



Arbitration Guide
IBA Arbitration Committee

POLAND

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Table of Contents

	Page
I. Background	3
II. Arbitration Laws	4
III. Arbitration Agreements	5
IV. Arbitrability and Jurisdiction	7
V. Selection of Arbitrators	9
VI. Interim Measures	11
VII. Disclosure/Discovery	12
VIII. Confidentiality	12
IX. Evidence and hearings	13
X. Awards	15
XI. Costs	17
XII. Challenges to Awards	18
XIII. Recognition and Enforcement of Awards	20
XIV. Sovereign Immunity	23
XV. Investment Treaty Arbitration	23
XVI. Resources	23
XVII. Trends and Developments	25

I. Background

- (i) **How prevalent is the use of arbitration in your jurisdiction? What are seen as the principal advantages and disadvantages of arbitration?**

Litigation is still a more popular form of dispute resolution. However, the case-load in state courts and an overly-formal procedure seems to result in an increased number of arbitration agreements prevalent in more sophisticated commercial transactions, in particular transactional ones.

The advantages of arbitration mainly considered in Poland are the lack of the appeal mechanism, easy enforcement of foreign arbitral awards and procedural flexibility. However, parties sometimes tend to refrain from arbitration as there are generally no costs limits and it does not seem to be an effective dispute resolution mechanism in smaller cases.

- (ii) **Is most arbitration institutional or ad hoc? Domestic or international? Which institutions and/or rules are most commonly used?**

Institutional arbitration tends to be more common in Poland. Arbitration is still mostly used in complex cases with an international element, rather than in domestic disputes.

The most commonly used rules are the ICC Rules, Rules of the Court of Arbitration at the Polish Chamber of Commerce, UNCITRAL Rules, and Rules of Arbitration at the 'Lewiatan' Court of Arbitration.

- (iii) **What types of disputes are typically arbitrated?**

Arbitration is more typical for cases with an international element or complex disputes, in particular: M&A, private equity transactions, energy-related, commercial properties. The state and its agencies are rather reluctant to agree to arbitration.

- (iv) **How long do arbitral proceedings usually last in your country?**

It varies a lot, and there are no reliable statistics; but one can say that anything between six and twenty four months, depending on the course of the evidentiary proceedings. This does not include post-arbitration proceedings, which may take a further 12 months.



- (v) **Are there any restrictions on whether foreign nationals can act as counsel or arbitrators in arbitrations in your jurisdiction?**

No. The parties are not required to be represented by professional legal counsel. Hence, any person who has full capacity for legal acts can represent a party in arbitration proceedings.

II. Arbitration Laws

- (i) **What law governs arbitration proceedings with their seat in your jurisdiction? Is the law the same for domestic and international arbitrations? Is the national arbitration law based on the UNCITRAL Model Law?**

Arbitration proceedings seated in Poland are subject to provisions set forth in Part Five of the Code of Civil Procedure (CCP) of 1964. Part Five entered into force in 2005 and resulted from the need to amend former CCP provisions relating to arbitration.

Part Five of the CCP is largely based on UNCITRAL Model Law with some exceptions. The most apparent exceptions include: Article 1161 § 2 CCP, which imposes a general prohibition on entering into arbitration agreements in which only one party is entitled to bring a claim before an arbitral tribunal, and Article 1170 § 2 CCP, which provides that an active national judge cannot serve as an arbitrator.

Polish arbitration law applies to both domestic and international arbitrations seated in Poland.

- (ii) **Is there a distinction in your arbitration law between domestic and international arbitration? If so, what are the main differences?**

In general, both domestic and international arbitration is governed by Part Five of the CCP. The only difference relates to the enforcement of arbitral awards. Whereas a foreign arbitral award may only be refused enforcement under the provisions of the CCP, or under the New York Convention if it was issued in a signatory State, a domestic award may also be challenged before a state court within two months from service of the award on the party (Article 1208 CCP).

- (iii) **What international treaties relating to arbitration have been adopted (eg New York Convention, Geneva Convention, Washington Convention, Panama Convention)?**

Poland is a party to the New York Convention and the Geneva (European) Convention. Poland is also a party to the Geneva Protocol on Arbitration Clauses

of 1923. Poland is a notable exception and has not so far signed the Washington Convention.

- (iv) **Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?**

Article 1194 CCP sets forth that the arbitral tribunal shall resolve the dispute in accordance with the law applicable to the transaction and, only if it is expressly authorized by the parties, on the basis of the general rules of law or the rules of equity. In any case, the tribunal should take into consideration the provisions of the contract and established usages applicable to the transaction.

In the event the parties do not agree, the tribunal should determine the applicable law in accordance with the conflict of law provisions relevant for the particular transaction.

III. Arbitration Agreements

- (i) **Are there any legal requirements relating to the form and content of an arbitration agreement? What provisions are required for an arbitration agreement to be binding and enforceable? Are there additional recommended provisions?**

According to Article 1162 § 1 CCP the arbitration agreement must be concluded in writing. Article 1162 § 2 CCP indicates that this requirement is fulfilled also if the arbitration agreement is contained in an exchange of documents or statements between the parties by means of communication which provides a record of the agreement and also if the written contract refers to a document containing an arbitration clause, making it part of the contract. Finally, under Article 1163 CCP the arbitration agreement may be incorporated in the articles of association of a company and in such case, it binds the shareholders. (This also applies to co-operatives and associations.)

To be binding and enforceable the arbitration agreement requires at least an indication of the matter in dispute and the legal relationship from which the dispute arose or could potentially arise (Article 1161 § 1 CCP). It is enough to indicate only the source of the dispute without further details.

Both an existing and future dispute may be subject to arbitration. However, in the case of labour law disputes, an arbitration agreement must be concluded after the dispute has arisen (Article 1164 CCP).

If the arbitration agreement violates the principle of equality of the parties, it shall be deemed ineffective. Under Polish law this principle is violated if the arbitration

agreement allows only one of the parties to bring a claim before an arbitral tribunal or a court (Article 1161 § 2 CCP), gives one party more rights in the process of composition of the tribunal (Article 1169 § 3 CCP) or gives one party more rights relating to presenting evidence before an arbitral tribunal (Article 1183 CCP).

If the person specifically named in the arbitration agreement refuses to be an arbitrator, or if it is otherwise not possible for that person to be an arbitrator, the arbitration agreement will lose its force (Article 1168 § 1 CCP). The arbitration agreement will also lose its force if the appointed tribunal refuses to act, or it is impossible for it to hear the case (Article 1168 § 2 CCP) and, if - when the award is to be issued - the required unanimity or majority cannot be attained (Article 1195 § CCP).

(ii) What is the approach of courts towards the enforcement of agreements to arbitrate? Are there particular circumstances when an arbitration agreement will not be enforced?

In general, the courts are arbitration friendly and tend to enforce arbitration agreements.

Pursuant to Article 1165 CCP, if one of the parties brings a claim before a state court despite the existence of an arbitration agreement and the other party raises an objection to this effect before submitting the first statement on the merits, the court will reject the claim, provided that the arbitration agreement is enforceable.

The sole fact that the dispute is subject to arbitration does not prohibit the parties from obtaining an interim measure before a state court (Article 1166 CCP).

The arbitration agreement will be deemed unenforceable if, among other reasons: it violates mandatory principles of the applicable law; it does not fulfil the requirements as to form; it refers to arbitration disputes that are not arbitrable or violates the principle of equality of the parties, or; it is inoperative. Also, the courts will refuse enforcement of arbitration agreements on the same grounds as those that apply to common contracts, such as, among others, the lack of capacity for juridical acts, exclusion of conscious or free decision-making, and an act giving a false appearance.

(iii) Are multi-tier clauses (eg arbitration clauses that require negotiation, mediation and/or adjudication as steps before an arbitration can be commenced) common? Are they enforceable? If so, what are the consequences of commencing an arbitration in disregard of such a provision? Lack of jurisdiction? Non-arbitrability? Other?

Multi-tier arbitration clauses are now becoming more common in Poland, in particular in construction contracts based on FIDIC or complex energy-related agreements.

There is no conclusive Polish Supreme Court interpretation on the consequences of disregarding the pre-arbitration steps in general terms. However generally, in the absence of clear language that pre-conditions for arbitration are obligatory, they are considered non-mandatory, and the tendency is to allow the arbitration to proceed despite a failure to initiate pre-arbitration steps such as negotiations.

(iv) What are the requirements for a valid multi-party arbitration agreement?

There are no particular requirements. General rules of enforcement of such arbitration agreements apply. Particular attention should be paid to Article 1169 § 3 CCP, according to which provisions granting one of the parties more rights in the procedure of appointment of the tribunal are ineffective.

(v) Is an agreement conferring on one of the parties a unilateral right to arbitrate enforceable?

No. An arbitration agreement which entitles only one party to bring a claim before an arbitral tribunal is ineffective and hence, unenforceable (Article 1161 § 2 CCP).

(vi) May arbitration agreements bind non-signatories? If so, under what circumstances?

An arbitration agreement may bind non-signatories in the case of a legal succession. For example, it binds the assignee who acquires a receivable covered by this agreement and may bind a party who acquires an enterprise. It is also accepted that it binds beneficiaries of contracts created for the benefit of a third party. Similarly, an arbitration agreement contained in the articles of association of a company binds its shareholders in relation to disputes concerning the company. (This also applies to co-operatives and associations.)

The Polish Supreme Court has not yet ruled on whether non-signatories are bound by the arbitration agreement if negotiations or other circumstances surrounding the agreement allow for a conclusion that this was the intention of the parties.

IV. Arbitrability and Jurisdiction

(i) Are there types of disputes that may not be arbitrated? Who decides – courts or arbitrators – whether a matter is capable of being submitted to arbitration? Is the lack of arbitrability a matter of jurisdiction or admissibility?

Upon Article 1157 CCP, the parties may subject to arbitration only disputes about monetary or non-monetary rights that may be subject to a court settlement, except for alimony disputes. The disputes that cannot be settled in court and that are therefore non-arbitrable include, among others, cases involving family and guardianship law and disputes concerning the abuse of consumer rights.

Non-arbitrability affects the jurisdiction of the arbitral tribunal. If an award was issued despite the fact that the dispute is non-arbitrable, it can be set aside (Article 1206 § 2 CCP) or refused recognition or enforcement (Article 1214 § 3 CCP).

- (ii) **What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an arbitration agreement? Do local laws provide time limits for making jurisdictional objections? Do parties waive their right to arbitrate by participating in court proceedings?**

If one of the parties brings a claim before a state court despite the existence of an arbitration agreement and the other party raises an objection to this effect before submitting the first statement on the merits, the court will reject the claim, provided that the arbitration agreement is enforceable (Article 1165 CCP).

According to Article 1165 § 3 CCP by participating in court proceedings, the parties do not waive their right to arbitrate.

In arbitration, jurisdictional objections shall be raised no later than in the statement of defence or within the time limit established by the parties unless before the end of this time limit the party did not know, or exercising due diligence could not have learned of the grounds for such an objection, or such ground arose only after the end of the time limit (Article 1180 § 2 CCP).

- (iii) **Can arbitrators decide on their own jurisdiction? Is the principle of competence-competence applicable in your jurisdiction? If yes, what is the nature and intrusiveness of the control (if any) exercised by courts on the tribunal's jurisdiction?**

The principle of competence-competence applies in Poland. According to Article 1180 § 1 CCP the arbitral tribunal may rule on its own jurisdiction, including the existence, validity and effectiveness of the arbitration agreement.

The arbitral tribunal's decision that it has jurisdiction may be questioned before a state court in the application to set aside an award (or to recognise and enforce the award) or in an appeal to the common court against the tribunal's decision assuming its jurisdiction, filed within two weeks from the day the decision was served. Pending the appeal, the tribunal is free to proceed with the case. The decision of the court is subject to a further appeal to the court of second instance.

At the same time, the state court is not competent to review the arbitral tribunal's decision declining jurisdiction over the case.

The state court will also examine the tribunal's jurisdiction if during the court proceedings a plea that a dispute is not covered by an arbitration agreement is raised at a timely juncture by the respondent, as per Article 1165 CCP. A court can proceed with the matter if it concludes that an arbitration agreement is invalid, ineffective, unenforceable or has lost its effect, as well as when an arbitral tribunal has already decided that it is not competent to hear the case.

V. Selection of Arbitrators

(i) How are arbitrators selected? Do courts play a role?

The parties are free to determine the number arbitrators, as long as it does not give one of the parties more rights in the process of the constitution of the tribunal. If the number of arbitrators is not determined, the tribunal should be composed of three arbitrators (Article 1169 § 2 CCP).

The parties may agree on the method of appointment of arbitrators. In the case of a lack of such agreement, Article 1171 CCP provides for a procedure of appointment of the tribunal, according to which each party appoints an equal number of arbitrators who then appoint the presiding arbitrator or, if the dispute is to be resolved by a sole arbitrator, they together appoint the sole arbitrator. If one of the parties fails to act in accordance with the procedure, the other party may request the court to make the relevant appointment. The relevant court is the one that would have had jurisdiction if there was no arbitration agreement (Article 1158 CCP).

Polish arbitration institutions maintain lists of recommended arbitrators which are often used by parties.

(ii) What are the requirements in your jurisdiction as to disclosure of conflicts? Do courts play a role in challenges and what is the procedure?

A person appointed as an arbitrator should immediately disclose to the parties any circumstances that could raise doubts as to his impartiality or independence (Article 1174 § 1 CCP).

An arbitrator may be challenged only in the event that circumstances raising justifiable doubts as to his impartiality or independence become apparent or, if he does not have the qualifications prescribed by the agreement of the parties. The party which appointed the arbitrator may demand that he be challenged only upon grounds which became known to it after the appointment (Article 1174 § 2 CCP).

In accordance with Article 1176 § 2 CCP, if the parties have agreed on the challenge procedure and within one month from the date on which the requesting party applied to challenge an arbitrator, the arbitrator is not recused, the requesting party may within two weeks apply to a state court to recuse the arbitrator.

If the parties have not agreed on the challenge procedure, the requesting party shall, within two weeks from the day on which it learned about the appointment of the arbitrator or from the day on which it learned about circumstances substantiating the challenge proposal, give written notification to the arbitral tribunal and the other party of the circumstances justifying the challenge (Article 1176 § 3 CCP). If subsequently the arbitrator does not withdraw or is not recused within two weeks, the requesting party may within the following two weeks apply to the state court to recuse the arbitrator (Article 1176 § 4 CCP).

(iii) Are there limitations on who may serve as an arbitrator? Do arbitrators have ethical duties? If so, what is their source and generally what are they?

If there is no party agreement specifying the qualifications of an arbitrator, any natural person of any citizenship with full capacity to perform legal acts, with the exception of an active judge, may serve as an arbitrator (Article 1170 CCP).

The CCP itself does not impose any specific ethical duties on arbitrators, except for those relating to the disclosure of doubts as to impartiality and independence. However, Polish arbitral institutions require arbitrators to adhere to the institutional codes of ethics (eg the Code of Ethics for Arbitrators of the 'Lewiatan' Court of Arbitration, and the Code of Ethics at the Court of Arbitration at the Polish Chamber of Commerce).

It is also worth noting that a national court may dismiss an arbitrator upon a motion of one of the parties if he fails to perform his duties within the prescribed deadline or is in undue delay without a valid reason (Article 1177 § 2 CCP).

(iv) Are there specific rules or codes of conduct concerning conflicts of interest for arbitrators? Are the IBA Guidelines on Conflicts of Interest in International Arbitration followed?

There are no specific rules or codes of conduct concerning conflicts of interest for arbitrators provided by Polish law. The IBA Guidelines on Conflicts of Interest in International Arbitration do not form part of Polish law. However, unless the parties have agreed otherwise, the arbitral tribunal may conduct the proceedings in a manner it deems appropriate by for instance adopting the IBA Guidelines as part of the procedural rules (Article 1184 CCP). The IBA Guidelines are generally

recognized in the practice of permanent Polish courts of arbitration and are frequently applied by the tribunals.

VI. Interim Measures

- (i) **Can arbitrators issue interim measures or other forms of preliminary relief? What types of interim measures can arbitrators issue? Is there a requirement as to the form of the tribunal's decision (order or award)? Are interim measures issued by arbitrators enforceable in courts?**

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party which *prima facie* evidenced its claim, decide to order such interim measures it considers necessary in respect of the subject-matter of the dispute. The tribunal may require the party to provide appropriate security in order for the measure to be effective (Article 1181 CCP).

Interim measures are granted in the form of the tribunal's decision, rather than in the form of an award.

The decision of the arbitral tribunal is enforceable after the court issues an enforcement clause.

- (ii) **Will courts grant provisional relief in support of arbitrations? If so, under what circumstances? May such measures be ordered after the constitution of the arbitral tribunal? Will any court ordered provisional relief remain in force following the constitution of the arbitral tribunal?**

The court is entitled to grant an interim relief in support of arbitration proceedings if the applicant's case is *prima facie* proved and it is likely that in the absence of relief, the enforcement of the award or the achievement of the purpose of the proceedings will be prevented or significantly impeded (Articles 730 and 1166 CCP). Such measures may be ordered before the constitution of the tribunal and will remain in force afterwards.

- (iii) **To what extent may courts grant evidentiary assistance/provisional relief in support of the arbitration? Do such measures require the tribunal's consent if the latter is in place?**

Since an arbitral tribunal is not allowed to use means of force, under Article 1192 CCP it may request assistance from a state court in the taking of evidence or in the performance of other judicial acts that the tribunal is not empowered to perform. A court may, among other things, issue an order of conveyance of a witness under constraint. Arbitrators and the parties are entitled to participate and ask questions in evidentiary proceedings before a state court.

This also applies when the place of arbitration is outside of Poland or is not determined (Article 1192 § 2 CCP).

VII. Disclosure/Discovery

(i) What is the general approach to disclosure or discovery in arbitration? What types of disclosure/discovery are typically permitted?

Unless the parties have agreed otherwise, an arbitral tribunal may conduct the proceedings in the manner it deems appropriate (Article 1184 CCP). The tribunal has powers to order the disclosure or discovery of documents. The tribunals will often consider parties' motions to produce specified documents. In the event of difficulties with obtaining documents, the arbitral tribunal may request a state court to take evidence (Article 1192 § 1 CCP).

However, since there is no established practice on disclosure and discovery in Poland, the approach will largely depend on the background and experience of the arbitrators and counsel. It is not uncommon for tribunals to follow the IBA Rules on the Taking of Evidence in International Arbitration in this respect.

(ii) What, if any, limits are there on the permissible scope of disclosure or discovery?

There is no established jurisprudence on this, but the tribunals tend to reject requests for documents covered by the legal privilege or that constitute a company secret.

(iii) Are there special rules for handling electronically stored information?

No, general rules apply in the case of electronically stored information.

VIII. Confidentiality

(i) Are arbitrations confidential? What are the rules regarding confidentiality?

Polish law does not provide for any rules concerning the confidentiality of arbitration proceedings. The parties are free to agree on confidentiality by way of an explicit agreement. Also, the tribunal may order the confidentiality of the proceedings within its authority to determine the arbitral procedure.

(ii) Are there any provisions in your arbitration law as to the arbitral tribunal's power to protect trade secrets and confidential information?

The CCP does not regulate the tribunal's power to protect trade secrets and confidential information.

(iii) Are there any provisions in your arbitration law as to rules of privilege?

No, there are no specific regulations. However, Polish lawyers are generally bound by professional rules of conduct, which prescribe the duty of confidentiality.

IX. Evidence and Hearings

(i) Is it common that parties and arbitral tribunals adopt the IBA Rules on the Taking of Evidence in International Arbitration to govern arbitration proceedings? If so, are the Rules generally adopted as such or does the tribunal retain discretion to depart from them?

The parties are free to decide on the rules of evidence and often refer to IBA Rules on the Taking of Evidence in International Arbitration. Referring to IBA Rules is also within the discretion of the arbitral tribunal. IBA Rules are occasionally used as a source of guidance. Rules of the 'Lewiatan' Court of Arbitration amended in 2012 specifically refer to IBA Rules on taking evidence.

(ii) Are there any limits to arbitral tribunals' discretion to govern the hearings?

Unless the parties have agreed otherwise, the arbitral tribunal may conduct the proceedings in the manner it deems appropriate. However, the parties shall be treated equally. Each party has the right to be heard and to present its arguments and evidence for their support (Article 1183 CCP). Also, the tribunal cannot apply coercive measures to obtain evidence (Article 1191 § 1 CCP). Further, if the parties have not agreed that the proceedings will be conducted without a hearing, the arbitral tribunal is obliged to hear the case at a hearing if requested by one of the parties. The parties shall be notified of the planned hearings and meetings of the tribunal held for the purpose of taking evidence in due time (Article 1189 CCP).

(iii) How is witness testimony presented? Is the use of witness statements with cross examination common? Are oral direct examinations common? Do arbitrators question witnesses?

There are no specific rules in the CCP relating to witness testimony and cross-examination of witnesses. The arbitral tribunal may conduct all evidence it deems necessary and in the manner it deems appropriate.

Written witness statements have become a standard practice in arbitration proceedings in Poland. More often, they replace direct oral examinations. Also, the use of cross examination is growing. The CCP provides no rules with regard

to questioning of witnesses, but in practice, arbitrators often question witnesses first and then hand the floor over to the parties.

(iv) Are there any rules on who can or cannot appear as a witness? Are there any mandatory rules on oath or affirmation?

There are no particular restrictions under Polish arbitration law as to who may serve as a witness.

Witnesses are not obliged to give testimony before an arbitral tribunal. Also, the tribunal has no power to examine witnesses under oath. However, upon Article 1192 CCP the tribunal may request the assistance of a district court in obtaining witness testimony, also under oath.

(v) Are there any differences between the testimony of a witness specially connected with one of the parties (eg legal representative) and the testimony of unrelated witnesses?

Although there are no direct differences in the arbitration law, the general rules of procedure do not allow representatives of a party to appear as witnesses. In practice, arbitral tribunals hear witnesses connected with one of the parties in a similar way as unrelated witnesses.

(vi) How is expert testimony presented? Are there any formal requirements regarding independence and/or impartiality of expert witnesses?

Typically, the expert provides his testimony in the form of a written opinion. Unless the parties have agreed otherwise, the expert then participates in the hearing if requested by a party or if the tribunal deems it necessary, where the parties may ask him questions and request clarification (Article 1191 § 3 CCP).

There are no formal requirements regarding independence and/or impartiality of expert witnesses under Polish arbitration law but it is common to question the credibility of an expert on the basis of a lack of independence or impartiality.

(vii) Is it common that arbitral tribunals appoint experts beside those that may have been appointed by the parties? How is the evidence provided by the expert appointed by the arbitral tribunal considered in comparison with the evidence provided by party-appointed experts? Are there any requirements in your jurisdiction that experts be selected from a particular list?

It is common for the parties to appoint their own experts. Under Article 1191 § 2 CCP unless the parties have agreed otherwise, the tribunal may appoint an expert and order the parties to provide the expert with relevant information or submit or enable the expert access to documents or other property for inspection.

There is no requirement in the CCP to select experts from a particular list.

(viii) Is witness conferencing ('hot-tubbing') used? If so, how is it typically handled?

Witness conferencing is sometimes used in arbitration proceedings seated in Poland, more commonly with expert evidence. If used, typically the experts would sit together and testify on issues determined as in dispute between them before the hearing. However, the approach to hot-tubbing will largely depend on the background and experience of the arbitrators and counsel.

(ix) Are there any rules or requirements in your jurisdiction as to the use of arbitral secretaries? Is the use of arbitral secretaries common?

There are no rules or requirements in Polish law as to the use of arbitral secretaries. However, the use of arbitral secretaries in arbitration proceedings is common.

X. Awards

(i) Are there formal requirements for an award to be valid? Are there any limitations on the types of permissible relief?

According to Article 1197 CCP, the award should be made in writing and signed by the issuing arbitrators. If the award is issued by a tribunal composed of three or more arbitrators, the signatures of the majority of arbitrators, accompanied by an explanation why the other signatures have not been provided are sufficient. The award should contain reference to the arbitration agreement, identify the parties and the arbitrators, specify the date and place the award was granted and provide an explanation of the grounds on which the tribunal based its decision. Based upon Article 1202 CCP the award has to contain a decision on all of the claims raised in the arbitration proceedings.

The tribunal may award any type of legally possible relief.

(ii) Can arbitrators award punitive or exemplary damages? Can they award interest? Compound interest?

Under Polish law punitive and exemplary damages cannot be awarded. An arbitral award granting punitive damages would likely be set aside or denied enforcement as being contrary to the basic principles of the Polish legal order. The arbitrators may award interest and compound interest.

(iii) Are interim or partial awards enforceable?

Although the CCP does not regulate the matter of interim and partial awards, it is accepted that an arbitral tribunal may issue such awards. Such awards are enforceable if they fulfil the conditions of enforcement (in particular, they should resolve the dispute in respect of the parties' claims and not mere procedural issues).

(iv) Are arbitrators allowed to issue dissenting opinions to the award? What are the rules, if any, that apply to the form and content of dissenting opinions?

Arbitrators are allowed to issue dissenting opinions. According to Article 1195 § 2 CCP an arbitrator who voted against the opinion of the majority of arbitrators may indicate, next to his signature under the award, that he was of a dissenting opinion. An explanation of the dissenting opinion shall be prepared within two weeks from the date of preparation of the reasons for the award and attached to the case files (Article 1195 § 3 CCP).

(v) Are awards by consent permitted? If so, under what circumstances? By what means other than an award can proceedings be terminated?

Article 1196 CCP allows for settlements recorded in the form of an award. If during the proceedings the parties settle the dispute, the tribunal shall terminate the proceedings. The terms of the settlement shall be recorded and signed by the parties and at the request of the parties the tribunal may record the settlement in the form of an award. Such award has the same effects as any other award of the arbitral tribunal.

The tribunal will issue an order for the termination of the proceedings if:

- the claimant fails to communicate his statement of claim within the prescribed deadline (Article 1190 § 1 CCP);
- the claimant withdraws the claim, unless the respondent objects to the withdrawal and the tribunal decides that the respondent has legitimate interest in the final settlement of the dispute and
- the tribunal decides that the continuation of the proceedings has become unnecessary or irrelevant (Article 1198 CCP).

(vi) What powers, if any, do arbitrators have to correct or interpret an award?

Article 1200 CCP grants the parties two weeks, from the date of receipt of the arbitral award, unless the parties have agreed another time limit, to request that the arbitral tribunal correct inaccuracies, clerical errors, miscalculations or other evident errors in a text of the award, or to clarify any doubts concerning the

content of the award. The tribunal corrects or interprets the award within two weeks from the date of receipt of the request, if it deems the request justified.

As per Article 1201 CCP, the arbitral tribunal may correct on its own initiative any clerical errors or miscalculations, or any other evident errors, within one month from the date of issuing of the award and shall notify the parties about the corrections.

In addition, under Article 1202 CCP, unless the parties have agreed otherwise, each party may, upon giving notice to the other, request the tribunal within one month of receipt of the award, to supplement the award with claims raised in proceedings which were not adjudicated in the award. Having reviewed the petition, the arbitral tribunal issues a supplementary award within two months from the day on which the petition was filed.

XI. Costs

(i) Who bears the costs of arbitration? Is it always the unsuccessful party who bears the costs?

Although the CCP is silent on costs of arbitration, in the absence of an agreement between the parties, the approach that the unsuccessful party bears the costs will prevail, as it is a general rule which applies in Polish litigation. However, the application of the 'pay your own way' rule, i.e. that each party should bear its own costs irrespective of the outcome of the proceedings, is also accepted in commentaries.

(ii) What are the elements of costs that are typically awarded?

The elements of costs that are typically awarded are: arbitrators' fees and expenses, parties' costs of legal representation, and other costs of arbitral proceedings, eg costs of expert opinions and translations.

(iii) Does the arbitral tribunal have jurisdiction to decide on its own costs and expenses? If not, who does?

The fees and expenses are decided on in the agreement of the parties or the rules of permanent arbitral institutions to which the parties consent. If the parties cannot reach an agreement on the allocation of arbitrators' fees and expenses, the arbitrator may request a court to determine his remuneration taking into account the workload, the amount in dispute, and reimbursable expenses. The court decision may be appealed against.

According to Article 1179 CCP, the parties are jointly and severally liable for the arbitrators' fees and expenses.

- (iv) **Does the arbitral tribunal have discretion to apportion the costs between the parties? If so, on what basis?**

Since the CCP is silent on awarding costs of arbitration, subject to the parties' agreement the tribunal shall apportion the costs between the parties at its own discretion.

- (v) **Do courts have the power to review the tribunal's decision on costs? If so, under what conditions?**

The court has the power to review the decision on costs in set aside and enforcement proceedings under the general conditions applicable to challenges of arbitral awards (see point XII (i) below).

XII. Challenges to Awards

- (i) **How may awards be challenged and on what grounds? Are there limitations for challenging awards? What is the average duration of challenge proceedings? Do challenge proceedings stay any enforcement proceedings? If yes, is it possible nevertheless to obtain leave to enforce? Under what conditions?**

Arbitral award issued in Poland may be challenged only in the set aside proceedings and not by way of a common appeal. Grounds for challenge are limited to those set forth in Article 1206 CCP, and so a state court may set aside an arbitral award provided that:

- there was no arbitration agreement between the parties or the agreement was invalid, ineffective or ceased to be binding in accordance with the law governing the agreement; or
- a party was not duly notified of the appointment of an arbitrator or of the arbitration proceedings or was otherwise unable to present its case; or
- the award was made in relation to a dispute not contemplated by or not falling within the terms of the arbitration agreement or contains a decision on matters beyond the scope of the arbitration agreement - where only part of an award has been rendered outside the scope of the arbitration agreement, then only that part of the award may be set aside. Furthermore, a party which during the arbitration proceedings did not object to claims falling outside of the scope of the arbitration agreement may not invoke those circumstances when applying for the arbitral award to be set aside; or

- the composition of the arbitral tribunal or the basic rules of the arbitral procedure was contrary to that agreed by the parties or to the CPC; or
- the award was criminally obtained, or it was based on a counterfeit document; or
- a final and binding judgement has already been issued in the same case between the same parties (*res judicata*).

The court also sets aside an award if it finds on its own motion that:

- the subject matter of the dispute is not arbitrable under Polish law; or
- the award is in conflict with basic principles of Polish public policy.

Only an award issued in Poland may be subject to a set aside (Article 1205 § 1 CCP). The application to set aside may lie only against a ruling on the merits or relief sought by the parties, including a partial award and a consent award.

An application to set aside an arbitral award shall be filed within two months from the date of service of the award. However, in the case of allegations that the award was criminally obtained, or obtained on the basis of a counterfeit document or constitutes *res judicata*, the period to file an application runs from the date on which the party learned of the ground for the application, but no later than five years from the service of the award (Article 1208 CCP).

The competent court is the court of appeals in the district in which the court that would have had jurisdiction to hear the case in the absence of an arbitration agreement is located. Due to the recent amendment to Polish arbitration law, the set aside procedure was shortened to one-instance proceedings followed by a cassation appeal. The proceeding for set aside is governed by the CCP provisions relating to civil proceedings. The duration of the proceeding varies from case to case, but the average duration in the first instance is approximately six to twelve months.

Based upon Article 1210 CCP, the court may stay the enforcement of the award in chambers, but may condition it on providing security. The court decision may be appealed against.

- (ii) **May the parties waive the right to challenge an arbitration award? If yes, what are the requirements for such an agreement to be valid?**

The parties may not waive their right to challenge an award.

- (iii) **Can awards be appealed in your country? If so, what are the grounds for appeal? How many levels of appeal are there?**

The arbitral award may only be subject to a set aside procedure, not an appeal. However, the parties may file a cassation appeal with the Supreme Court against a state court judgment setting aside the arbitral award.

(iv) May courts remand an award to the tribunal? Under what conditions? What powers does the tribunal have in relation to an award so remanded?

No, the courts cannot remand an award to the tribunal. The judgement setting the award aside is of constitutive legal effect and eliminates the legal status existing under the award. The parties may start a new arbitral proceeding or file a claim in the common court, if the award was set aside because of the lack of arbitration agreement.

However, Article 1209 CCP provides for a possibility to stay the set aside proceedings, upon a motion of one of the parties, in order to enable the arbitral tribunal to resume the arbitration proceedings to remove the basis for setting aside the arbitral award. In such proceedings the tribunal shall perform the actions indicated by the court.

XIII. Recognition and Enforcement of Awards

(i) What is the process for the recognition and enforcement of awards? What are the grounds for opposing enforcement? Which is the competent court? Does such opposition stay the enforcement? If yes, is it possible nevertheless to obtain leave to enforce? Under what circumstances?

The arbitral award or a settlement reached before the arbitral tribunal shall have the same legal effect as a court judgment upon its recognition or confirmation of its enforcement by a court that would have jurisdiction to hear the case in the absence of an arbitration agreement. The CCP applies 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 which case the New York Convention prevails.

The court recognizes the arbitral award or declares it enforceable at the request of a party. The requesting party shall attach the original or a certified copy of the award or the settlement as well as the original or duly certified copy of the arbitration agreement. In the case that either of the above is not made in Polish, a certified translation shall be delivered (Article 1213 CCP). The court shall rule in chambers on the recognition of an award or settlement that cannot be enforced. In the case of an award or settlement that can be enforced, the court will decide on its enforcement by attaching an enforcement clause (Article 1214 § 1 CCP).

Under Article 1214 § 3 the CCP recognition or enforcement of a domestic award shall be refused if:

- the subject matter of the dispute is non-arbitrable under Polish law; or
- the award is in conflict with basic principles of Polish public policy.

When it comes to the recognition and enforcement of a foreign arbitral award (not coming from a New York Convention signatory state), apart from the above-mentioned grounds for refusal, under Article 1215 CCP at the request of a party the court shall refuse recognition or enforcement, if the party proves that:

- there was no arbitration agreement between parties or the agreement was invalid, ineffective or ceased to be binding in accordance with the law governing the agreement; or
- a party was not duly notified of the appointment of an arbitrator or of the arbitration proceedings or was otherwise unable to present its case; or
- the award was made in relation to a dispute not contemplated by or not falling within the terms of the arbitration agreement or contains a decision on matters beyond the scope of the arbitration agreement - where only part of an award has been rendered outside the scope of the arbitration agreement, then only that part of the award may be set aside; or
- the composition of the arbitral tribunal or the basic rules of the arbitral procedure were contrary to the composition or rules agreed on by the parties or to the CPC; 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 it was made.

A foreign arbitral award or a settlement reached before an arbitral tribunal seated abroad may be recognised or declared enforceable only after an oral hearing has been conducted (Article 1215 § 1 CCP).

If an application to set aside the award was made in accordance with the CCP, or in the country in which, or under the law of which the award was made, the court may suspend the proceedings and upon the request of the party requesting recognition or enforcement, order the other party to provide appropriate security (Article 1216 § 1 and 2 CCP).

- (ii) **If an *exequatur* is obtained, what is the procedure to be followed to enforce the award? Is the recourse to a court possible at that stage?**

Once an award has been recognized or declared enforceable, it is treated as any other enforcement order under Polish law. Separate enforcement proceedings have to be initiated. The enforcement proceedings differ depending on whether the award grants monetary or non-monetary relief. Enforcement matters fall under the jurisdiction of district courts and enforcement officers at the courts. A debtor may file a counter-enforcement action which may lead to court limiting the enforceability of the award.

- (iii) **Are conservatory measures available pending enforcement of the award?**

The court may order a party to provide security while suspending the enforcement proceedings owing to an application to set aside the award (Article 1216 § 2 CCP).

- (iv) **What is the attitude of courts towards the enforcement of awards? What is the attitude of courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?**

Polish courts are rather arbitration friendly and so most arbitral awards (either foreign or domestic) are recognised and enforced in Poland.

Under Article 1215 § 2 (5) CCP, upon the request of a party, the court shall refuse recognition or enforcement of an award that has been set aside by a court of the State in which, or under the law of which it was rendered. However, this applies only to awards enforced under the provisions of the CCP and not under the New York Convention.

- (v) **How long does enforcement typically take? Are there time limits for seeking the enforcement of an award?**

The process for obtaining *exequatur* usually takes anything from between two weeks and two months. If the appeal is filed, the process may take from six to eighteen months, provided that no challenge has been filed. It can take longer if there is a challenge to the award and the enforcement is stayed pending the challenge.

Polish law does not provide for time limits for seeking the enforcement of an award. However, under Polish substantive law, it is not possible to enforce an award after ten years from the date of its issue (three years in the case of periodical payments).

XIV. Sovereign Immunity

- (i) **Do state parties enjoy immunities in your jurisdiction? Under what conditions?**

Polish law does not regulate the sovereign immunity of state parties; although the prevailing view is that states enjoy immunity when it comes to sovereign acts. As long as the state or state entity acts as a party to a business transaction, it does not enjoy the immunity.

- (ii) **Are there any special rules that apply to the enforcement of an award against a state or state entity?**

The enforcement of an award against a state or state entity is generally subject to the same rules as enforcement of any other award. It is worth noticing that in Poland security for monetary claims against the State Treasury is not admissible.

XV. Investment Treaty Arbitration

- (i) **Is your country a party to the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States? Or other multilateral treaties on the protection of investments?**

Poland is not a party to the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States. Poland is a party to the Energy Charter Treaty of 1994.

- (ii) **Has your country entered into bilateral investment treaties with other countries?**

Poland is currently a party to 59 bilateral investment treaties. The future of the bilateral investment treaties is uncertain. Recently, Poland terminated the bilateral investment treaty with Portugal and announced termination of further treaties, based on an alleged inconsistency with EU law.

XVI. Resources

- (i) **What are the main treatises or reference materials that practitioners should consult to learn more about arbitration in your jurisdiction?**

Treatises:

- R. Morek, *Mediacja i arbitraż. Komentarz*, C.H. Beck, Warsaw 2006

- T. Ereciński, K. Weitz, *Sąd Arbitrażowy*, LexisNexis, Warsaw 2008
- A. Szumański (red.), *Arbitraż Handlowy, System Prawa Handlowego Tom 8*, 2015
- A. W. Wiśniewski, *Międzynarodowy arbitraż handlowy w Polsce. Status prawny arbitrażu i arbitrów*, Wolters Kluwer 2011
- M. Łaszczuk, A. Szumański (red.), *Regulamin Arbitrażowy Sądu Arbitrażowego przy KIG. Komentarz*, C.H. Beck, Warsaw 2017
- K. Czech, *Dowody i postępowanie dowodowe w międzynarodowym arbitrażu handlowym i inwestycyjnym. Zagadnienia wybrane*, Wolters Kluwer 2017
- W. Jurcewicz, K. Pörnbacher, C. Wiśniewski, *Spory korporacyjne w praktyce arbitrażowej – perspektywa polska i niemiecka*, C.H. Beck, Warsaw 2017.
- Ł. Błaszczak, M. Ludwik, *Sądownictwo polubowne (arbitraż)*, C.H. Beck, Warsaw 2007

Reference materials:

- P. Nowaczyk, *Międzynarodowy i krajowy arbitraż handlowy u progu XXI wieku. Księga pamiątkowa dedykowana doktorowi habilitowanemu Tadeuszowi Szurskiemu*, C.H. Beck, 2008
- J. Okolski (red.), *Księga pamiątkowa 60-lecia Sądu Arbitrażowego przy Krajowej Izbie Gospodarczej w Warszawie*, LexisNexis, 2010
- *Arbitration in Poland*, Court of Arbitration at the Polish Chamber of Commerce, Warsaw 2011

Journals:

- *ADR. Arbitraż i Mediacja Quarterly*, C.H. Beck
- *Przegląd Prawa Handlowego*, Wolters Kluwer
- e – *Przegląd Arbitrażowy*, Sąd Arbitrażowy 'Lewiatan'

(ii) Are there major arbitration educational events or conferences held regularly in your jurisdiction? If so, what are they and when do they take place?

Both the Court of Arbitration at the Polish Chamber of Commerce and the 'Lewiatan' Court of Arbitration organize several arbitration conferences, debates and workshops with national and international speakers each year. These include

the 'Dispute Resolution in M&A Transactions' conference organized annually by the 'Lewiatan' Court of Arbitration and an annual conference organized in autumn by the Court of Arbitration at the Polish Chamber of Commerce.

Furthermore, a few major educational arbitration events are held regularly: Warsaw Pre-moots for the Willem C. Vis Moot and Foreign Direct Investment Moot, with accompanying arbitration conferences organized by the Center for Dispute Resolution at the Faculty of Law and Administration at the University of Warsaw, the 'Lewiatan' Arbitration Moot Court for advocate and legal adviser trainees and the Draft Common Frame of Reference Moot organized by the Court of Arbitration at the Polish Chamber of Commerce.

XVII. Trends and Developments

(i) Do you think that arbitration has become a real alternative to court proceedings in your country?

Arbitration is the most common form of alternative dispute resolution. Although it is still secondary to litigation as a method of resolving disputes, it is becoming more and more popular. The 2015 amendment of the CCP shows the effect of the growing popularity of arbitration. Since the set aside procedure has been shortened, there is more legal certainty that the parties to arbitration will not be involved in prolonged post-arbitration proceedings.

(ii) What are the trends in relation to other ADR procedures, such as mediation?

CCP provisions on mediation in civil disputes go back five years and implement the EU Mediation Directive. There is also a general rule in Polish civil procedure that the parties to a dispute should aim to settle it. However, mediation is not very common in Poland. Parties to litigation are still reluctant to initiate mediation. Most mediations are initiated by the courts but the rate of successful mediations appears to be very low.

(iii) Are there any noteworthy recent developments in arbitration or ADR?

The development of arbitration in Poland is enforced by the main arbitral institutions – the Court of Arbitration at the 'Lewiatan' and the Court of Arbitration at the Polish Chamber of Commerce – which have recently revised their arbitration rules so as to align them with the modern trends.

Also, the Supreme Court's jurisprudence impacts Poland's outlook on arbitration. Among other things, in recent rulings, the Supreme Court opted in general for a broad interpretation of the arbitral clause, so that it also covered claims for the return of unjust enrichment or tort claims.



By virtue of the recent amendment to the CCP, courts of appeal have become competent as courts of the first instance to hear a complaint challenging an arbitral award. The aim of this amendment was also to shorten the post-arbitration proceedings.

Further, arbitration may become more popular for state agencies in infrastructure contracts. Recently, the Ministry of Infrastructure and Construction introduced the new Standard Contract Terms for Road Investments in Poland, under which all disputes arising from road investment contracts executed by the state agencies will be resolved through arbitration.