

## **RULES ON SUBMISSION OF PENDING STATE COURT DISPUTES TO ARBITRATION AND INTRODUCTION OF ARBITRATION AGREEMENTS IN STATUTES OF FAMILY FOUNDATIONS**

In recent months the Polish arbitration framework has expanded. There are two legal novelties that are worth being familiar with while considering the state of commercial arbitration in Poland. The first change comes with an overhaul of the rules about submitting pending State court disputes to arbitration. Second, there is the possibility of introducing an arbitration clause in the statute of a family foundation.

### **Submitting Pending State Court Disputes to Arbitration**

From July 2023, new rules on submitting pending State court disputes into arbitration were implemented. Changes were introduced in order to facilitate effective dispute resolution and promote methods of dispute resolution alternative to traditional State court litigation.

Converting ongoing litigation into arbitration was, of course, possible under the rules applicable before. However, the introduced changes are aimed at making the process of such conversion easier and more cost-effective.

### **How to transfer your case from ongoing State court litigation into arbitration?**

According to the newly added Article 11611 Code of Civil Procedure ("CCP"), during litigation, parties may submit the dispute to arbitration until the case is finally resolved by the State court. This has essentially been possible so far using the regular submission agreement.

The key amendment is to be found in the second paragraph of the above-mentioned Article 11611 of the CCP. It describes both the procedure for transferring cases to arbitration and their substantial consequences.

In order to submit the ongoing case to arbitration and discontinue the ongoing litigation, as well as to trigger the substantial consequences provided for in the amended law, there are three key steps to be performed.

- First, the parties have to enter into an arbitration agreement.
- Second, the parties have to make a joint request for the discontinuance (termination) of the litigation.
- Third, the court shall discontinue the proceedings unless it follows from the content of the arbitration agreement and the circumstances of the case that it would be contrary to the law, the principles of social coexistence or would be aimed at circumventing the law, or the arbitration agreement is invalid or ineffective.

Thus, the discontinuation of court proceedings in connection with the conclusion of an arbitration agreement is not automatic and is preceded by an examination by the court. What seems more important, however, are the consequences of taking a case to arbitration in this particular way.

### **What are the consequences of transferring your case in a manner provided for in Article 11611 CCP?**

If the parties to an ongoing litigation decide to submit their case to arbitration, there are three key consequences directly provided for in new regulation.

First, a repeated pursuit of claims covered by a case that has been discontinued in accordance with the procedure described will be prohibited. Any case that was pending before a State court and then discontinued due to the submission of the case to arbitration under the new law will be dismissed.

Second, the conversion of ongoing litigation into arbitration in accordance with Article 11611 of the CCP leads to the interruption of the limitation period. Under the new law, the statute of limitations for claims covered by the arbitration clause entered into in order to convert the case into arbitration begins to run anew from the date on which the order to discontinue the proceedings becomes final.

Third, and what may be most important for those potentially considering moving litigation to arbitration, is the financial incentive. According to the amendment of Article 79(1)(2)(aa) of the Law on Court Fees in Civil Cases, the court automatically reimburses a party three-fourths of the lawsuit fee paid if the proceedings are discontinued at the joint request of the parties before the court of first instance, following the parties' entry into an arbitration agreement.

The idea behind the new change was to reduce the backlog of court cases and encourage litigants to use methods of dispute resolution other than State court. Whether this goal will actually be achieved remains to be seen in the coming years e.g., by examining the statistics of both State courts and arbitral institutions.

## **Family Foundation**

The second of the new developments came in the course of legislative work on the new Polish law on family foundations. A proposal was made to enable the introduction of arbitration agreements within the statutes of family foundations, which are aimed at creating a new vehicle for estate planning. The proposal was accepted by the lawmakers and, consequently, Poland joined the family of jurisdictions in which arbitration agreements may be introduced in the statute of a family foundation.

As a general rule, under Polish law, arbitration agreements can only be concluded within the general framework of agreements. The statute of the family foundations does not fall into said category. Polish law allows for arbitration agreements introduced in legal acts other than agreements valid only if the law directly provides for it.

Up until recently, under Article 1163 of the CCP, arbitration agreements could be included in statutes of commercial companies, cooperatives, or associations. Now, such possibility has also been added for family foundations.

This possibility is important because of the very design of the family foundations. At its core, a foundation is based on the idea that the founders contribute assets to a family foundation, and the beneficiaries designated by the founder benefit from those assets under the terms of the statute. Like its counterparts from other jurisdictions, the purpose of a foundation is to operate an established enterprise for generations. Family foundations may encompass significant estates, and the foundation beneficiaries may operate internationally.

It is inevitable that disputes will arise during the operation of the foundation. It can be reasonably assumed that these will be disputes of a particularly sensitive nature for which arbitration, with its speed and confidentiality, is a natural fit. The new law simply makes it possible for the parties to take advantage of the benefits that arbitration provides.