

# ARBITRATION IN POLAND

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## 1. Legislative framework

- 1.1.1 Domestic and international arbitration in Poland is regulated by the provisions of the Fifth Part of the Polish Code of Civil Procedure (**CCP**). The CCP came into force in 1964. However, the CCP provisions that are dedicated to arbitration were largely modified by an amendment dated 28 July 2005, which entered into force on 17 October 2005. This new arbitration legislation is based on the Model Law (1985).<sup>1</sup> The recognition and enforcement of foreign awards is based either on the New York Convention or on the provisions of the CCP.

## 2. Scope of application and general provisions of the CCP

### 2.1 Scope of application

- 2.1.1 The provisions of the Fifth Part of the CCP apply to all arbitral proceedings where the seat of arbitration is within Poland and, in certain cases, to foreign arbitral proceedings. For example, a Polish court can reject a statement of claim due to the other party's objection based on a foreign arbitration agreement, or it can issue an interim injunction in a dispute that has been decided by a foreign arbitral tribunal. The law does not establish any major differences between institutional and ad hoc arbitration.
- 2.1.2 One of the main strengths of the CCP provisions on arbitration is that they allow a wide degree of party autonomy. In particular, the parties to the dispute are free to determine almost all issues concerning procedure and select the procedural rules, seat of arbitration and language of the arbitral proceedings (among other things).

### 2.2 General principles

- 2.2.1 The CCP contains only a few mandatory provisions regarding arbitral proceedings. On the basis of these provisions, the following general principles may be identified.

#### *Party autonomy*

- 2.2.2 The parties are free to agree on the procedure to be applied to the resolution of their dispute, as long as the arbitral proceedings comply with the mandatory provisions of the CCP.<sup>2</sup>

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<sup>1</sup> For the full text of the Model Law (1985), see CMS Guide to Arbitration, vol II, appendix 2.1.

<sup>2</sup> CCP, art 1184(1).

*Fairness*

2.2.3 The principle of equal treatment of the parties is expressly stated in the CCP and is binding on the arbitral tribunal.<sup>3</sup> Any provisions of an arbitration agreement that would impede this principle of equality, including provisions entitling only one party to file a statement of claim before an arbitral tribunal or a court, are prohibited. If a party is not granted the opportunity to defend its rights then the courts may set aside the award.

*Non-intervention by the courts*

2.2.4 The courts may only intervene in arbitral proceedings in the cases and to the extent expressly provided for by the CCP. For example, the courts have jurisdiction to take the following steps:

- appoint an arbitrator if the parties fail in making an appointment;<sup>4</sup>
- rule on a challenge to an arbitrator, if the arbitrator has not been removed by the arbitral tribunal or by the parties, or has not resigned;<sup>5</sup> or
- take other steps that cannot be carried out by the arbitral tribunal itself, including compelling the attendance of witnesses.<sup>6</sup>

2.2.5 The assistance that the courts may rightly offer the parties to a dispute is discussed in more detail in section 9 below.

### 3. Institutional arbitral tribunals in Poland

3.1.1 Institutional arbitral tribunals have been established by a few Polish arbitral institutions for the settlement of international and domestic disputes. The most important arbitral institutions are the Court of Arbitration at the Polish Chamber of Commerce in Warsaw and the Court of Arbitration at the Polish Confederation of Private Employers Lewiatan. The arbitral tribunals constituted under these rules are independent units within their respective arbitral institutions.

3.1.2 The rules for constituting such institutional arbitral tribunals, and the procedure applicable in institutional arbitral proceedings, are determined by the regulations issued by the respective arbitral institutions. In general, the rules governing institutional arbitral proceedings follow the rules set out in the Model Law (1985). The parties may choose party-appointed arbitrators freely, but a sole arbitrator

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<sup>3</sup> *Ibid*, art 1183.

<sup>4</sup> *Ibid*, art 1171–1173.

<sup>5</sup> *Ibid*, art 1176(2)–(4).

<sup>6</sup> *Ibid*, art 1192(1).

and the president of the arbitral panel must be chosen from the list of arbitrators provided by the arbitral institutions.<sup>7</sup>

## 4. The arbitration agreement

### 4.1 Formal requirements

- 4.1.1 An arbitration agreement may be drafted as a separate, self-contained agreement, or may appear as an arbitration clause in the main contract. The CCP recognises arbitration agreements in either form, whether they are intended to govern future disputes between the parties (although the arbitration agreement needs to specify the legal relationship from which the future dispute may arise) or to submit existing disputes to arbitration.
- 4.1.2 The formal requirements for an arbitration agreement are set out in Article 1162(1) of the CCP, which specifies that it must be made in writing. This requirement is met if an arbitration agreement is included in letters or statements that are exchanged between the parties by means of a communication that preserves the content of the agreement (e.g. a fax).<sup>8</sup> An arbitration clause may also be valid if it is included in a separate document that is referred to in a written contract between the parties, provided that the reference makes the arbitration clause an integral part of the contract. The CCP requires that the subject matter of the dispute, or the legal relationship from which the dispute arises or may arise, is specified in the arbitration agreement.<sup>9</sup>
- 4.1.3 The parties are free to appoint the arbitrators in their arbitration agreement or indicate the number of arbitrators and the method of their appointment. As mentioned in paragraph 2.2.2 above, the parties are, to a large extent, also free to determine the procedure governing the arbitral proceedings.
- 4.1.4 An arbitration agreement may be incorporated into a company's articles of association regarding corporate disputes, i.e. disputes between the shareholders, between the shareholders and the company, or between the company and its statutory organs.<sup>10</sup> Arbitration agreements may also be used in the statutes (articles of association) forming co-operatives and associations.

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<sup>7</sup> Rules of Court of Arbitration at the Polish Chamber of Commerce, para 22, and Rules of Court of Arbitration at the Polish Confederation of Private Employers Lewiatan, para 24.

<sup>8</sup> CCP, art 1162(2).

<sup>9</sup> *Ibid.*, art 1161(1).

<sup>10</sup> *Ibid.*, art 1163(1).

4.1.5 Unless otherwise agreed, a power of attorney granted by a business entity in relation to a specific act also includes a power of attorney to conclude an arbitration agreement in relation to possible disputes concerning that act.<sup>11</sup>

## **4.2 Arbitrability**

4.2.1 The scope of arbitrability under Polish law was extended by the recent amendment to the CCP. The provisions of the CCP enable the parties to submit most disputes to domestic or foreign arbitration. With the exception of alimony disputes, all disputes that can be subject to settlement in court may be submitted to arbitration.<sup>12</sup> The previous standard of arbitrability was premised on a distinction between financial and non-financial rights. The aim of this new provision is to put an end to problems regarding the determination of what constitutes a financial right.

4.2.2 While the previously relevant distinction between financial and non-financial rights has ceased to be relevant as far as arbitrability is concerned, some doubts still arise as to what disputes may be subject to settlement in court. This is due to the fact that Polish law lacks any explicit regulation on this issue.

4.2.3 The requirement that the arbitrability of a dispute depends on whether it can be subject to settlement in court also applies to corporate disputes, where an arbitration agreement is incorporated into the company's articles of association. Disputes concerning whether resolutions of a company should be set aside or declared invalid may not be submitted to arbitration.

## **4.3 Separability**

4.3.1 The CCP provides for the separability of arbitration clauses.<sup>13</sup> The arbitration clause is a separate and independent part of the contract. As a consequence, the validity and existence of the arbitration clause is construed separately from the other terms of the contract. As described in more detail in section 6 below, the arbitral tribunal has the authority to determine the validity of the arbitration agreement.

## **4.4 Law applicable to an arbitration agreement**

4.4.1 Under the new Conflicts of Laws Act of 4 February 2011 (**Conflicts of Laws Act**), an arbitration agreement is governed by the law chosen by the parties.<sup>14</sup> If the

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<sup>11</sup> *Ibid*, art 1167.

<sup>12</sup> *Ibid*, art 1157.

<sup>13</sup> *Ibid*, art 1180(1).

<sup>14</sup> Conflict of Laws Act, art 39(1).



governing law is not chosen by the parties, the law of the seat of the arbitration, as agreed by the parties, governs the arbitration agreement. If the seat of the arbitration has not been agreed by the parties then the arbitration agreement is governed by the law applicable to the legal relationship to which the dispute relates.<sup>15</sup>

#### **4.5 Legal consequences of a binding arbitration agreement**

- 4.5.1 If an arbitration agreement is valid and binding with regard to the dispute between the parties, neither party may unilaterally demand that a court decide the dispute. For details of preliminary rulings on jurisdiction by the courts, please see section 9.2 below.
- 4.5.2 The parties may terminate the arbitration agreement by agreement and restore the jurisdiction of the courts. In addition, the CCP recognises the following three situations where an arbitration agreement may lose its validity and cease to be binding:
- (i) where a person who was expressly designated in an arbitration agreement as an arbitrator and/or chair rejects or cannot otherwise fulfil his or her duties. In such a situation, the arbitration agreement becomes void, unless the parties have agreed otherwise;<sup>16</sup>
  - (ii) where an arbitral tribunal which was expressly designated by the parties in an arbitration agreement refuses to hear the case or is unable to do so. In such a situation, the arbitration agreement again becomes void, unless the parties have agreed otherwise;<sup>17</sup> and
  - (iii) where a majority of votes, or unanimity if required, cannot be reached by the arbitral tribunal when making the award with regard to all or a part of the claim. In such a situation, the arbitration agreement becomes void as regards the part on which a majority (or, if required, unanimity) of votes cannot be obtained.<sup>18</sup>
- 4.5.3 Should any of these situations arise, the parties are free to commence proceedings in court.

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<sup>15</sup> *Ibid*, art 39(2).

<sup>16</sup> CCP, art 1168(1).

<sup>17</sup> *Ibid*, art 1168(2).

<sup>18</sup> *Ibid*, art 1195(4).

## 5. Composition of the arbitral tribunal

### 5.1 Composition of the arbitral tribunal

- 5.1.1 Any individual with full legal capacity may be an arbitrator.<sup>19</sup> However, active judges of the Polish courts cannot serve as arbitrators.<sup>20</sup> It is unclear whether active judges of foreign state courts may serve as arbitrators. The law does not require arbitrators to be citizens of Poland and, as long as a foreign citizen has full legal capacity, that foreign citizen may be appointed to act as an arbitrator.
- 5.1.2 The person appointed as arbitrator should immediately inform both parties about any circumstances that could raise doubts as to his impartiality or independence.<sup>21</sup> According to limited case law, an arbitrator may be removed by the court at a party's request for the same reasons as court judges, such as if the arbitrator is a party to a dispute, the disputed case relates to the arbitrator's spouse or relatives, or the arbitrator is or was an attorney at law for any party in the disputed case.
- 5.1.3 In their arbitration agreement, the parties are free to agree on the number of arbitrators and the method of their appointment. The parties may also agree on the number after a dispute has arisen, or may refer to the rules of an established arbitral institution. It is possible for the parties to either appoint the arbitrators in the arbitration agreement, or to select them as and when a dispute arises. It is also possible for the parties to only agree on an appointing authority, which will then choose the arbitrators when asked to do so by the parties.
- 5.1.4 If the parties fail to specify the number of arbitrators, or if the applicable procedural rules of the arbitral institution do not provide for the number of arbitrators, the arbitral tribunal will consist of three arbitrators.<sup>22</sup>
- 5.1.5 The CCP provides for limited recourse to the courts when a party, or the appointing authority that is obliged to appoint an arbitrator, fails to do so (generally within one month of being requested to appoint an arbitrator). In such a case, the court shall appoint an arbitrator at the request of a party, pursuant to Articles 1171–1173 of the CCP. When appointing an arbitrator, the court shall consider the arbitrator's qualifications specified by the parties in the arbitration agreement, as well as other circumstances ensuring the impartiality and independence of the arbitrator. When

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<sup>19</sup> *Ibid*, art 1170(1).

<sup>20</sup> *Ibid*, art 1170(2).

<sup>21</sup> *Ibid*, art 1174(1).

<sup>22</sup> *Ibid*, art 1169(2).

appointing a sole arbitrator in a dispute between parties from different countries, the court shall consider appointing an arbitrator who is not linked to the relevant countries.

## 5.2 Procedure for challenging and removing arbitrators

- 5.2.1 An arbitrator may only be removed if there are justified doubts as to his or her impartiality or independence, or if he or she does not have the qualifications specified in the arbitration agreement.<sup>23</sup> A party may only request the removal of an arbitrator who it appointed or in whose appointment it took part, if that party became aware of the grounds for removal after the appointment of the arbitrator.<sup>24</sup>
- 5.2.2 The procedure for challenging and removing arbitrators by the arbitral tribunal may be agreed between the parties.<sup>25</sup> However, if an arbitrator who has been challenged is not removed by the arbitral tribunal within one month of the date on which the challenging party filed a corresponding motion with the arbitral tribunal, the challenging party may file a request for the removal of the arbitrator with the appropriate court within two weeks. The appropriate court is the court that would have been competent to decide the case if the parties had not entered into an arbitration agreement. Provisions in an arbitration agreement excluding such a motion are ineffective.<sup>26</sup>
- 5.2.3 If the parties have not agreed upon a procedure for challenging and removing arbitrators, the arbitral tribunal has no authority to decide on the removal of an arbitrator. In such a case, a party demanding the removal of the arbitrator must notify all of the arbitrators and the other party, in writing, within two weeks of the date of the demanding party learning of the appointment or about the reason for removing the arbitrator. If the arbitrator does not resign or is not removed by the mutual agreement of the parties within two weeks from the delivery of the notice to the arbitrator, the demanding party will be entitled to file a motion challenging the arbitrator with the court.<sup>27</sup>
- 5.2.4 The court is also entitled to remove any arbitrator upon a motion from a party, if it is obvious that the arbitrator will not perform his or her obligations within the specified time, or if the arbitrator delays the performance of his or her obligations without a significant reason.<sup>28</sup>

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<sup>23</sup> *Ibid.*, art 1174(2).

<sup>24</sup> *Ibid.*, art 1174(2).

<sup>25</sup> *Ibid.*, art 1176(1).

<sup>26</sup> *Ibid.*, art 1176(2).

<sup>27</sup> *Ibid.*, art 1176(3)–(4).

<sup>28</sup> *Ibid.*, art 1177(2).

5.2.5 If the case is heard by an arbitrator who, based on the provisions of the CCP, should be removed, this also constitutes grounds for the award to be set aside, but only if the party filed an objection (to the arbitral tribunal or to the arbitrator and the other party, as the case may be) within the appropriate time (as set out in paragraphs 5.2.2 and 5.2.3 above).

### **5.3 Appointment of substitute arbitrators**

5.3.1 If an arbitrator breaches his or her duties, or if the arbitrator's appointment terminates for any other reason, the parties should appoint a substitute arbitrator. This should be done following the same procedure that is applicable to the appointment of the original arbitrators.<sup>29</sup>

5.3.2 If a party-appointed arbitrator resigns or is removed, and the replacement arbitrator that has been appointed by that party likewise resigns or is removed, then the other party may demand that the court, instead of the opposing party, appoints a substitute arbitrator. A substitute arbitrator may also be appointed before the expiry of the mandate of any arbitrator (e.g. in an arbitration agreement).<sup>30</sup>

### **5.4 Arbitration fees and expenses**

5.4.1 The arbitrators are entitled to remuneration for the services rendered, and to reimbursement of expenses incurred by them in relation to the resolution of the dispute.<sup>31</sup> The amount of the arbitrators' fees and the method of their payment is a matter to be agreed between the parties and the individual arbitrator. If no agreement is reached between the parties and the arbitrators, the court shall determine the arbitrators' remuneration and the expenses to be reimbursed.<sup>32</sup> The parties are jointly liable for the payment of the arbitrators' remuneration and for reimbursement of their expenses.

5.4.2 In an institutional arbitration, the rules of the relevant arbitral institution will provide for the amount, method and terms of payment of arbitrators' fees and expenses. If the institutional rules do not provide for these, the statutory rules provided by the CCP shall apply.

### **5.5 Arbitrator immunity**

5.5.1 An arbitrator is liable for any losses caused by his or her resignation, unless there are important reasons for such resignation.<sup>33</sup> The CCP does not make any further

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<sup>29</sup> *Ibid*, art 1178(1).

<sup>30</sup> *Ibid*, art 1171(3).

<sup>31</sup> *Ibid*, art 1179(1).

<sup>32</sup> *Ibid*, art 1179(2).

<sup>33</sup> *Ibid*, art 1175.

provision for the liability of arbitrators, but established doctrine and practice characterise the relationship between the parties and arbitrators as similar to that between parties contracting for the performance of services. Therefore, should a negligent act or omission on the part of an arbitrator cause a loss to a party, that party may be entitled to damages. Even though the CCP does not provide for any specific rules on arbitrators' liability, the rules of the main Polish arbitral institutions limit the arbitrators' liability only to damage caused intentionally.

## 6. Jurisdiction of the arbitral tribunal

### 6.1 Competence to rule on its own jurisdiction

6.1.1 The arbitral tribunal can rule on its own jurisdiction, including the existence and validity of the arbitration agreement.<sup>34</sup> A plea that the arbitral tribunal does not have jurisdiction must be raised no later than in the statement of defence, unless that party did not know and could not have known, even when acting with due diligence, of the grounds to question the arbitral tribunal's competence, or if such grounds occurred after the filing of the defence.<sup>35</sup> The parties may agree to extend the term for questioning the jurisdiction of the arbitral tribunal beyond the filing of the defence. The arbitral tribunal may, in any case, admit a later plea if it considers that the delay is justified. A party is not prevented from raising such a plea by the fact that it has appointed, or participated in the appointment of, an arbitrator.

6.1.2 Each party may appeal against a decision of the arbitral tribunal on its jurisdiction to the state courts within two weeks from the date of delivery of such decision. The decision of the state courts may then be subject to a further appeal (*zazalenie*).<sup>36</sup>

### 6.2 Power to order interim measures

6.2.1 The arbitral tribunal may issue orders imposing interim protective measures, but such measures are not directly enforceable. Issuing such orders may be made conditional upon the payment of appropriate security.<sup>37</sup> If a protective measure was obviously unjustified then the party requesting it is responsible for any loss caused by such measure.<sup>38</sup> The claim may be pursued before the arbitral tribunal who issued the order or before the court, see section 9.3 below.

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<sup>34</sup> *Ibid*, art 1180(1).

<sup>35</sup> *Ibid*, art 1180(2).

<sup>36</sup> *Ibid*, art 1180(3).

<sup>37</sup> *Ibid*, art 1181(1).

<sup>38</sup> *Ibid*, art 1182.

## 7. Conduct of proceedings

### 7.1 Commencing an arbitration

7.1.1 Unless otherwise agreed by the parties, the proceedings before an arbitral tribunal commence on the date that a notice of arbitration is served on the respondent.<sup>39</sup> Within a period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall make a statement of claim and the respondent may file a defence.<sup>40</sup> The parties may submit all documents that they consider to be relevant when submitting their respective statements.<sup>41</sup>

7.1.2 The presentation of a statement of claim by the claimant is obligatory.<sup>42</sup> As regards the consequences of a failure by either party to file their statement of claim or defence, see section below.

7.1.3 Unless otherwise agreed by the parties, either party may amend or supplement its statement of claim or defence in the course of the arbitral proceedings, except where the arbitral tribunal considers that the delay in seeking such an amendment renders it inappropriate.<sup>43</sup>

### 7.2 Applicable procedural rules

7.2.1 The parties are free to decide on the procedural rules governing the arbitration.<sup>44</sup> Should the parties fail to determine the applicable procedural rules, the arbitral tribunal must apply the rules of procedure that it deems most appropriate.<sup>45</sup> The provisions of civil procedure applicable to court proceedings are not binding on the arbitral tribunal.

7.2.2 If the parties have agreed in the arbitration agreement that the arbitration will be conducted under the auspices of an arbitral institution, the parties are bound by the rules of the relevant arbitral institution as they were on the date on which the parties concluded the arbitration agreement, unless otherwise agreed or unless the rules of the relevant arbitral institution state otherwise.<sup>46</sup>

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<sup>39</sup> *Ibid*, art 1186.

<sup>40</sup> *Ibid*, art 1188(1).

<sup>41</sup> *Ibid*, art 1188(2).

<sup>42</sup> *Ibid*, art 1190(1).

<sup>43</sup> *Ibid*, art 1188(2).

<sup>44</sup> *Ibid*, art 1184(1).

<sup>45</sup> *Ibid*, art 1184(2).

<sup>46</sup> *Ibid*, art 1161(3).

### 7.3 Receipt of written communications

- 7.3.1 Following the amendment of the CCP provisions on arbitration in 2005, the CCP now provides for special rules of service.<sup>47</sup> This is due to the fact that many awards were challenged by losing parties on the basis of faults in service, which allegedly had deprived them of the possibility to present their case. Service of correspondence is now regulated in detail to avoid such problems.
- 7.3.2 Unless otherwise agreed by the parties, any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at its place of business, habitual residence or mailing address.<sup>48</sup> If the addressee is a business entity registered in the proper court or other public registry, a communication is deemed to have been received if it is delivered to the address specified in the registry.<sup>49</sup>
- 7.3.3 If none of these places can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address. In these instances, the communication is deemed to be received on the last day that the communication could have been collected by the addressee.<sup>50</sup>

### 7.4 Seat and language of arbitration

- 7.4.1 The parties are free to choose the seat of arbitration. In the absence of a choice by the parties, the arbitral tribunal shall determine the seat of arbitration, bearing in mind the subject matter of the dispute, the circumstances of the case and convenience for the parties.<sup>51</sup> If the seat of arbitration was not agreed to by the parties or determined by the arbitral tribunal and the award was rendered in Poland then the seat of arbitration will be deemed to be Poland.<sup>52</sup>
- 7.4.2 The parties are also free to choose the language of the arbitration.<sup>53</sup> If the parties have not expressed a choice of language then the arbitral tribunal shall determine the language of the arbitration.

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<sup>47</sup> *Ibid.*, art 1160.

<sup>48</sup> *Ibid.*, art 1160(1).

<sup>49</sup> *Ibid.*, art 1160(2).

<sup>50</sup> *Ibid.*, art 1160(3).

<sup>51</sup> *Ibid.*, art 1155(1).

<sup>52</sup> *Ibid.*, art 1155(2).

<sup>53</sup> *Ibid.*, art 1187(1).

## **7.5 Multi-party issues**

7.5.1 Neither the CCP nor the rules of the Polish institutional arbitral tribunals contain any specific provisions dealing with multi-party proceedings. Generally, multi-party arbitration is allowed, provided that the parties so decided in the arbitration agreement. The arbitration rules of the Court of Arbitration at the Polish Chamber of Commerce in Warsaw only provide for the procedure of appointing an arbitrator in case there is more than one person acting as a claimant or a respondent.

## **7.6 Oral hearings and written proceedings**

7.6.1 Unless otherwise agreed by the parties, the arbitral tribunal shall decide whether to hold an oral hearing for the presentation of arguments and evidence, or to conduct the arbitral proceedings on the basis of documents and other materials only.<sup>54</sup> If requested by a party and not agreed otherwise, the arbitral tribunal shall hold such hearings at an appropriate stage of the arbitral proceedings.

## **7.7 Default by one of the parties**

7.7.1 As mentioned in paragraph 7.1.2 above, it is obligatory for the claimant to file a statement of claim. Where a claimant fails to file its statement of claim in accordance with the requirements of Article 1188 of the CCP, the arbitral tribunal shall terminate the arbitral proceedings without deciding on the merits of the dispute.<sup>55</sup>

7.7.2 If the respondent defaults in submitting a reply to the statement of claim (i.e. it fails to file a statement of defence), this does not prevent the arbitral tribunal from continuing with the arbitral proceedings.<sup>56</sup>

7.7.3 The default of any party to appear at a hearing or to submit documents that have been requested from it does not prevent the arbitral tribunal from continuing the arbitral proceedings and rendering an award based on gathered evidence.<sup>57</sup>

## **7.8 Evidence generally**

7.8.1 An arbitral tribunal may hear witnesses, and examine documents and other necessary evidence, but it may not compel the parties or third parties to provide evidence.<sup>58</sup> In particular, an arbitral tribunal is not entitled to compel anyone to appear before it or fine anyone for failing to do so. However, the arbitral tribunal

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<sup>54</sup> *Ibid*, art 1189(1).

<sup>55</sup> *Ibid*, art 1190(1).

<sup>56</sup> *Ibid*, art 1190(2).

<sup>57</sup> *Ibid*, art 1190(3).

<sup>58</sup> *Ibid*, art 1191(1).



is entitled to ask the courts for assistance in obtaining evidence, as discussed in section 9.4 below.

## 7.9 Appointment of experts

7.9.1 Unless the parties have agreed otherwise, the arbitral tribunal can appoint an expert or experts in order to obtain their opinions. The arbitral tribunal may also request the parties to provide the expert with requested information and documents.<sup>59</sup> Unless the parties have agreed otherwise, at a party's request or if the arbitral tribunal considers it necessary, the expert, after providing an opinion, will attend a hearing where the parties can ask questions or request explanations.<sup>60</sup>

## 7.10 Confidentiality

7.10.1 Although confidentiality is regarded as one of the main characteristics of arbitration, the CCP does not establish the confidentiality of arbitral proceedings. Therefore, for the avoidance of doubt, it is advisable that the parties provide for the confidentiality of arbitral proceedings in their arbitration agreement.

7.10.2 The arbitral rules of the Court of Arbitration at the Polish Chamber of Commerce establish the confidentiality of arbitral proceedings, while the rules of the Court of Arbitration at the Polish Confederation of Private Employers Lewiatan allow the President of the Court to publish the award, although on a no-names basis.

# 8. Making the award and closing the proceedings

## 8.1 Choice of law

8.1.1 The parties are free to choose the substantive law applicable to their contract that governs the disputes arising from it or in connection with it. The Conflicts of Laws Act refers in this respect to Regulation (EC) No. 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations.<sup>61</sup>

8.1.2 Parties may also authorise the arbitral tribunal to resolve the dispute on the principles of equity or in accordance with general principles of law.<sup>62</sup> However, this requires "explicit authorisation" by the parties, which can be granted either in the arbitration agreement or through some other express agreement.

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<sup>59</sup> *Ibid.*, art 1191(2).

<sup>60</sup> *Ibid.*, art 1191(3).

<sup>61</sup> Often referred to as the Rome I Regulation.

<sup>62</sup> CCP, art 1194(1).

8.1.3 In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the specific nature of the trade applicable to the transaction.<sup>63</sup>

## **8.2 Decision making by the arbitral tribunal**

8.2.1 Unless a unanimous decision is required by the arbitration agreement, a majority of the arbitral tribunal is sufficient to make a valid award.<sup>64</sup> However, the chair of the arbitral tribunal, if so authorised by the parties or all members of the arbitral tribunal, may determine questions regarding the procedure of the arbitral proceedings.

8.2.2 Any arbitrator who voted against the ruling may indicate, next to his or her signature on the award, that he or she presented a dissenting opinion and may prepare a statement of reasons within two weeks of drawing up the reasons for the award.<sup>65</sup> However, in practice, this occurs quite rarely. Dissenting signatures are discretionary; the dissenting arbitrator has a right, but not an obligation, to indicate in the award that he or she expressed a dissenting opinion.<sup>66</sup>

## **8.3 Form, content and effect of the award**

8.3.1 An award must be made in writing and must include:<sup>67</sup>

- a reference to the arbitration agreement;
- the date of the award and the place where it was made;
- the names of the parties and the arbitrators;
- the decision on the claims of the parties;
- the reasons for the award; and
- the signatures of all the arbitrators (or a majority of the arbitrators if the case was judged by three or more arbitrators, with the reasons for the absence of other arbitrators' signatures being stated in the award).

8.3.2 The arbitral tribunal shall serve a copy of the award on both parties.<sup>68</sup> In ad hoc arbitral proceedings, the arbitral tribunal then files the records of the case and the original award (and proof that copies have been served) at the court. Such court documents are not publicly available. In institutional arbitral proceedings, these records are retained by the arbitral institution.<sup>69</sup>

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<sup>63</sup> *Ibid*, art 1194(2).

<sup>64</sup> *Ibid*, art 1195(1).

<sup>65</sup> *Ibid*, art 1195(3).

<sup>66</sup> *Ibid*, art 1195(2).

<sup>67</sup> *Ibid*, art 1197(1)–(3).

<sup>68</sup> *Ibid*, art 1197(4).

<sup>69</sup> *Ibid*, art 1204.

## 8.4 Settlement

8.4.1 Based on the principle of party autonomy, it is open to the parties to settle their dispute in the course of the arbitral proceedings.<sup>70</sup> The essential terms of a settlement must be included in a protocol and certified with the parties' signatures. On request from the parties, the arbitral tribunal may provide an award by consent in accordance with the settlement. Awards issued in accordance with the settlement and settlements concluded before the arbitral tribunal have the same effect and force as awards.<sup>71</sup> An award made on the basis of a settlement should conform to the requirements listed in paragraph 8.3.1 above and should contain a statement that it is an award.<sup>72</sup>

## 8.5 Discontinuation of proceedings

8.5.1 The arbitral tribunal shall discontinue the arbitral proceedings if:

- the claimant fails to submit a statement of claim within the prescribed time agreed by the parties, or in absence of the parties' agreement in that regard, within the time specified by the arbitral tribunal;<sup>73</sup>
- the claimant withdraws the claim, unless the respondent opposes this withdrawal and the arbitral tribunal decides that the respondent has a justified interest in resolving the dispute;<sup>74</sup> or
- the arbitral tribunal concludes that continuing with the arbitral proceedings is unnecessary or impossible for reasons other than the withdrawal of the statement of claim.<sup>75</sup>

## 8.6 Costs

8.6.1 The parties are jointly and severally liable for the payment of the arbitrators' remuneration and reimbursement of their expenses.<sup>76</sup> Institutional arbitral rules usually contain specific provisions concerning the allocation of costs. In the case of ad hoc arbitration, the amount of the arbitrators' remuneration and the allocation of costs between the parties may be specified in the arbitration agreement, although this occurs rarely in practice.

8.6.2 Usually, the costs of the arbitral proceedings (including arbitrators' fees and expenses, discussed in section 5.4 above), the parties' costs of legal representation and other expenses of the arbitral proceedings, such as the costs of expert

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<sup>70</sup> *Ibid.*, art 1196(1).

<sup>71</sup> *Ibid.*, art 777(1)–(2).

<sup>72</sup> *Ibid.*, art 1196(2).

<sup>73</sup> *Ibid.*, art 1190(1).

<sup>74</sup> *Ibid.*, art 1198(1).

<sup>75</sup> *Ibid.*, art 1198(2).

<sup>76</sup> *Ibid.*, art 1179(1).

opinions, are dealt with in the award. The arbitral tribunal may apply to the relevant court for the arbitrators' fees and expenses to be assessed in separate proceedings. The court will determine, in chambers, the amount of the arbitrators' remuneration, taking into account the amount of time spent on the matter and reimbursable expenses. The court's assessment and decision may be appealed.

8.6.3 The CCP does not address the allocation of the costs of the arbitration (including arbitrators' fees and expenses and the parties' costs of legal representation) between the winning and losing party. Under the general rules of civil procedure that are applicable to court proceedings, the parties bear the costs of the proceedings in accordance with the proportion of their success or failure, as stated in the judgment.<sup>77</sup> Although the arbitral tribunal is not bound by these rules, they may be applied by analogy in arbitral proceedings.

## **8.7 Correction, interpretation and issuance of a supplemental award**

8.7.1 Within two weeks of receipt of an award, unless another period of time has been agreed upon by the parties:<sup>78</sup>

- a party, with notice to the other party, may request that the arbitral tribunal corrects any error in calculation, any clerical or typographical errors, or any errors of a similar nature in the award;<sup>79</sup> and
- a party, with notice to the other party, may request that the arbitral tribunal provides an interpretation of a specific point or part of the award.<sup>80</sup>

8.7.2 If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within two weeks of receiving the request. The interpretation shall form part of the award.

8.7.3 The arbitral tribunal may correct any clerical or typographical errors on its own initiative within a month of making the award. The arbitral tribunal shall inform the parties of any such corrections.<sup>81</sup>

8.7.4 Unless otherwise agreed by the parties, within a month of receiving the award, one party, with notice to the other, may request that the arbitral tribunal makes a supplemental award on claims raised in the arbitral proceedings but omitted from

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<sup>77</sup> *Ibid*, art 98–110.

<sup>78</sup> *Ibid*, art 1200.

<sup>79</sup> *Ibid*, art 1200(1.1).

<sup>80</sup> *Ibid*, art 1200(1.2).

<sup>81</sup> *Ibid*, art 1201.

the award. If the arbitral tribunal considers the request to be justified, it shall make the supplemental award within two months of the date of the request.<sup>82</sup>

- 8.7.5 If necessary, the arbitral tribunal may extend the period of time within which the parties may file a request for a correction, interpretation or supplemental award.<sup>83</sup>

## 9. Role of the courts

### 9.1 Jurisdiction of the courts

- 9.1.1 In principle, a valid and binding arbitration agreement excludes the courts from the determination of disputes covered by such an agreement. As discussed in paragraph 9.2.1 below, if the respondent party properly objects to the court action, the court shall reject a statement of claim that has been submitted in relation to a dispute that is covered by an arbitration agreement.

- 9.1.2 However, in some cases it is necessary for the courts to act in order to ensure the effectiveness of arbitration as a dispute resolution mechanism. Such actions may even be taken before the arbitral proceedings commence. Usually, the courts will only intervene if the proper conduct of the arbitral proceedings is in some way jeopardised, or if a party refuses to satisfy an award voluntarily.

- 9.1.3 The CCP gives the courts jurisdiction to decide the following arbitration matters upon request of either party:
- the appointment of arbitrators or the chair of the arbitral tribunal, if the parties (or the arbitrators) fail to make such appointment themselves within the required period of time, or if an appointing authority does not make the appointment within the prescribed period or such period was not specified;<sup>84</sup>
  - an appeal against the decision of the arbitral tribunal in the case of a challenge to arbitrators under specified conditions;<sup>85</sup>
  - the determination of the arbitrators' remuneration and of reimbursable expenses, if not determined by the parties;<sup>86</sup>
  - other judicial assistance, such as securing the appearance of a witness before the arbitral tribunal;<sup>87</sup>

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<sup>82</sup> *Ibid.*, art 1202.

<sup>83</sup> *Ibid.*, art 1203(1).

<sup>84</sup> *Ibid.*, art 1171(2) and art 1172.

<sup>85</sup> *Ibid.*, art 1176(2) and (4).

<sup>86</sup> *Ibid.*, art 1179(2).

<sup>87</sup> *Ibid.*, art 1192(1).

- the maintenance of ad hoc arbitration files following service of the final award on the parties;<sup>88</sup> and
- the declaration of the enforceability of an award or a settlement.<sup>89</sup>

## **9.2 Preliminary rulings on jurisdiction**

- 9.2.1 If one of the parties brings a dispute before the court, and the other party properly objects, then the court will reject the dispute without any consideration of the merits. The objecting party must reference the arbitration agreement and object before it involves itself in the merits of the dispute.<sup>90</sup>
- 9.2.2 If one party brings the dispute before the court and the other party either does not object or engages in a discussion concerning the merits of the dispute, then the dispute may be determined by the court.

## **9.3 Interim protective measures**

- 9.3.1 Regardless of the existence of any pending arbitral proceedings, a party may apply to the courts and request interim measures. An injunction may be granted in accordance with the relevant general provisions of the CCP. Such applications may be allowed notwithstanding the existence of an arbitration agreement and may be made irrespective of whether arbitral proceedings are pending in Poland or abroad.

## **9.4 Obtaining evidence and other court assistance**

- 9.4.1 The arbitral tribunal is entitled to ask the courts for assistance in summoning witnesses.<sup>91</sup> Upon such a request, the court shall summon the witness or expert to appear before the arbitral tribunal and, should such a person fail to do so, the court may administer a fine and even ask the police to bring that person to the hearing. Recourse to the courts is extremely rare in practice.

# 10. Challenging and appealing an award through the courts

## **10.1 Appeals**

- 10.1.1 The only judicial remedy against an award is an application to set aside an award. Where the parties have agreed to allow appeals or subsequent awards, an

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<sup>88</sup> *Ibid*, art 1204(1).

<sup>89</sup> *Ibid*, art 1212.

<sup>90</sup> *Ibid*, art 1165(1).

<sup>91</sup> *Ibid*, art 1192(1).

aggrieved party may only apply to set aside the final award resolving the claims between the parties.<sup>92</sup>

## 10.2 Applications to set aside an award

10.2.1 An action to set aside an award should be filed with the courts and meet all the requirements prescribed for a statement of claim.<sup>93</sup>

10.2.2 An award may be set aside on the following grounds:

- there was no arbitration agreement, or the arbitration agreement was invalid or became inoperative;
- a party was not properly notified of the appointment of an arbitrator or of the arbitral proceedings, or was otherwise deprived of the possibility to defend its rights before the arbitral tribunal;
- the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not submitted, the part of the award which contains decisions on matters submitted to arbitration may be recognised and enforced;
- the fundamental rules of procedure, as determined by the parties or by statutory provisions, in particular, by the provisions relating to the composition of the arbitral tribunal, were not observed. However, a party may not raise an objection on the grounds of a violation of the provisions of the CCP relating to procedure before the arbitral tribunal, and may not challenge the award on such grounds if that party failed to raise the objection immediately upon its notification or within such time as set by the parties;<sup>94</sup>
- the award was issued as a result of a crime, or a document that formed the grounds for the award was falsified or forged; or
- there is already a judgment with force of law in the case.<sup>95</sup>

10.2.3 Moreover, the court may also set aside an award if it finds that:

- the subject matter of the dispute is not capable of settlement by arbitration;
- or
- the award is contrary to the fundamental rules of Polish public policy.<sup>96</sup>

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<sup>92</sup> *Ibid*, art 1192(1).

<sup>93</sup> *Ibid*, art 187.

<sup>94</sup> *Ibid*, art 1193.

<sup>95</sup> *Ibid*, art 1206(1).

<sup>96</sup> *Ibid*, art 1206(2).

- 10.2.4 An action to set aside an award should be filed with the court within three months of the date of service of the award (the rules concerning service are discussed in section 7.3 above). If the action is justified by the fact that the award was issued as a result of a crime, if a document that formed the basis of the award was falsified or forged, or there was already a judgment with force of law in that case, then the party may file an action to set aside an award within three months of the discovery of one of these facts, but not later than five years after delivery of the award.<sup>97</sup>
- 10.2.5 When asked to set aside an award the court may, where requested by a party, suspend court proceedings for a determined period of time to allow the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action that may eliminate the grounds for setting the award aside.<sup>98</sup>

## 11. Recognition and enforcement of awards

- 11.1.1 For an award (and a settlement concluded by the parties before the arbitral tribunal) to have the same legal force as a judgment of the courts, the court must recognise the award and grant an *exequatur* declaring the award to be enforceable. If the award is not subject to enforcement (e.g. it confirms an existence of a right), the court determines whether the award shall be recognised. The provisions of Title Eight of the Fifth Part of the CCP relate to the same extent to awards rendered in Poland and abroad, unless the award was rendered in a country being a signatory of the New York Convention. In the latter case, the New York Convention prevails over the rules of the CCP.<sup>99</sup>
- 11.1.2 The court recognises or declares the enforceability of an award upon a motion from a party. The party must present the court with original or certified copies of the award and the arbitration agreement. In declaring the enforceability of the award or recognising the award, the court will not review the merits of the case, but will only check the records filed by the arbitral tribunal at court to see whether the subject matter of the dispute was capable of settlement by arbitration, and whether the recognition or enforcement of the award would be contrary to the fundamental rules of Polish public policy. The last condition is described as a 'public order clause' in Article 1214(3)(2) of the CCP. In the case of a foreign arbitration, the court makes the examination based on the documents provided by the requesting party, i.e. the arbitration agreement and the award.

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<sup>97</sup> *Ibid*, art 1208(2).

<sup>98</sup> *Ibid*, art 1209(1).

<sup>99</sup> *Ibid*, art 1212(2).



- 11.1.3 A foreign award may be recognised or declared enforceable only after conducting a hearing before the court recognising/enforcing the award.<sup>100</sup> Domestic awards may be recognised at a closed session, that is, without the parties present, or may be declared enforceable by granting *exequatur* through a simplified procedure described in and regulated by Articles 781–795 of the CCP. *Exequatur* is granted to the awards that are enforceable, while the awards that are not enforceable are only recognised (and thus they are not granted with *exequatur*).
- 11.1.4 Based on the CCP, the court will refuse to recognise or declare enforceable a foreign award in the situations described above and, upon a motion from a party, if it is shown that:
- there was no arbitration agreement, or the arbitration agreement was invalid or became inoperative;
  - a party was not properly notified of the appointment of an arbitrator or of the arbitral proceedings, or was otherwise deprived of the possibility to defend its rights before the arbitral tribunal;
  - the award deals with a dispute not contemplated by, or not falling within, the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not submitted, the part of the award which contains decisions on matters submitted to arbitration may be recognised and enforced;
  - the composition of the arbitral tribunal or the arbitration procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
  - the award has not yet become binding on the parties, or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made.<sup>101</sup>
- 11.1.5 The above CCP rules of recognising and enforcing foreign awards apply only to awards from non-signatories to the New York Convention. Poland is a party to the 1961 European Convention and, more importantly, the New York Convention, both of which have binding force in Poland. The New York Convention is subject to the two reservations contained in Article I (3).<sup>102</sup> New York Convention awards will be recognised and enforced through the Polish courts in accordance with Article V of the New York Convention.

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<sup>100</sup> *Ibid*, art 1215(1).

<sup>101</sup> *Ibid*, art 1215(2).

<sup>102</sup> See CMS Guide to Arbitration, vol II, appendix 1.1.

## 12. Special provisions and considerations

### 12.1 Consumers

- 12.1.1 In general, arbitration agreements contained in contracts concluded with consumers are allowed under Polish law. However, if the arbitration agreement is contained in general conditions or in a contractual document that has not been individually negotiated with the consumer, it is deemed to be an abusive clause and as such has no legal effect.<sup>103</sup>
- 12.1.2 In Poland, consumer disputes can be decided by the Permanent Consumer Arbitration Tribunals (*Stałe Polubowne Sądy Konsumenckie*) acting at the state Commercial Inspection (*Inspekcja Handlowa*). There are also arbitral tribunals acting in specific sectors, e.g. Banking Consumer Arbitration, that can decide on a dispute in which consumers are involved.

### 12.2 Employment law

- 12.2.1 Employment disputes may be subject to an arbitration agreement, provided that the agreement is explicit, made in writing and only concerns an existing dispute.<sup>104</sup>

## 13. Conclusion

- 13.1.1 Arbitration continues to gain popularity in Poland as a method of resolving commercial disputes, particularly disputes arising from international commercial transactions. In comparison to proceedings before Polish courts, arbitral proceedings tend to be faster and cheaper, considering that appeals against awards are generally excluded.
- 13.1.2 Moreover, the new legislation largely incorporates the Model Law (1985) into the CCP. For foreign parties, it should also be of added benefit that arbitral proceedings may be conducted in a foreign language, which reduces the cost and delay caused by translations and facilitates resolution of the dispute.
- 13.1.3 Last but not least, awards are more readily enforceable (both Polish awards abroad and foreign awards in Poland) than court judgments, due to the fact that Poland is a signatory to the New York Convention. Taken together, these factors constitute strong grounds for preferring arbitration over court proceedings for the resolution of international commercial disputes in Poland.

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<sup>103</sup> Polish Code of Civil Procedure, art 385(3).

<sup>104</sup> CCP, art 1164.

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