

Poland Introduces New Rules for Submitting Pending State Court Disputes to Arbitration

Rafal Kos and Maciej Durbas from Kubas Kos Galkowski believe recent amendments to the Polish Civil Procedure Code will incentivise the use of arbitration as an alternative to court proceedings and thereby potentially increase its popularity in Poland.

On 9 March 2023, the Polish Parliament adopted an act that amended the Code of Civil Procedure by introducing changes that allow for the so-called conversion of litigation to arbitration. The act enters into force in July 2023.

This article offers a brief overview of the special rules for submitting a dispute already pending before a state court to arbitration.

How to Submit Pending State Court Disputes to Arbitration in Poland

Prior to the adoption of the aforementioned law, parties could transfer their pending cases from state courts to arbitration simply by signing an arbitration agreement once the claim had already been brought and withdrawing the case from the state court. There were, however, some doubts about the consequences—particularly with regard to the limitation period—and these seem to be the reason why conversion to arbitration was unpopular and quite rare. As a result, law-makers decided to implement express rules for submitting pending state court disputes to arbitration.

In brief, the following procedure must be followed when converting to arbitration:

- conclusion of an arbitration agreement by the parties after the action has been brought and proceedings before the state court have been commenced;
- a joint request by the parties for termination of proceedings before the state court;
- evaluation by the court of the request and the arbitration agreement;
- final decision by the court regarding the termination of proceedings; and
- commencement of arbitration proceedings.

Submitting pending state court disputes to arbitration remains relatively straightforward and uncomplicated, as the amendments to the Civil Code of Procedure are aimed at speeding up proceedings.

What special rules now apply when submitting disputes pending before Polish state courts to arbitration?

First, under the newly adopted Article 1161(1) Section 1 of the Code of Civil Procedure, the parties in a case pending before a court may submit the dispute to arbitration until the court finally resolves the case. As such, they must sign an arbitration agreement. The parties are granted discretion as to the content of the agreement—for example, they may freely choose the seat of arbitration, as well as the applicable law, rules and arbitration institution that will govern the arbitration.

Second, under Article 1161(1) Section 2 of the Code of Civil Procedure, the court shall terminate the proceedings at the joint request of the parties filed once they have entered into the arbitration agreement unless the content of the agreement or the circumstances of the case indicate that:

- discontinuing the proceedings would be contrary to the law and/or principles of social coexistence;
- the aim is to circumvent the law; or
- the arbitration agreement is invalid or ineffective.

Thus, the provision expressly specifies situations in which the court may refuse to terminate the proceedings. The listed scenarios (eg, the invalidity of the arbitration agreement) are not controversial and seem standard.

Third, the provision also expressly states that the limitation period for claims covered by the arbitration agreement shall start to run anew from the date on which the decision to discontinue the court proceedings becomes final. Before the adoption of this amendment to the Code of Civil Procedure, the effects of the limitation period were unclear and thus created many doubts that contributed to the unpopularity of submitting state court disputes to arbitration.

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Fourth, under the new law, the court refunds three-quarters of the court fee if the case is discontinued as a result of the parties signing an arbitration agreement. This may be an additional incentive for parties to consider using the conversion mechanism. The final decision regarding the termination of proceedings concludes the proceedings before the court. This does not, however, mean that the arbitration proceedings commence "automatically". A new statement of claim or request for arbitration is necessary to begin the arbitration proceedings.

Why choose arbitration as an alternative to court proceedings in Poland?

Conversion seems a useful way to speed up the resolution of significant, complex, high-value commercial cases, as arbitration would better facilitate their time-effective settlement. There is a considerable backlog when it comes to Polish state courts. A party may sometimes wait a year or more for a first hearing and, even then, the case is rarely resolved immediately. Arbitration would make it possible to set up a flexible procedural calendar that, in turn, enables the prompt exchange of pleadings and hearing of witnesses, experts, etc. Moreover, the parties may prefer their dispute to be heard by a professional (even a non-lawyer) in a given field. This is not always the case in a state court, as state judges often deal with various completely different topics and will not necessarily be experts on a given matter. Arbitration also allows parties to appoint an expert witness, which professionalises as well as speeds up the resolution of the case.

The Outlook

The authors believe introducing the conversion mechanism into Polish law was a wise decision. The popularisation of arbitration should take place on many levels and through the implementation of new laws—given that the lack of trust in arbitration often results not from parties' negative experiences but, rather, from insufficient knowledge or awareness of such an option.

The conversion of litigation to arbitration does not come without potential disadvantages, however.

- Transferring the dispute to arbitration may not be a good solution in all disputes—especially low-value or simple cases that can be resolved through a payment order, thereby allowing for speedy enforcement.
- The court does not refund the full fee, only three-quarters. Some claimants may be dissatisfied with this, along with the need to pay further arbitration fees.
- There are additional doubts as to whether conversion affects the interim measures imposed by the court in support of the litigation.

It is also worth mentioning that the conversion mechanism is not the only significant change in the Polish arbitration landscape. Polish law-makers have also introduced a new estate planning vehicle known as a "family foundation"—and, with it, the option of submitting family foundation-related disputes to arbitration.