure of the Court of Arbitration at the Polish Chamber of Commerce leave the final decision as to rely or not on a witness's written testimony to the parties.

4.37. Similarly, Article 26.3c of the Rules of the Lewiatan Court of Arbitration provides that the calendar of the proceedings should determine the time limit for the parties to submit the written testimony of witnesses unless the arbitral tribunal considers that the witnesses shall only give oral testimony at a hearing. It is therefore standard practice for the parties to present the parties' written testimony, but the potential decision whether or not to hear a given witness traditionally at the hearing remains at the discretion of the court of arbitration.

V.4. Production of Documents

4.38. As regards the stage of production of documents, Polish best practices are usually based on international standards. The IBA Rules on Taking Evidence in International Arbitration are most commonly used for this purpose. Under Article 31.3 of the Rules of the Lewiatan Court of Arbitration the arbitral tribunal may require that the parties produce documents or

other evidence that may be relevant to the resolution of the dispute within such a period as it shall determine. The arbitral tribunal shall determine how to interpret the refusal of a party to present a specific piece of evidence. In terms of the decision of the Arbitral Tribunal on motions to order the opposing party to submit documents, the Rules of the Lewiatan Court of Arbitration expressly refer to the above-mentioned IBA Rules.

4.39. As a matter of fact, this issue was similarly regulated in Article 33.4 and Article 33.6 of the Rules of Procedure of the Court of Arbitration at the Polish Chamber of Commerce, although without an express reference to international standards which in the Polish realities are most frequently used in this scope anyway. Interestingly, Article 33.7 of the Rules of Procedure of the Court of Arbitration at the Polish Chamber of Commerce allows the Arbitral Tribunal to entrust this task to one of the arbitrators. The parties and their attorneys shall have the right to participate in taking of evidence by the designated arbitrator.

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Summaries

FRA [***À la recherche de la procédure parfaite : les bonnes pratiques dans la procédure arbitrale***]

Une des questions cruciales de l'arbitrage commercial international est l'effet du lieu du for sur le déroulement de la procédure devant le tribunal arbitral. Cette question se décline sous trois formes : 1) le problème de l'interaction potentielle entre le tribunal arbitral ou les parties au litige d'un côté, et la juridiction de l'État du for de l'autre ; 2) le problème des règles de procédure impératives qui s'imposent au tribunal arbitral ; 3) le problème du contrôle potentiellement réduit de la procédure arbitrale par la juridiction de droit commun à l'occasion de la procédure d'annulation de la sentence arbitrale ou de la procédure de reconnaissance ou d'exécution de la sentence arbitrale. La question du lieu du for est primordiale dans l'appréciation des risques juridiques de la procédure arbitrale, d'autant plus que les parties ont le droit de choisir le lieu du for au moment de la conclusion d'une clause compromissoire. Selon les bonnes pratiques appliquées à la procédure arbitrale commerciale en Pologne, les parties ont la faculté de formuler la convention d'arbitrage de telle façon qu'elle contienne des dispositions tributaires de la prévisibilité, rapidité et efficacité financière de

la procédure arbitrale, tout en préservant le droit des parties à un procès équitable. Les bonnes pratiques représentent un outil pertinent qui optimise la procédure arbitrale en tant que méthode efficace de règlement des litiges. Si le recours aux bonnes pratiques peut mener, à long terme, à une standardisation de la procédure au sein de la communauté des arbitres, il convient de relever qu'il s'agit d'un phénomène naturel, qui témoigne du potentiel évolutif de la procédure arbitrale et de sa capacité d'adaptation à la réalité juridique et économique. Les bonnes pratiques de la procédure arbitrale correspondent à un ensemble de normes et de procédés dont l'utilisation est recommandée dans toutes les phases de la procédure : 1) ouverture de la procédure ; 2) actes préalables aux débats ; 3) débats ; 4) administration des preuves ; 5) clôture de la procédure. Le présent article propose une sélection de bonnes pratiques, ainsi que des méthodes pour les intégrer dans la convention d'arbitrage.

CZE [***Hledání dokonalého řízení – osvědčená praxe v rozhodčím řízení***]
Jedním z klíčových problémů mezinárodní obchodní arbitráže je vliv sídla rozhodčího řízení na řízení vedené u rozhodčího soudu. Tato otázka se projevuje ve formě tří závažných problémů, a sice: 1) otázky potenciální interakce mezi rozhodčím soudem nebo stranami rozhodčí smlouvy na jedné straně a soudem státu, v němž se nachází místo řízení, 2) otázky kogentních procesních norem, jež jsou pro rozhodčí soud závazné, 3) otázky potenciální omezené kontroly nad řízením vedeným u rozhodčího soudu vykonávané obecným soudem ve fázi řízení o zrušení rozhodčího nálezu, popřípadě řízení o uznání nebo o výkonu rozhodčího nálezu. Problematika místa (sídla) rozhodčího řízení je jednou z nejdůležitějších otázek při posuzování právních rizik vedení rozhodčího sporu, a to tím spíše, že si strany mohou sídlo rozhodčího řízení zvolit ve fázi uzavírání rozhodčí doložky. Nalezení osvědčené praxe v rozhodčím řízení v obchodních věcech v Polsku umožňuje stranám uzavírajícím rozhodčí doložku formulovat rozhodčí smlouvu takovým způsobem, aby umožňovala zakotvení řešení přispívajících ke zvýšení předvídatelnosti, jakož i efektivity rozhodčího řízení z hlediska času a nákladů, přičemž však zůstane zachováno právo strany na spravedlivý proces. Dokládá relevanci předmětu této studie pro uživatele rozhodčího řízení coby efektivní metody řešení právních sporů. Přestože v dlouhodobém horizontu vede využívání osvědčené rozhodčí praxe v rámci rozhodčí komunity ke standardizaci rozhodčího řízení, je potřeba podotknout, že se jedná o přirozený projev procesu vývoje

rozhodčího řízení, usnadňující jeho pružné přizpůsobení měnící se právní a hospodářské realitě. Osvědčená praxe v rozhodčím řízení zahrnuje soubor norem a postupů, které jsou používány a doporučovány ve fázi: 1) zahájení řízení, 2) přípravy projednání sporu, 3) vedení projednávání, 4) provádění důkazů, jakož i 5) ve fázi skončení řízení. Tento příspěvek představuje prezentaci vybraných osvědčených norem a postupů, jakož i způsob, jakým je lze učinit součástí dohody stran.

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POL [***W Poszukiwaniu Perfekcyjnej Procedury – (Najlepsze) Praktyki w Arbitrażu***]
Problematyka identyfikacji (najlepszych) praktyk w arbitrażu stanowi jedno z najważniejszych zagadnień prawa arbitrażowego. Artykuł omawia granice swobody stron umowy o arbitraż w kształtowaniu postępowania arbitrażowego, a także problem sposobu inkorporacji najlepszych standardów do umowy arbitrażowej. Analiza wychodzi od zwrócenia uwagi na specyficzne zjawisko konwergencji postępowań arbitrażowych i postępowań przed sądami powszechnymi.

DEU [***Auf der Suche nach dem vollkommenen Verfahren – die bewährte Praxis im Schiedsverfahren***]
Das Problem der Ermittlung der bewährten Praxis im Schiedsverfahren ist eines der wichtigsten Probleme des auf das Schiedsverfahren anzuwendenden Rechts. Der vorliegende Beitrag widmet sich der Analyse der Wahlfreiheit der Parteien von Schiedsklauseln, wenn es um die Bestimmung der im Schiedsverfahren anzuwendenden Verfahren geht, sowie dem Prozedere, mit dem die bewährte Praxis zum Bestandteil der Schiedsvereinbarung gemacht werden kann. Eingangs widmen die Autoren des Beitrags ihre Aufmerksamkeit außerdem dem besonderen Phänomen der Konvergenz zwischen Schiedsverfahren und dem Gerichtsverfahren.

RUS [***Поиск идеального процесса – проверенная практика в арбитраже***]
Поиск проверенной практики в арбитраже представляет собой одну из наиболее существенных проблем права, применимого к арбитражу. В данной статье анализируются границы свободы сторон арбитражного соглашения при определении процедур, которые будут применяться в арбитраже, а также

рассматривается способ, как включить проверенную практику в арбитражное соглашение. В начале данной статьи авторы обращают внимание на особый феномен, т. е. конвергенцию арбитража и разбирательства в судах.

ESP [***La búsqueda del proceso ideal: las mejores prácticas del arbitraje***]

Uno de los problemas más palpables del derecho aplicado a los procesos de arbitraje es la búsqueda de las mejores prácticas. El presente artículo analiza los límites de la libertad de las partes del contrato de arbitraje de establecer procedimientos arbitrales a seguir en el proceso, así como los mecanismos de inclusión de las mejores prácticas en el contrato de arbitraje. Los autores del artículo también prestan atención a una convergencia interesante del arbitraje y los procesos ante los tribunales ordinarios.

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