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International Arbitration 2022

Poland: Law and Practice

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POLAND

Law and Practice

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1. GENERAL

1.1 Prevalence of Arbitration

Arbitration is not yet prevalent as a method of resolving disputes in Poland, but it is a popular and respected means of dispute resolution.

According to data gathered in 2021 by Anna Tujakowska, in 2019-20 parties initiated 515 cases in Polish arbitral institutions, with a 36% increase year on year. This number excludes ad hoc proceedings and cases heard by foreign institutions (which amount to at least several dozen more). By contrast, parties filed 1,780 cases with the ICC court in 2019-2020, circa 850 in 2021 and almost 1.5 million commercial cases with Polish courts each year in 2020 and 2021.

In turn, according to the data gathered by this firm in 2021, in 2020 parties filed 35 motions with Polish courts to set awards aside, 232 motions to recognise/enforce a domestic award, and 32 motions to recognise/enforce a foreign one. According to the data gathered by this firm in 2021, 81% of motions to set awards aside were unsuccessful and, in turn, in 93% of cases the courts granted enforcement or recognition of both domestic and foreign arbitral awards.

As for last year, the initial data gathered proves that the interest in arbitration in Poland is increasing. In 2021 parties filed around 35% more motions to set awards aside and about 5% more motions to recognise/enforce a domestic or foreign award in comparison 2020. This also means that more arbitral awards were rendered as more arbitral proceedings were initiated.

All this data confirms that arbitration in Poland is becoming more and more popular as the country demonstrates its “arbitration-friendly” label.

1.2 Impact of COVID-19

The COVID-19 pandemic has impacted virtually every aspect of life and business in Poland, including arbitration.

Major Polish arbitral institutions reacted immediately to the COVID-19 pandemic. The Court of Arbitration at the Polish Chamber of Commerce reported that the first online hearing took place on 3 April 2020, just a few weeks after the pandemic started. In April 2020, the Court also prepared recommendations for conducting a hearing in the form of a videoconference.

The Lewiatan Court of Arbitration also issued such recommendations in October 2020. Moreover, this Court amended its rules in May 2020, allowed electronic filing, and underlined the possibility of conducting online hearings.

By contrast, it took several months for Polish state courts to launch online hearings. Electronic filings, despite several attempts, were not introduced. Therefore, a significant backlog in Polish courts grew even more prominent during the pandemic. In the state courts, some, or even most, hearings are still conducted online, depending on the court.

All these developments confirmed the flexibility and speed of arbitration. Digitalisation (e-filing, online hearings) was present in Polish arbitration even before the pandemic, with recent months only catalysing further digital transformations.

Furthermore, as described in **1.1 Prevalence of Arbitration**, there was a 36% rise in cases before Polish arbitral institutions in 2020 despite (or perhaps because of) the pandemic.

Even though most of the measures adopted by the public authorities have now been lifted, the movement toward the digitalisation of arbitration in Poland has not stopped. Conversely, it seems

that online measures (eg, online hearings and e-filings) are here to stay.

1.3 Key Industries

According to data gathered by the Court of Arbitration at the Polish Chamber of Commerce, the following industries were present in its caseload (data from 2019 compared to 2020):

- construction (increase from 18% to 34%);
- lease (drop from 34% to 25%);
- commercial transactions (drop from 19% to 15%);
- services (drop from 15% to 11%); and
- other (increase from 4% to 12%).

The statistics from 2021 show a similar division (apart from a drop in construction cases to 18%, a drop in other cases to 6% and an increase in services cases to 19%).

The Lewiatan Court of Arbitration informed this firm that it heard the most significant number of cases from the construction and commercial transactions categories last year.

This data seems to confirm a common belief that complex cases are more suitable for arbitration than litigation. This is usually the case with construction cases, where parties file multiple claims and cross-claims, the facts are complicated, and the tribunal needs to adduce expert evidence.

1.4 Arbitral Institutions

Polish stakeholders usually choose the Court of Arbitration at the Polish Chamber of Commerce, the Lewiatan Court of Arbitration or the Court of Arbitration at the Polish Bank Association. The first of these is one of the oldest and most popular and significant institutions in Poland. However, the Lewiatan Court of Arbitration is also gaining a reputation as a renowned institution.

Ultima Ratio, an online arbitration court specialising in small and simple cases, was established in recent years, and it is gaining in popularity as well.

Additionally, a specialised Construction Court of Arbitration at the Association of Engineers, Experts and Advisers in Warsaw is also gaining its momentum when it comes to construction disputes (which are the most commonly arbitrated disputes, see **1.3 Key Industries**) and public procurement disputes.

1.5 National Courts

There are no specific courts in Poland designated to hear disputes related to international arbitrations and/or domestic arbitrations. Courts of appeal hear post-arbitral cases with a possibility to file a cassation complaint to the Supreme Court (concerning motions to set aside and motions to recognise/enforce a foreign award). Other state courts act in aid and in the course of arbitration, for, example in cases relating to challenges to arbitrators, evidentiary assistance or jurisdiction (see **5.3 Circumstances for Court Intervention**).

2. GOVERNING LEGISLATION

2.1 Governing Law

Book V of the Polish Code of Civil Procedure contains the Polish internal arbitration law. It was amended in 2005 to reflect the UNCITRAL Model Law on International Commercial Arbitration in its original version. Polish law does not diverge in a significant way from the Model Law. Poland is a party also to New York Convention and European Convention (see **12.1 New York Convention**). These sources of law make Poland a jurisdiction with stable and predictable arbitration law.

2.2 Changes to National Law

Since the adoption of the new Polish arbitration law in 2005, the law has changed significantly.

2016 Amendments

In 2016, significant changes to the arbitration landscape were introduced:

- arbitrability of cases including insolvent parties;
- obligatory declaration of independence and impartiality;
- courts of appeal competent to hear post-arbitral cases;
- time to file a recourse against the award reduced from three to two months;
- cases on the enforcement of domestic awards – possibility to file an appeal to a different bench of the courts of appeal;
- cases on the enforcement of foreign awards and cases for setting aside the award – the possibility to file a cassation complaint to the Supreme Court; and
- the opportunity for a party to file a response to a motion to recognise and enforce an arbitral award.

2017 Amendments

2017 brought changes to consumer arbitration as a result of implementing EU Directive 2013/11/EU of 21 May 2013 on alternative dispute resolution for consumer disputes:

- the arbitration agreement has to be concluded with the consumer in writing after the dispute emerged and cannot be entered into by reference (see **3.1 Enforceability**);
- the agreement has to contain specific language informing the consumer about the effects of arbitration under pain of nullity (see **3.1 Enforceability**); and
- arbitration cannot deprive consumers of the protection granted to them by the mandatory provisions of law even if the tribunal decides ex aequo et bono. If this is the case, the award may be set aside or refused recognition/enforcement ex officio (see **11. Review of an Award** and **12. Enforcement of an Award**).

2019 Amendments

2019 brought changes to the arbitration of corporate disputes:

- arbitrability clarified (see **3.2 Arbitrability**);
- the arbitration agreement contained in the articles of association of a company binds not only the company and its partners (shareholders) but also the company's bodies and their members;
- new rules on corporate disputes introduced relating, for example, to the joinder or content of the arbitration agreement (see **3.1 Enforceability**);
- the version of arbitration rules in force at the time of filing the statement of claim (not time of entering into an arbitration agreement as before) applies unless the parties decide otherwise; and
- rules on arbitrators' selection in multi-party disputes (see **4.2 Default Procedures**).

3. THE ARBITRATION AGREEMENT

3.1 Enforceability

Under Polish law, the arbitration agreement has to be (i) valid on the part of substance and (ii) form and also (iii) comply with certain other rules.

Substantive Requirements

The arbitration agreement needs to meet the following substantive requirements.

- First, the arbitration agreement must specify the subject matter of the dispute or the legal relationship from which a dispute arose or

could arise, ie, the scope of the dispute (Article 1161 Section 1, Code of Civil Procedure – CCP). An arbitration agreement concluded with a consumer must contain additional disclaimers as to effect of arbitration under pain of nullity (Article 1164(1) Section 2, CCP, see **2.2 Changes to National Law**).
- Arbitration clauses in articles of association have to include an obligation to announce the initiation of arbitral proceedings on shareholders' resolutions in a manner required for company announcements no later than one month from the start date (Article 1163 Section 2, CCP, see **2.2 Changes to National Law**).

Formal Requirements

The arbitration agreement needs to meet the following formal requirements:

- the main rule is that the arbitration agreement has to be made in writing (Article 1162 Section 1, CCP);
- however, it suffices if the letters or recordable communications exchanged between the parties include the arbitration agreement (Article 1162 Section 2, CCP); and
- 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 (Article 1162 Section 2, CCP).

Other Rules

Furthermore, arbitration agreements:

- cannot be unilateral or violate the principle of equality (eg, granting more rights in the selection of arbitrators), otherwise they can be deemed ineffective (Article 1161 Section 2, CCP);
- concerning consumer and labour disputes – have to be made in writing and entered into only after the dispute arose (Articles 1164 and 1164(1) Section 1, CCP); and
- may lose their legal effect in part or entirely in some instances (if the arbitrator or the court named in the agreement refuses to hear or cannot hear the case or if the rendering of an award is not possible due to the lack of required unanimity or majority, Articles 1168 Sections 1-2 and 1195 Section 4, CCP); and
- incorporated into the statute (or articles of association) of a commercial company are ineffective if they do not provide for an obligation to announce the commencement of arbitration proceedings in the manner required for making company announcements (Article 1163 Section 2, CCP); this allows other interested parties to join the proceedings (see **13.4 Consolidation**).

3.2 Arbitrability

Since the 2019 reform (see **2.2 Changes to National Law**), all disputes regarding property rights (save for child support (alimony) disputes) and those non-property disputes in which parties may conclude a court settlement are arbitrable (Article 1157, CCP).

Most disputes in the commercial spectrum are arbitrable. Most importantly, since 2016, arbitration agreements concluded by an insolvent party do not automatically become ineffective at the date of the declaration of bankruptcy, and all ongoing arbitration proceedings do not necessarily have to discontinue. The proceedings are instead stayed ex officio and can be resumed when the prerequisites stemming from bankruptcy law are met, for example, the participation of a bankruptcy receiver.

3.3 National Courts' Approach

National Court's Approach to Enforcement of Arbitration Agreements

Polish courts usually enforce arbitration agreements. Under Polish law, if a party brings a claim covered by an arbitration agreement 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 (unless the arbitration agreement is defective, Article 1165 Sections 1-2, CCP).

Polish courts may interfere with arbitration only in cases prescribed by law (Article 1159 Section 1, CCP). Hence, according to a prevailing opinion, it is impossible to motion for a declaratory judgment on the validity of an arbitration agreement or an anti-arbitration injunction.

Applicable Law

As to determining the law applicable to the arbitration agreement, the New York Convention and the European Convention play a primary role.

Additionally, Polish private international law will apply outside the scope of application of these two Conventions. This law differentiates between the law applicable to the form and to the substance of the agreement.

- The law of the state of the place of arbitration governs the form of the arbitration agreement. It is enough, however, to maintain the form prescribed by the law of the state to which the arbitration agreement is subject (Article 40, Private International Law – PIL).
- The substance of the arbitration agreement is governed:
  - (a) by the law chosen by the parties; or (in the absence thereof)
  - (b) by the law of the state in which the place of arbitration agreed to by the parties is situated; or (in the absence thereof)
  - (c) by the law applicable to the legal relationship in a dispute.

However, it is sufficient that the contract is effective under the law of the state in which the proceedings are pending or the arbitral tribunal has issued its award (Article 39 Sections 1-2, PIL).

3.4 Validity

Polish law enshrines the principle of separability of an arbitration agreement (Article 1180 Section 1, CCP). Therefore, an arbitral agreement may be considered valid and effective even if the rest of the contract in which it is contained is invalid or expired.

4. THE ARBITRAL TRIBUNAL

4.1 Limits on Selection

Polish law provides for extensive parties' autonomy to select the arbitrator. Any natural person, irrespective of their nationality, with full capacity to perform legal acts, can be an arbitrator, except for active judges (Article 1170 Sections 1-2, CCP). Some Polish institutions provide lists of recommended arbitrators and require the sole or presiding arbitrator to be chosen from such a list.

4.2 Default Procedures

Parties are free to determine the method for selecting arbitrators (Article 1171 Section 1, CCP) as long as the principle of equality is maintained (Article 1169 Section 3, CCP, see **3.1 Enforceability**). If this method fails, there is a default procedure. Parties can also specify the procedure by applicable arbitration rules or Polish arbitration law (Article 1171 Section 2, CCP). The leading Polish institutions' rules allow the institution to nominate an arbitrator if parties or co-arbitrators fail to do so.

The default rule that applies in the case of multi-party arbitrations is that parties acting on the same side in multi-party arbitration shall appoint the arbitrator jointly unless the arbitration agreement provides otherwise (Article 1169 Section 2(1), CCP).

4.3 Court Intervention

Parties can agree on a procedure of appointment of arbitrators (eg, by adopting arbitral rules, see **4.2 Default Procedures**). In the absence of such an agreement, any party can motion a state court to appoint an arbitrator that should have been appointed by the other party, by both parties, by the other arbitrators or by a third party (Article 1172, CCP). Apart from aiding in arbitrators' appointments, Polish courts do not intervene in the selection of arbitrators.

4.4 Challenge and Removal of Arbitrators

Polish law recognises the basic standard for the challenge of arbitrators, ie, justifiable doubts as to their impartiality and independence (Article 1174 Section 2, CCP). A challenge is also possible if the arbitrator does not meet the requirements specified in the parties' agreement. There are no official guidelines that help determine whether a challenge is substantiated. The stakeholders often rely on the International Bar Association (IBA) Guidelines on Conflicts of Interest in International Arbitration.

Parties are free to agree on a challenging procedure (Article 1176 Section 1, CCP). If the arbitrator is not removed within one month from the challenge, the requesting party can file a motion to challenge the arbitrator with the state court within a further two weeks (Article 1176 Section 2, CCP).

In the absence of parties' agreement to the contrary, the party challenging the arbitrator should file its request within two weeks and state reasons for the challenge (Article 1176 Section 3, CCP). If the arbitrator does not resign or if the parties do not jointly remove them within the following two weeks, the challenging party has a further two weeks to file the challenge with the state court (Article 1176 Section 4, CCP).

Polish law provides short deadlines for filing the challenge in order to ensure that the decision is rendered in a timely manner.

4.5 Arbitrator Requirements

Arbitrators should be independent and impartial. They are required to submit a statement of independence and impartiality to the parties and disclose any subsequent conflicts in each case (Article 1174 Section 1, CCP). Polish law does not specify any particular requirements in this regard (see **13.2 Ethical Codes**).

5. JURISDICTION

5.1 Matters Excluded From Arbitration

If a matter is arbitrable (see **3.2 Arbitrability**), it can be referred to arbitration. However, since in labour and consumer cases parties can only submit to arbitration after the dispute emerged (see **3.1 Enforceability**), the use of arbitration in these sectors is very limited in practice.

5.2 Challenges to Jurisdiction

Polish law recognises the competence-competence principle, and therefore a tribunal may rule on a party's challenge to its jurisdiction (Article 1180 Section 1, CCP). The same principle is incorporated into the arbitration rules of the major Polish arbitration institutes.

5.3 Circumstances for Court Intervention

A Polish state court can address the issue of a tribunal's jurisdiction in the following cases.

- A party can question the tribunal's separate positive decision on jurisdiction in the course of arbitral proceedings. The tribunal can proceed with the case pending the state court's proceedings (Article 1180 Section 3, CCP). However, Polish law does not provide for a challenge of a tribunal's negative ruling on jurisdiction.
- If a party brings a claim covered by the arbitration agreement to the state court, the other party can ask the court to reject the statement of claim. The court will do so unless it finds that the arbitration agreement is defective or the tribunal had already declined its jurisdiction (Article 1165 Sections 1-2, CCP).
- A party can challenge the tribunal's jurisdiction in post-arbitral proceedings (see **11. Review of an Award** and **12. Enforcement of an Award**).

Polish law prohibits the state courts from intervening in arbitration without having a direct statutory basis (Article 1159 Section 1, CCP). Therefore, Polish courts have ruled that they cannot, for instance, render an anti-arbitration injunction or issue a declaratory relief on the (non-)defectiveness of arbitration agreement. Poland is an arbitration-friendly jurisdiction in that respect (see **1.1 Prevalence of Arbitration**).

5.4 Timing of Challenge

Under a general rule, parties can challenge the jurisdiction of the arbitral tribunal no later than in the statement of defence or within another time limit specified by the parties, unless they did not discover and could not have discovered the basis of such an objection beforehand, or such a basis occurred only afterward (Article 1180 Section 2, CCP).

Therefore, in principle, parties can file such a challenge at the initial state of the case. Challenges in the course of the proceedings are less frequent.

Parties can also challenge jurisdiction in post-arbitral proceedings (see **5.3 Circumstances for Court Intervention**).

The prevailing opinion is that the law precludes a party from challenging jurisdiction in post-arbitral proceedings if it did not pursue its challenge in the course of the arbitration (see **11. Review of an Award** and **12. Enforcement of an Award**). This serves to resolve the issue of jurisdiction at an early stage of the proceedings.

5.5 Standard of Judicial Review for Jurisdiction/Admissibility

The standard of judicial review for the question of jurisdiction has not yet been decided in Poland, as is the case in international practice. It seems that the state courts review legal aspects of the jurisdiction de novo, but usually defer to facts established by the tribunal.

As Poland is a civil law country, it does not explicitly recognise the notion of admissibility. Some issues recognised under admissibility in other legal systems (eg, the statute of limitations) fall within the scope of Polish substantive law. The review of awards from a substantive law perspective is limited and deferential (see **11. Review of an Award** and **12. Enforcement of an Award**).

5.6 Breach of Arbitration Agreement

If a party brings a claim covered by the arbitration agreement to the state court, the other party can ask the court to reject the statement of claim (see **5.3 Circumstances for Court Intervention**). Polish courts usually act diligently in reviewing arbitral jurisdiction in such cases.

There is no clear case law on whether a party can claim damages for breach of the arbitration agreement.

5.7 Jurisdiction Over Third Parties

The Polish law remains silent on the issue of the extension of arbitral jurisdiction to non-signatories. There is one exception (see **2.2 Changes to National Law**): the arbitration agreement contained in the articles of association of a company binds not only the company and its partners (shareholders) but also the company's bodies and their members (Article 1163 Section 1, CCP).

Polish courts have clarified that arbitration agreements can bind entities that are not parties to arbitration agreements. This is the case, for example, concerning:

- legal successors;
- companies created after mergers or divisions;
- assignees of a debt;
- acquirers of a debt;
- acquirers of an enterprise; and
- insurers that covered damage and have a recourse claim.

However, the courts have ruled that the buyer of real estate is not bound by the arbitration agreement contained in the property's lease agreement.

Courts have not yet clarified whether doctrines extending the arbitral jurisdiction even further (ie, alter ego, chain of contracts, group of companies, piercing the corporate veil) apply in Poland.

6. PRELIMINARY AND INTERIM RELIEF

6.1 Types of Relief

Polish law allows tribunals to award preliminary or interim relief. Unless the parties have agreed otherwise, the arbitral tribunal, at the request of the party that has substantiated the claim, may decide to apply the type of interim relief it deems appropriate due to the subject matter of the dispute. By issuing such an order, the arbitral tribunal may make its execution conditional on the provision of appropriate security (Article 1181 Section 1, CCP).

6.2 Role of Courts

Under Polish law, parties are free to choose whether they wish to secure their claims before an arbitral tribunal or state courts. If they motion the arbitral tribunal (see **6.1 Types of Relief**), its order can be enforced or recognised under rules on awards (Article 1181 Section 3, CCP, see **12. Enforcement of Arbitral Awards**).

Parties can also motion a state court to secure the claim in aid of arbitration (Article 1166 Sections 1-2, CCP). Such a motion can be granted during the arbitral proceedings or even before they begin. Courts can grant such a motion also in aid of arbitration seated abroad. The state court will secure the claim if a party makes the existence of the claim probable and demonstrates that without securing the claim, the 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(1) Section 1, CCP).

Polish law is silent on the issue of emergency arbitration, and therefore the general rules described above apply. There are no arguments for the courts not to allow such measures if parties agreed that an emergency arbitrator might decide on security. Some of the arbitration rules of major Polish arbitration institutions provide for emergency arbitration.

6.3 Security for Costs

Polish law does not provide any guidance on security for costs. Therefore, general rules on securing claims apply (see **6.1 Types of Relief** and **6.2 Role of Courts**).

7. PROCEDURE

7.1 Governing Rules

Polish law provides general rules governing the arbitral procedure (Articles 1183-1193, CCP). Most of the rules are not mandatory and parties can shape the procedure as they see fit (Article 1184 Section 1, CCP). In the absence of such an agreement, the arbitral tribunal may decide on a procedure (Article 1184 Section 2, CCP). In any case, both parties need to be treated equally and have the right to present their case (Article 1183, CCP).

The main default rules are the following:

- unless parties agreed otherwise, if a party requests a hearing, the tribunal should grant such a request; otherwise, it is free to determine whether to conduct a document-only arbitration;
- default proceedings are allowed;
- the tribunal cannot apply means of coercion; and
- a party waives its right to invoke a violation of the rules of the procedure unless it objects promptly.

7.2 Procedural Steps

Under Polish law, parties can initiate arbitration by filing a request for arbitration, which is the default procedure. The respondent answers the request, and then subsequently, the claimant files a statement of claim, followed by the respondent's statement of defence (Articles 1186 and 1188 Sections 1-3, CCP). Parties can agree otherwise, and they often do so by adopting institutional rules that provide only a statement of claim, without the need to file the request.

Parties need to describe the claim and the parties involved properly. Such steps allow for interrupting the limitation period under Polish law.

7.3 Powers and Duties of Arbitrators

Polish law, like other jurisdictions, provides for vast autonomy of arbitrators to conduct the proceedings as they see fit absent the parties' agreement (see **7.1 Governing Rules**). The primary duties and obligations of arbitrators under Polish law are the following.

Duty of Impartiality and Independence

As described in **4.4 Challenge and Removal of Arbitrators**, arbitrators need to be impartial and independent or they can be removed from the tribunal.

Right to Remuneration

Arbitrators are entitled to remuneration for their services. The parties' liability is joint and several in this respect. The state court can specify the amount of remuneration if parties and arbitrators fail to reach an agreement (Article 1179 Sections 1-3, CCP).

Duty to Resolve the Case without Undue Delay

Any party can motion a state court to revoke an arbitrator if it is clear that they will not perform in due time or if they are in undue delay in resolving the case (Article 1177 Section 2, CCP). However, this provision is rarely used in practice.

7.4 Legal Representatives

There is no particular rule obliging parties to hire a professional representative. Thus, the rules of parties' representation in arbitration are liberal and a party can, for example, hire a foreign lawyer to represent them in a Polish arbitration.

However, in most if not all cases, parties are represented by members of one of two legal professions present in Poland (ie, attorneys-at-law and legal counsels). Both of these professions are organised in bars and have their codes of conduct and rules of diligent performance of duties. These codes and rules do not differen-

tiate between arbitration (both domestic and international) and state court litigation.

8. EVIDENCE

8.1 Collection and Submission of Evidence

Parties are free to agree on and outline the rules on the collection and submission of evidence (Articles 1184 Sections 1-2, 1191 Sections 1-2, CCP). They generally refer to a particular set of arbitral rules or soft-law instruments (eg, the International Bar Association's Rules on Taking Evidence in International Arbitration). Unless parties decide otherwise, the tribunal can shape the procedure as it sees fit. In all cases, however, all parties need to be treated equally (Article 1183, CCP).

8.2 Rules of Evidence

Polish arbitral law regulates the taking of evidence in a very general manner.

The general approach to evidence in Polish state courts is that parties submit their evidence, discovery is very limited, and courts hear witnesses during several hearings (direct examination).

Polish arbitral practice differs and is in line with international standards. Written witness statements, tribunals' flexibility as to document production, and one hearing (often lasting several days) are common practice. In some cases, arbitral tribunals rely on the IBA Rules on the Taking of Evidence in International Arbitration as guidance.

Moreover, the attorney-client privilege applies in Poland.

8.3 Powers of Compulsion

Under Polish law, arbitral tribunals have no compulsory measures to impose on parties or witnesses. They can draw adverse inferences, for example, from a party failing to present a document.

However, the tribunal may request the state court to assist it in evidentiary proceedings or any other activities that the tribunal is unable to perform (Article 1192, CCP). This means that the court can, for instance, call witnesses who refuse to appear before the arbitral tribunal and fine them if they ignore the state court's subpoena. The state court can also request anyone to present a document. It can impose a fine on a third party to the proceedings. However, the court cannot impose means of compulsion on a party to the proceedings under a general rule that a party cannot be forced to testify against itself.

9. CONFIDENTIALITY

9.1 Extent of Confidentiality

Polish law does not explicitly state whether arbitration proceedings are confidential, although some argue that arbitration is confidential by nature. Of course, parties can clarify the issue and agree, explicitly or by adopting a particular set of arbitral rules, that their arbitration is confidential.

However, state court proceedings referring to arbitration are not confidential and hearings are open to the public. The Ministry of Justice provides a database of anonymised judgments.

Moreover, public companies have corporate disclosure obligations, which may include duties of information about arbitral proceedings or awards.

10. THE AWARD

10.1 Legal Requirements

Polish law provides the following requirements for an arbitral award (Articles 1195 Sections 2-3, 1197 Sections 1-3, CCP):

- the award has to be made in writing and signed;
- dissenting opinions are permissible and can be reasoned;
- the award should dispose of all claims presented in the case;
- the award needs to contain reasoning; and
- the award should refer to the arbitration agreement, name the parties and arbitrators, and state the date and place of its issuance.

Parties can settle the case, in which case the tribunal discontinues the proceedings; however, they can also motion for the award by consent (Article 1196 Sections 1-2, CCP).

The law does not provide for any time limits on the delivery of the award. Arbitral rules, to the contrary, require arbitrators to create timeframes (which can be extended under certain conditions), for example:

- the Lewiatan Court of Arbitration – six months from the constitution of the tribunal; and
- the Court of Arbitration at the Polish Chamber of Commerce – nine months from the initiation of arbitration.

10.2 Types of Remedies

There are no statutory limits on the types of remedies that an arbitral tribunal may award under Polish law. However, case law has clarified that certain remedies might be contrary to public policy. This was the case, for example, with punitive damages awarded in a US judgment. Therefore, parties motioning for a certain relief need to consider enforcement issues; certain reliefs available in common law jurisdictions may be unfit under Polish law, which is a civil law system.

10.3 Recovering Interest and Legal Costs

Parties are entitled to recover interest and legal costs under general rules of Polish law:

- interest should be awarded on monetary claims from the time the claim became mature;
- awarding compound interest is possible from the moment of filing the statement of claim; and
- costs usually follow the event.

Parties may agree otherwise as to the costs or the tribunal may adopt a costs-sharing approach, depending on the circumstances of the case.

11. REVIEW OF AN AWARD

11.1 Grounds for Appeal

Parties can only challenge an arbitral award on one of the grounds listed in law (Article 1206 Section 1, CCP):

- there was no arbitration agreement, or 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 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 rules on 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 based on a forged or falsified document;

- a final judgment has already been made in the same case between the same parties.

In the event of a challenge, parties can invoke, or a Polish court can rely ex officio on, the following grounds (Article 1206 Section 2, CCP):

- the dispute is not arbitrable under statutory law;
- the award is contrary to the fundamental principles of public policy;
- the award deprives consumers of the protection granted to them by the binding provisions relevant to a certain legal relationship.

A party should file its recourse to a court of appeal within two months from the service of the award. The court orders a hearing and issues its judgment. A party unsatisfied with the ruling can file a cassation complaint to the Supreme Court (Article 1208 Sections 1-3, CCP).

11.2 Excluding/Expanding the Scope of Appeal

Parties cannot limit the scope of the motion to set aside the arbitral award. More so, parties cannot waive the right to challenge an arbitral award. Thus, even if a party obliged itself not to challenge an award (or not to invoke one of the grounds for appeal), it will still be able to do so before the court.

Moreover, parties cannot expand the scope of review of an arbitral award by the state court. They can, however, introduce a second instance of proceedings with a full appeal to another arbitral tribunal. The Lewiatan Court of Arbitration in Warsaw introduced such optional appellate procedures to its rules.

11.3 Standard of Judicial Review

Polish courts limit their control over the arbitral award to the circumstances listed in the law (see **11.1 Grounds for Appeal**). They do not evaluate the facts of the case and, in this regard, defer to the tribunal's findings (see **5.5 Standard of Judicial Review for Jurisdiction/Admissibility**). The courts can adopt a different approach to a given question of law but can only set the award aside if it violates public policy.

12. ENFORCEMENT OF AN AWARD

12.1 New York Convention

Poland signed and ratified the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (see **2.1 Governing Law**). It made both reservations possible under Article I (3) of the Convention, ie, declared that it would apply the Convention:

- to the recognition and enforcement of awards made only in the territory of another contracting state; and
- only to differences arising from legal relationships, whether contractual or not, which are considered commercial.

Furthermore, Poland signed and ratified the European Convention on International Commercial Arbitration drafted in Geneva, 21 April 1961.

The Conventions take precedence over Polish law.

12.2 Enforcement Procedure

Procedure for Enforcing an Award

Procedures and standards for enforcing an award in Poland are in line with international practice. First, the applicant should file a motion with a court of appeal and append the original or a certified copy of the award and arbitration agreement along with translations into Polish (if they were made in a foreign language, Article 1213 Sections 1-2, CCP).

In the case of domestic awards, the court usually hears the motion in camera, and its decision is subject to an appeal to a different bench of the court (Article 1214 Sections 1-4, CCP). In the case of foreign awards, the courts usually decide after a hearing. A party can only challenge the court's decision through an extraordinary challenge – a cassation complaint to the Supreme Court (Article 1215 Section 3, CCP).

Grounds for Refusal of Enforcement

The court will refuse enforcement or recognition of foreign/domestic awards in the following circumstances.

- Domestic awards (Article 1214 Section 3, CCP):
  - (a) if the dispute is not arbitrable;
  - (b) if recognition would be contradictory to the fundamental principles of Polish public policy; or
  - (c) if the award deprives consumers of the protection granted to them by the binding provisions relevant to a particular legal relationship.
- Foreign awards (Article 1215 Section 2, CCP):
  - (a) for the reasons stated above;
  - (b) if there was no arbitration agreement, or the agreement is not valid, is ineffective or has lost its effectiveness;
  - (c) if the party was not given proper notice of the appointment of an arbitrator or the arbitral proceedings, or it was otherwise unable to present its case before the arbitral tribunal;
  - (d) if the arbitral award deals with a dispute not covered by or beyond the scope of the arbitration agreement;
  - (e) if the composition of the arbitral tribunal or the arbitral procedure was violated; or
  - (f) if 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.

Relationship between Enforcement and Setting-Aside Proceedings

Polish courts can stay the enforcement proceedings pending the setting-aside proceedings, under both the New York Convention and Polish law (Article 1216 Sections 1-3, CCP). They decide on such a stay on a case-by-case basis.

Enforcement against State Entities

Polish law recognises a defence of sovereign immunity at the enforcement stage as a matter of public international law. Also, compulsory enforcement concerning the Polish state is limited to the bank accounts of the entity to whose activities the case refers. Also, it is not possible to secure claims against the Polish state.

12.3 Approach of the Courts

State courts conduct the recognition and enforcement of arbitration awards in a professional and unbiased manner.

One of the reasons to refuse enforcement is that it would violate Polish public policy. This notion remains undefined, but courts describe it as referring to the most fundamental principles of Polish law. Polish law, at least explicitly, does not differentiate between domestic and international public policy.

Having said that, public policy should be interpreted narrowly. Moreover, the court should not take the evaluation of the facts of the case by the tribunal into account and cannot review the case de novo. Polish courts found that when examining the compliance of an arbitral award with Polish public policy, the court does not examine whether the award is compliant with the applicable substantive law, whether it is based on facts, and whether the facts were established

correctly. This interpretation is in line with international practice.

According to the data gathered by this firm, 92% of foreign arbitral awards and 93% of domestic ones were enforced or recognised in Poland in 2020, making Poland an arbitral-friendly jurisdiction.

13. MISCELLANEOUS

13.1 Class Action or Group Arbitration

There are no rules on class-action arbitration or group arbitration in Poland. Rules of arbitral institutions allow parties to consolidate (see **13.4 Consolidation**) or join third parties to disputes.

13.2 Ethical Codes

Polish arbitration law requires arbitrators to be impartial and independent with no particular rules introduced (Article 1174 Section 1, CCP). This requirement is often specified in arbitral rules or clarified by the IBA Guidelines on Conflicts of Interest in International Arbitration.

As to party representation, general ethical codes of conduct of legal professions (attorneys-at-law and legal counsel) apply.

13.3 Third-Party Funding

Polish law neither prohibits nor promotes third-party funding and introduces no rules in this respect. This issue is left entirely to be clarified in arbitral practice.

13.4 Consolidation

An arbitral tribunal with its seat in Poland can consolidate separate arbitral proceedings. However, arbitral law does not specify any rules in this regard, leaving this issue to parties' agreements and arbitral rules. The arbitration rules of major institutions (eg, the Court of Arbitration at the Polish Chamber of Commerce and the Lewiatan Court of Arbitration) provide similar rules in this respect with certain differences as to, for instance, the entity deciding on the consolidation or the possibility to consolidate proceedings between different parties.

One notable exception relates to disputes as to companies' resolutions. In such cases, each partner or shareholder may join the proceedings on the side of one of the parties within one month from the date of the announcement of the initiation of the proceedings. The tribunal appointed in the case initiated the earliest hears all other cases referring to the same resolution (Article 1163 Section 2, CCP).

13.5 Binding of Third Parties

As discussed above (see **5.7 Third Parties**), there are no statutory rules that extend the effects of arbitration agreements to third parties. However, case law has provided a list of cases where an arbitration agreement can bind a non-signatory.

The case is similar concerning the extension of the effects of arbitral awards to third parties. A party that succeeded in pursuing arbitration can, of course, assign the claim to a third party, which can, under certain formal conditions, enforce the award.

Kubas Kos Gałkowski (KKG) is a law firm with offices in Warsaw and Krakow which has a firmly grounded position confirmed by rankings conducted in Poland and abroad, and numerous recommendations for the law firm and its attorneys. KKG is a founding member of The European Federation for Investment Law and Arbitration (EFILA). Dispute resolution and arbitration is a core practice at KKG. A team of attorneys specialising in commercial arbitration, with many years of practice in client representation, supported by numerous academic achievements in the field of arbitration proceedings, guarantees the highest standard of legal services. KKG's team represents clients in complex arbitration proceedings involving high-value disputes in compliance with the rules followed by the world's leading arbitration organisations (The International Chamber of Commerce, The Vienna International Arbitral Centre, The Swiss Chambers' Arbitration Institution, and The London Court of International Arbitration).

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