

## **Special rules for submitting pending court disputes to arbitration**

### **INTRODUCTION**

According to available statistics from 2022, the average duration of court proceedings in a commercial case before a state court in Poland is approximately 8 months in district courts (these courts usually deal with less complex cases, where the value at dispute is less than PLN 100,000) and approximately 12 months in regional courts (these courts deal with cases where the value at dispute exceeds PLN 100,000). The statistics refer only to first instance proceedings, and if you ask practitioners in Poland, the statistics may still seem optimistic, as it is not uncommon for a case to take longer.

As a result, Polish legislators continue to develop other tools that allow parties to resolve their disputes more efficiently, and the interest in arbitration in Poland seems to be growing. One of these instruments was a recent amendment to the Civil Procedure Code, which introduced the so-called "conversion" of a pending court dispute to arbitration.

### **WHAT SPECIAL RULES APPLY TO SUBMITTING PENDING STATE COURT DISPUTES TO ARBITRATION?**

Prior to the enactment of the Act, parties could still transfer their pending cases from state courts to arbitration simply by concluding an arbitration agreement after the claim had already been filed and withdrawing the case from the state court. There were, however, some doubts as to the effects of such an action, in particular with regard to limitation period. This seems to be one reason why it was not popular and quite rare. This is because the lawmakers decided to implement special and express rules that apply to submitting pending state court disputes to arbitration.

In brief, the procedure requires:

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

### **WHAT IS THE PROCEDURE OF SUBMITTING PENDING STATE COURT DISPUTES TO ARBITRATION?**

The procedure of submitting pending state court disputes to arbitration was shaped in a clear and uncomplicated manner.

First, under the newly-adopted Art. 1161(1) § 1 of the Code of Civil Procedure, in a case pending before a court, the parties may submit a dispute to arbitration until the case is finally resolved by the court. Thus, the parties will have to conclude an arbitration agreement. The parties are given discretion as to its content. Parties may freely choose the seat of arbitration, the applicable law, rules (and arbitration institution), which will govern the arbitration etc.

Second, under Art. 1161(1) § 2 of the Code of Civil Procedure, the court shall terminate the proceedings at the joint request of the parties filed after the parties have entered into the arbitration agreement,

unless the content of the arbitration agreement or the circumstances of the case indicate that it would be contrary to the law, principles of social co-existence or its 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, e.g. invalidity of 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 starts to run anew from the date on which the decision on termination of proceedings becomes final. Prior to the adoption of this provision, the effect on the limitation period was not clear and the issue raised many doubts.

Fourth, under the new law the court orders a refund of 3/4 of court fee, if the proceedings are terminated on the basis of Art. 1161(1) of the Code of Civil Procedure. That may be an additional incentive for the parties to consider using the conversion mechanism.

The final decision to terminate the proceedings concludes the proceedings before the court. This does no arbitration (or a statement of claim) is required to commence arbitration.

## **SHOULD CONVERSION OF A PENDING COURT DISPUTE TO ARBITRATION BE CONSIDERED?**

Conversion seems to be a perfect tool to speed up the resolution of large, complex and high value commercial cases. Arbitration would better facilitate their time-efficient resolution. There is a significant backlog when it comes to Polish state courts. A party may sometimes wait a year or sometimes more for an initial hearing, and even then, and the case is almost never resolved immediately. Arbitration, on the other hand, would allow for the establishment of a flexible procedural calendar, that allows for exchange of pleadings and the hearing witnesses, experts etc. in a timely manner.

In addition, the parties may prefer to have their dispute heard by a professional (expert) in a particular field, which may not be the case with state judges, as they often deal with various completely different topics and may not be experts of a given matter. It also opens up the possibility of appointing a party-appointed expert witness without the risk of an appointment of an incompetent person by the court from the court's list of court experts.

There seem to also be some disadvantages.

- Transferring the dispute to arbitration may not be a good solution in all disputes, especially low value cases or cases for payment on the basis of an invoice, which may be resolved in form of a payment order, which allows for a speedy enforcement.
- The court does not refund the whole court fee, but only its 3/4. Some claimants may not be satisfied with this; however, it is possible for the parties to separately agree on a split of costs.
- There are also some doubts as to whether conversion affects the interim measures imposed by the court in support of the litigation.

## **CONCLUSION**

The popularization of arbitration should take place on many levels, including the implementation of new laws, as the lack of confidence in arbitration is often not due to parties' negative experiences, but to a lack of sufficient knowledge or awareness of the existence of such an option.

It is also worth noting that this is not the only significant change in the Polish arbitration legal landscape. Along with the conversion, the Polish legislator also introduced a new vehicle for estate planning (family foundation) – under the new law the disputes arising out of family foundation may also be resolved in arbitration.

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