GAR KNOW HOW COMMERCIAL ARBITRATION

Poland

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Infrastructure

1 Is your state a party to the New York Convention? Are there any noteworthy declarations or reservations?

Poland has been a party to the New York Convention since 1 January 1962. Poland made both reciprocity and commercial reservations. However, the reservations were made at accession, but not confirmed at ratification, so their effectiveness is debatable. The majority view is that both reservations are effective.

2 Is your state a party to any other bilateral or multilateral treaties regarding the recognition and enforcement of arbitral awards?

Poland has been a party to the European Convention on International Commercial Arbitration of 1961 since 14 December 1964. Poland is also a party to bilateral treaties relating to recognition and enforcement of arbitral awards with Algeria, Bosnia and Herzegovina, China, Croatia, Iraq, Montenegro, Morocco, North Macedonia, Serbia, Slovenia, Syria, and Turkey. Poland remains a party to the Geneva Protocol on Arbitration Clauses in Commercial Matters of 1923, although its relevance is very limited due to its replacement by the New York Convention between the convention states pursuant to article VII(2) of the New York Convention.

On 14 November 2022, an act terminating the Energy Charter Treaty and the Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects was signed by the President of Poland.

3 Is there an arbitration act or equivalent and, if so, is it based on the UNCITRAL Model Law? Does it apply to all arbitral proceedings with their seat in your jurisdiction?

Polish arbitration law is incorporated in a separate chapter of the Polish Civil Procedure Code (CPC) (article 1154–1217). It is largely based on the UNCITRAL Model Law. Only a few matters are governed by mandatory provisions, and the parties are generally free to agree on all other matters.

Unlike the UNCITRAL Model Law, Polish arbitration law is not limited to international commercial arbitration, but applies to all arbitral proceedings seated in Poland.

If the place of arbitration is abroad or undetermined, Polish arbitration law applies only if expressly provided by the CPC.

4 What arbitration bodies relevant to international arbitration are based within your jurisdiction? Do such bodies also act as appointing authorities?

The leading arbitral institution in Poland for international arbitration is the Court of Arbitration at the Polish Chamber of Commerce. It may act as an appointing authority. There are also other smaller arbitral institutions (eg, the Court of Arbitration at Polish Confederation Lewiatan). Some institutions are focused on disputes in particular industries, such as the Court of Arbitration for Internet Domain Names at the Polish Chamber of Information Technology and Telecommunication, the Court of Arbitration at the Gdynia Cotton Association, and the International Court of Arbitration at the Polish Chamber of Maritime Commerce (IMAC). The Polish Arbitration Association, which primarily promotes arbitration in Poland, may also serve as an appointing authority.

5 Can foreign arbitral providers operate in your jurisdiction?

Foreign arbitral providers can freely operate in Poland.

6 Is there a specialist arbitration court? Is the judiciary in your jurisdiction generally familiar with, and supportive of, the law and practice of international arbitration?

The reform of Polish arbitration law effective from 1 January 2016 entrusted proceedings pertaining to setting aside as well as recognition and enforcement of arbitral awards to the courts of appeal, as the courts of the only instance. The purpose of the change was to shorten post-arbitration proceedings, as well as to enhance the quality of arbitration-related case law.

There is no appeal against judgments rendered in proceedings for setting aside of arbitral awards and for recognition or enforcement of foreign arbitral awards. However, a cassation appeal to the Supreme Court of Poland is permissible against those judgments, regardless of the amount in dispute or the subject-matter of the case. This should serve the purpose of having the most controversial issues related to arbitration decided by the highest court, to ensure quality and consistency of case law. A cassation appeal to the Supreme Court is not available in proceedings for recognition or enforcement of domestic arbitral awards; however, a party may file an interlocutory appeal against the court's decision to another panel of the same court of appeal.

Polish courts have a neutral approach to arbitration-related matters, but this is changing to a rather arbitration-friendly approach. In particular, the Supreme Court has expressly indicated the need to interpret arbitration agreements in favorem iurisdictionis arbitrii, especially in international trade (see judgment of 1 December 2017, case No. I CSK 170/17).

Agreement to arbitrate

7 What, if any, requirements must be met if an arbitration agreement is to be valid and enforceable under the law of your jurisdiction? Can an arbitration agreement cover future disputes?

An arbitration agreement must be in writing. It may be contained in electronic correspondence provided that the means of communication used enables the content to be recorded. An arbitration agreement may also be incorporated by reference (eg, the parties conclude a contract that refers to general terms and conditions containing an arbitration agreement). Arbitration agreements in labour law and consumer disputes must be signed by the parties.

Arbitration agreements can cover future disputes except for labour law and consumer disputes, where the arbitration agreement may be concluded only after the dispute has arisen. Moreover, an arbitration agreement that covers consumer disputes will be invalid unless the agreement clearly indicates that the parties are aware of its consequences.

An arbitration agreement may also be included in the articles of association of a commercial company or partnership (as well as in similar documents regulating the functioning of a cooperative or association, or – from 22 May 2023 – also family foundation). It may apply to all disputes regarding relationships within a company (or partnership, cooperative, association or family foundation). Until 2019, such an arbitration agreement was binding only for the company and its shareholders. However, under the reform of Polish arbitration law effective from 8 September 2019, an arbitration agreement included in the articles of association of a company (or in the statute of a partnership, cooperative, association or – from 22 May 2023 – also family foundation) pertaining to disputes relating to the relationships within the company is binding also for the corporate bodies (such as the management board) and their members. This is particularly important for disputes over validity of corporate resolutions, where the proceedings may be initiated by corporate bodies or their members.

In disputes pertaining to validity of corporate resolutions, an arbitration agreement included in the articles of association is effective only if an additional formal requirement is fulfilled. Such an arbitration agreement needs to include the obligation to publish information on the commencement of an arbitral proceeding (in the way that the company makes its formal announcements, usually in an official gazette) within one month of the date of its commencement.

In March 2023, the Polish parliament passed certain amendments to the CPC introducing, among other things, the conversion of state court proceedings to arbitration. According to this new regulation, the parties to a court proceeding will have the possibility to submit their dispute to arbitration until the final decision on the merits is rendered by the court. The court will discontinue proceedings following the conclusion of an arbitration agreement by the parties, unless such discontinuation would be against the law or public policy, or would be aimed at circumventing the law, or the arbitration agreement is invalid or ineffective. Following the discontinuation, 75 per cent of the court fee will be automatically refunded to the claimant and the limitation period will run anew from the date on which the discontinuation order becomes final.

8 Are any types of dispute non-arbitrable? If so, which?

Only disputes that could be heard by civil courts are arbitrable. Until 2019, arbitrability was limited to disputes that could be the subject of a court settlement, namely, disputes regarding rights the parties may freely dispose of. This requirement applied both to disputes relating to economic rights, as well as disputes over non-economic rights, such as certain intellectual property rights. However, from 8 September 2019, the "settleability" requirement applies only to disputes over non-economic rights. Thus, disputes over economic rights are generally arbitrable, unless certain categories of such disputes are expressly rendered non-arbitrable by the law, such as disputes relating to maintenance (spousal support, child support, etc), or are non-arbitrable due to their legal nature. Therefore, from 8 September 2019, a very broad catalogue of disputes may be submitted to arbitration under Polish arbitration law.

This applies in particular to internal corporate disputes regarding validity of corporate resolutions, which may be submitted to arbitration under an arbitration agreement included in the articles of association of a company (or in the statute of a partnership, cooperative, association or – from 22 May 2023 – also family foundation). Such an arbitration agreement must comply with additional formal requirements discussed below.

Some categories of disputes remain non-arbitrable, in particular those that involve the public interest or interests of third parties. It is generally accepted that the following disputes lack arbitrability:

- disputes over personal rights of individuals;
- disputes over entries in public registers; and
- certain non-economic family matters.

9 Can a third party be bound by an arbitration clause and, if so, in what circumstances? Can third parties participate in the arbitration process through joinder or a third-party notice?

An arbitration agreement is generally binding only upon the parties. Under Polish arbitration law, a third person may be bound by an arbitration agreement for example in case of assignment of the underlying contract, general succession, acquisition of an enterprise (with respect to disputes concerning liabilities connected with operation of the enterprise), contracts involving third-party beneficiaries or arbitration agreements concluded by agents. Moreover, an arbitration agreement included in articles of association of a company extends to the company and any subsequent shareholders as well as to the bodies of the company and members of these bodies (the same rule also applies to partnerships, associations, cooperatives and – from 22 May 2023 – also family foundations).

Polish arbitration law does not contain any general provisions regarding third-party joinder or intervention, but it is generally accepted that a third party may be joined to pending arbitral proceedings if both the parties and the third party consent. The parties are free to agree upon different requirements for joinder in the arbitration agreement (directly or indirectly through choice of arbitration rules providing for different models of joinder).

Polish arbitration law expressly provides for third-party joinder only in disputes concerning corporate resolutions. Any shareholder may join the proceedings on the side of the claimant or the respondent within a specified deadline.

Under the Rules of the Court of Arbitration at the Polish Chamber of Commerce, joinder is permissible only with consent of the parties and the third party. However, under the Supplementary Rules for Disputes

Regarding Corporate Resolutions that entered into force on 1 January 2022, any shareholder is entitled to join arbitral proceedings within one month from the date of announcement of the dispute. Consent of the parties is not required.

10 Would an arbitral tribunal with its seat in your jurisdiction be able to consolidate separate arbitral proceedings under one or more contracts and, if so, in what circumstances?

Polish arbitration law does not contain any general provisions on consolidation of separate arbitral proceedings. Generally, consolidation is permissible if all parties to the proceedings to be consolidated consent.

Under the Rules of the Court of Arbitration at the Polish Chamber of Commerce, consolidation requires an order by the tribunal, which should be made with due consideration of all relevant circumstances and interests of the parties, particularly the need to ensure efficiency of the proceedings. Two or more arbitrations between the same parties may be consolidated provided that:

- the same arbitrators were nominated or appointed in each of the proceedings, and
- the parties' claims in each of the proceedings are based on the same arbitration agreement, or the claims are related even if based on different arbitration agreements.

If the parties are not identical, additionally all parties to the proceedings to be consolidated must consent to consolidation.

However, Polish arbitration law provides that in disputes concerning validity of corporate resolutions, the tribunal in the proceeding that was initiated at the earliest date is competent to hear also all subsequent disputes regarding the same resolution, even if the remedy sought or the party commencing the proceeding is different. The Supplementary Rules for Disputes Regarding Corporate Resolutions issued by the Court of Arbitration at the Polish Chamber of Commerce implement this regulation.

11 Is the "group of companies doctrine" recognised in your jurisdiction?

The "group of companies" or similar doctrines are not recognised in Poland. However, it cannot be excluded that a state court or an arbitral tribunal might find implied consent of a company belonging to a group of companies to be bound by an arbitration agreement based on its conduct.

12 Are arbitration clauses considered separable from the main contract?

The doctrine of separability is recognised by Polish arbitration law. Under art. 1180 §1 CPC, invalidity or expiration of the underlying contract does not per se result in invalidity or expiration of the arbitration agreement.

13 Is the principle of competence-competence recognised in your jurisdiction? Can a party to an arbitration ask the courts to determine an issue relating to the tribunal's jurisdiction and competence?

The principle of competence-competence is recognised by Polish arbitration law. Under article 1180 §1 CPC, an arbitral tribunal may rule on its own jurisdiction, including the existence, validity or effectiveness of the arbitration agreement.

The arbitral tribunal may rule on a jurisdictional objection in a separate decision or in the award on the merits. If the tribunal upholds its jurisdiction in a separate decision, then either party may challenge that decision before a state court within two weeks of the date of service of the decision. Initiation of the proceeding before the state court does not result in a mandatory stay of arbitral proceedings. The decision of the court is subject to an interlocutory appeal.

If a tribunal rules that it lacks jurisdiction, there is no recourse to state courts available. If a party subsequently raises a jurisdictional objection before a state court, the court is bound by the tribunal's decision and cannot dismiss the claim based on such an objection.

14 Are there particular issues to note when drafting an arbitration clause where your jurisdiction will be the seat of arbitration or the place where enforcement of an award will be sought?

An arbitration agreement must identify the parties as well as the subject-matter of the dispute or the legal relationship from which a dispute has arisen or may arise. As in other jurisdictions, it is advisable to specify in an arbitration agreement the number of arbitrators, the seat of arbitration, the language of the proceedings, and the law governing the arbitration agreement. Currently, under Polish arbitration law, when parties refer in their arbitration agreement to an arbitral institution, unless they decide otherwise the procedure will be governed by the institution's arbitration rules in force at the time of filing of the statement of claim. This rule was introduced with the reform of Polish arbitration law entering into force on 8 September 2019 (the previous default rule was that procedure was governed by the arbitration rules in force on the date of entering into the arbitration agreement).

A specific feature of Polish arbitration law is an express regulation that an arbitration agreement violating the principle of party equality is ineffective (article 1161 §2 CPC). Consequently, it is advisable to avoid unilateral arbitration clauses if they are supposed to be governed by Polish law (see Supreme Court judgment of 13 October 2017, case No. I CSK 33/17).

If the parties wish to submit their disputes to institutional arbitration, it is of utmost importance to identify the arbitral institution that is supposed to administer their future arbitrations. The arbitral institution chosen by the parties must be at least definable for a state court in case one of the parties initiates court proceedings and the other party raises a jurisdictional objection. In the judgment of 27 October 2022 (case no. II CSKP 470/22), the Supreme Court indicated that a state court cannot convert an arbitration agreement submitting a dispute to institutional arbitration into an ad hoc arbitration agreement. Thus, if a state court cannot identify the arbitral institution chosen by the parties (eg, because the parties used a non-existent name), the arbitration agreement may be deemed unenforceable, and consequently the dispute may be decided by a state court.

When drafting an arbitration agreement that is to be included in the articles of association of a company (or in the statute of a partnership, association, cooperative or – from 22 May 2023 – also family foundation) and should cover disputes over validity of corporate resolutions, the specific formal requirements discussed in the answers to questions 7 and 8 must be taken into consideration.

15 Is institutional international arbitration more or less common than ad hoc international arbitration? Are the UNCITRAL Rules commonly used in ad hoc international arbitrations in your jurisdiction?

Although no statistics are available, it seems that institutional international arbitration is generally more common than ad hoc arbitration. In ad hoc international arbitration, the UNCITRAL Rules are frequently used.

16 What, if any, are the particular points to note when drafting a multi-party arbitration agreement with your jurisdiction in mind? In relation to, for example, the appointment of arbitrators.

There is only one specific regulation regarding multi-party arbitration agreements and no published case law on this issue. The reform of Polish arbitration law that entered into force on 8 September 2019 introduced a rule that if two or more persons bound by an arbitration agreement act on the side of the claimant or the respondent, the nomination of an arbitrator on their side has to be unanimous. This default rule can be modified in the arbitration agreement. However, a multi-party arbitration agreement must guarantee equal treatment of the parties, in particular with respect to appointment of arbitrators. If the agreed mechanism for constitution of the tribunal violates party equality, it may be deemed ineffective and replaced by the default statutory rules.

Commencing the arbitration

17 How are arbitral proceedings commenced in your jurisdiction? Are there any key provisions under the arbitration laws of your jurisdiction relating to limitation periods of which the parties should be aware?

Under Polish arbitration law, arbitral proceedings may be commenced by serving a request for arbitration on the respondent, designating the parties, the dispute, and the arbitration agreement, and also appointing an arbitrator if the party is entitled to do so. Unless otherwise agreed, the date of service of the request for arbitration is deemed to be the date of commencement of the arbitration.

The Rules of the Court of Arbitration at the Polish Chamber of Commerce provide for two alternative ways of initiating proceedings, i.e. by filing with the Court of Arbitration either a request for arbitration or a statement of claim.

Polish arbitration law does not provide for any special limitation periods. The statute of limitations in Poland is governed by substantive law. Under those rules, the limitation period is interrupted by any action before a state court or in arbitration that is aimed directly at pursuing, declaring, satisfying or securing a claim. Thus, in arbitration effective service of a request for arbitration or statement of claim on the other party or the arbitral institution, as the case may be, will interrupt the limitation period. However, a party commencing arbitration must be aware of the risk that if it turns out that the arbitral tribunal does not have jurisdiction over the particular dispute, the limitation period may be deemed not to have been interrupted and, consequently, to continue to run until the case is brought before the state court. Similarly, bringing a case before a state court that is dismissed due to a valid arbitration agreement may also be deemed not to interrupt the limitation period. However, some commentators argue that the limitation period should be deemed interrupted even if the case is brought before the improper forum.

Choice of law

18 How is the substantive law of the dispute determined? Where the substantive law is unclear, how will a tribunal determine what it should be?

Polish arbitration law provides that the arbitral tribunal will resolve the dispute under the law applicable to the underlying legal relationship, leaving the method of determining the applicable law to the tribunal. Only when the arbitral tribunal is explicitly authorised by the parties may it resolve the dispute in accordance with general principles of law or equity, although even in such a case it always has to take into consideration the content of the parties' agreement and any settled customs relating to the underlying legal relationship.

Unlike the UNCITRAL Model Law, Polish arbitration law does not expressly give priority to the choice of law made by the parties. However, it is generally recognised that the tribunal should always respect the parties' choice of law, especially in light of article VII of the European Convention of 1961. The choice of law is deemed to refer to substantive law only, and not to conflict-of-laws regulations. In the absence of the parties' choice of law, the trend is that the tribunal determines the applicable law following Polish conflict-of-laws principles, although in international cases the tribunal may also apply other methods, without following any conflict-of-laws rules (eg, in accordance with the principle of the closest connection).

There is a mandatory rule regarding consumer disputes that obliges the tribunal to consider mandatory provisions of consumer law applicable to the given legal relationship, even if the parties explicitly authorise the tribunal to resolve the dispute in accordance with general principles of law or equity.

Appointing the tribunal

19 Does the law of your jurisdiction place any limitations in respect of a party's choice of arbitrator?

Generally, any natural person with full legal capacity may act as an arbitrator. However, judges may not act as arbitrators, unless they are retired. There are no nationality restrictions.

Arbitral institutions maintain their own lists of arbitrators, but usually parties are free to choose a person who is not listed by the institution administering the proceedings. Under the Rules of the Court of Arbitration at the Polish Chamber of Commerce, only a sole arbitrator or presiding arbitrator must be selected from the institution's list. However, upon mutual application of the parties or the arbitrators, the Arbitral Council may consent to selection of a sole arbitrator or presiding arbitrator from outside the list, particularly if justified by the specific nature of the dispute or the qualifications of the arbitrator.

20 Can non-nationals act as arbitrators where the seat is in your jurisdiction or hearings are held there? Is this subject to any immigration or other requirements?

Non-nationals can act as arbitrators with no restrictions. They are subject only to general immigration requirements (eg, there may be visa requirements for citizens of non-EU countries).

21 How are arbitrators appointed where no nomination is made by a party or parties or the selection mechanism fails for any reason? Do the courts have any role to play?

Under the default rule, if a party fails to nominate an arbitrator within one month from the date of receipt of the request from another party, or the parties fail to jointly nominate a sole arbitrator within one month of the date when one party recieved the request from another party for joint nomination of the sole arbitrator, or the nominated co-arbitrators fail to nominate a presiding arbitrator within one month from their nomination, such arbitrator or arbitrators may be appointed by a state court, at the request of any of the parties. The same rule applies if under the arbitration agreement the arbitrator or arbitrators should be appointed by a third party and the third party fails to do so in time.

If a state court is to appoint a presiding arbitrator or a sole arbitrator in international arbitration, it should take into consideration a need to appoint a person who has no connections to any of the jurisdictions of the parties.

Under the Rules of the Court of Arbitration at the Polish Chamber of Commerce, if a party fails to nominate an arbitrator or the arbitrators fail to agree on a presiding arbitrator, the Arbitral Council appoints an arbitrator or presiding arbitrator. The appointment will be made from the institution's list of arbitrators.

22 Are arbitrators afforded immunity from suit under the law of your jurisdiction and, if so, in what terms?

Polish arbitration law does not expressly regulate arbitrators' immunity from suit. On the contrary, it expressly sets out that if an arbitrator resigns without a valid reason, he or she is liable for damage caused by his or her resignation. However, arbitral institutions usually provide in their rules for limitation or exclusion of liability for negligent breach of arbitrators' duties.

23 Can arbitrators secure payment of their fees in your jurisdiction? Are there fundholding services provided by relevant institutions?

Under Polish arbitration law, an arbitrator has a right to a fee and reimbursement of expenses for which the parties are jointly and severally liable. If an arbitrator and the parties fail to agree on a fee or reimbursement of expenses, an arbitrator may request a state court to determine the fee based on the work performed by

the arbitrator and the amount in dispute. In ad hoc arbitrations, an arbitrator may also demand an advance on fees and expenses, which is typically held in trust by the arbitrators — usually the presiding arbitrator.

Arbitral institutions, such as the Court of Arbitration at the Polish Chamber of Commerce, require the parties to pay fees and costs in advance to the institution, which later transfers them to the arbitrators. The advance on costs is in principle payable by the parties in equal shares. Arbitral institutions usually also provide fundholding services for ad hoc arbitrations.

Challenges to arbitrators

24 On what grounds may a party challenge an arbitrator? How are challenges dealt with in the courts or (as applicable) the main arbitration institutions in your jurisdiction? Will the IBA Guidelines on Conflicts of Interest in International Arbitration generally be taken into account?

Polish arbitration law provides for the following grounds for challenging an arbitrator: circumstances occurred which raise doubts as to impartiality or independence of the arbitrator, or the arbitrator lacks qualifications agreed by the parties. The party that appointed the arbitrator may challenge him or her only if it became aware of the grounds for challenge after the appointment. Under the default procedure, the party seeking to challenge an arbitrator must notify all arbitrators and the opposing party of the grounds for challenge. If the arbitrator does not resign or is not removed within one month from the date when a party filed a challenge, the party may submit a challenge to a state court. An order of the court dismissing the challenge is subject to an interlocutory appeal.

Parties are free to agree on a procedure for challenging an arbitrator. Usually the rules of arbitral institutions provide for their own procedures. For example, under the Rules of the Court of Arbitration at the Polish Chamber of Commerce, the Arbitral Council decides on the challenge. However, the rules or the parties' agreement may not deprive a party of its right to challenge an arbitrator before a state court.

Arbitral institutions deciding on a challenge would generally take the IBA Guidelines on Conflicts of Interest in International Arbitration into account. State courts may treat the IBA Guidelines only as general authoritative guidance.

Interim relief

25 What main types of interim relief are available in respect of international arbitration and from whom (the tribunal or the courts)? Are anti-suit injunctions available where proceedings are brought elsewhere in breach of an arbitration agreement?

Interim measures are available from both state courts and arbitral tribunals.

A state court may order any type of interim measure that is permissible under the law before or after arbitral proceedings are initiated. If a party's request for an interim measure is granted by a state court before the commencement of arbitral proceedings, the requesting party has to initiate arbitration within the time specified by the court, which is no longer than two weeks. If the requesting party fails to do so, the interim measure will automatically expire.

Unless otherwise agreed by the parties, an arbitral tribunal may, upon a motion of a party that has substantiated its claim, order such interim measures as it deems proper. However, arbitral tribunals do not have coercive powers, so an order granting interim measures must be enforced by the state courts. An arbitral tribunal may make enforcement of an interim measure conditional upon security provided by the party requesting interim relief. Polish arbitration law does not provide for any express limitations as to the types of interim measures that may be ordered by an arbitral tribunal. However, there are certain practical limitations — for instance, an arbitral tribunal may not order interim measures that interfere with the activities of state courts or other state institutions (eg, a stay of judicial enforcement proceedings).

Polish state courts would not issue anti-suit injunctions to protect arbitral proceedings. It is not clear whether an arbitral tribunal seated in Poland is entitled to do so.

26 Does the law of your jurisdiction allow a court or tribunal to order a party to provide security for costs?

Polish arbitration law does not allow state courts to order a party to provide security for costs of an arbitration. However, there are no provisions that would prevent an arbitral tribunal from granting such an interim measure. So far, there has been no published case law in that regard.

Procedure

27 Are there any mandatory rules in your jurisdiction that govern the conduct of the arbitration (eg, general duties of the tribunal and/or the parties)?

Polish arbitration law sets out certain mandatory rules which the parties cannot deviate from, including the principle of equal treatment of the parties as well as the right to be heard and to present one's case.

28 What is the applicable law (and prevailing practice) where a respondent fails to participate in an arbitration?

Under Polish arbitration law, an arbitral tribunal can proceed with an arbitration and render an award despite the respondent's failure to participate. However, the respondent's failure to participate shall not be deemed to constitute admission of the facts alleged by the claimant.

If a party fails to appear at a hearing or produce documents that it was ordered to produce, an arbitral tribunal may continue the proceedings and issue an award on the basis of the collected evidence, unless the default is sufficiently justified.

29 What types of evidence are usually admitted, and how is evidence usually taken? Will the IBA Rules on the Taking of Evidence in International Arbitration generally be taken into account?

Under Polish arbitration law, an arbitral tribunal has broad discretion as to evidentiary matters (in particular admissibility, taking and assessment of evidence). Nevertheless, an arbitral tribunal is not empowered to use any coercive measures to obtain evidence. Commonly used evidence includes fact witnesses, documents, expert witnesses, etc.

Written witness statements are becoming more frequently used in Polish arbitration practice. Furthermore, in practice arbitral tribunals seated in Poland frequently use tribunal-appointed experts, unless the parties agree otherwise. However, parties are generally free to submit written expert reports prepared by party-appointed experts.

The parties are generally free to agree on the rules governing taking of evidence. The IBA Rules on the Taking of Evidence in International Arbitration may apply if the parties expressly or impliedly agree. However, the tribunal may use the IBA Rules as guidance, provided that the parties have not objected.

The Rules on the Efficient Conduct of Proceedings in International Arbitration (Prague Rules) are not commonly used in arbitrations seated in Poland.

30 Will the courts in your jurisdiction play any role in the obtaining of evidence?

An arbitral tribunal may request a state court for assistance in obtaining evidence. A state court is entitled to take certain actions that the arbitral tribunal is unable to take due to the lack of coercive powers. The parties

and the arbitrators may participate in the evidentiary proceedings before the state court. However, state court assistance in taking of evidence in arbitration is used rather rarely in practice.

31 What is the relevant law and prevailing practice relating to document production in international arbitration in your jurisdiction?

There are no provisions in Polish arbitration law dealing with document production. Thus, the use of document production is subject to the parties' agreement or the tribunal's discretion. However, in arbitrations seated in Poland there is usually no far-reaching pretrial discovery or extensive document production — an arbitral tribunal may order production of a specified document or category of documents. If a party refuses to produce the requested documents, the tribunal may draw adverse inferences against that party. If a specified document is held by a third person, an arbitral tribunal may, upon motion of a party, request a state court to order the third person to produce that document. A state court may order the third person to pay a penalty for non-compliance.

32 Is it mandatory to have a final hearing on the merits?

Generally, it is not mandatory to have a final hearing on the merits. The parties may agree whether to hold an evidentiary hearing. Otherwise, it is for the tribunal to decide. However, an arbitral tribunal is obliged to hold an evidentiary hearing on the merits if a party requested it.

33 If your jurisdiction is selected as the seat of arbitration, may hearings and procedural meetings be conducted elsewhere?

Polish arbitration law allows for hearings and procedural meetings to be conducted at the place the arbitral tribunal considers appropriate, unless the parties have specifically agreed on the venue for hearings or meetings. Online procedural meetings and evidentiary hearings are permissible provided that the parties do not object.

Award

34 Can the tribunal decide by majority?

A majority decision is permitted and sufficient, unless the parties specifically agreed that a unanimous decision must be reached.

35 Are there any particular types of remedies or relief that an arbitral tribunal may not grant?

Under Polish arbitration law, an arbitral tribunal is free to grant any kind of remedy or relief available under the applicable substantive law, provided that it does not violate public policy. According to the majority view, such a violation would occur if an arbitral tribunal awarded punitive damages, even if it was permitted to do so under the substantive law governing the underlying legal relationship.

36 Are dissenting opinions permitted under the law of your jurisdiction? If so, are they common in practice?

Polish arbitration law expressly permits dissenting options. A dissenting arbitrator may indicate his or her dissent in the award next to his or her signature. A dissenting opinion requires a justification, which should be included in the case file. Dissenting opinions are rather uncommon in practice.

37 What, if any, are the legal and formal requirements for a valid and enforceable award?

An arbitral award must be in writing and signed by all arbitrators. If there are three or more arbitrators, signatures of the majority of arbitrators would be sufficient with a statement of the reason for the absence of the other signatures. An award must indicate the arbitration agreement under which it was issued, the names of the parties and the arbitrators, the date and place of issuance, and the reasons for the decision.

38 What time limits, if any, should parties be aware of in respect of an award? In particular, do any time limits govern the interpretation and correction of an award?

Polish arbitration law does not provide any time limits for issuance of an award. However, the parties may, also by reference to arbitration rules, agree on such time limits. The rules of the Court of Arbitration at the Polish Chamber of Commerce provide that an award should be issued within nine months after commencement of the proceeding and no later than 30 days after closing of the hearing. The Director General of the Court may, at his own initiative or at the request of the presiding arbitrator, extend the deadline by a specified period if necessary due to the complexity of the issues to be resolved or other circumstances of the case. Failure to meet the deadline does not in itself render the award invalid or unenforceable.

A party may request correction or interpretation of an arbitral award within two weeks from the date of service of the award. If the request is justified, the tribunal should make the correction or interpretation within two weeks. Within one month of the date of service of the award, either party may request supplementation of the award if the tribunal omitted from the award some claims pursued in the arbitral proceedings. The tribunal then has two months to issue a supplementary award.

Within one month of the date of issuance of an award, the tribunal may correct on its own initiative typographical or computational errors or other obvious mistakes in the award.

Costs and interest

39 Are parties able to recover fees paid and costs incurred? Does the "loser pays" rule generally apply in your jurisdiction?

Polish arbitration law does not provide any rules on cost allocation or recovery. In practice, the "loser pays" rule is typically applied (see §48(1) of the Rules of the Court of Arbitration at the Polish Chamber of Commerce). Generally, a tribunal will order the losing party to reimburse the winning party for any costs incurred in connection with the proceedings, including administrative fees, arbitrators' fees and expenses, attorneys' fees, and other expenses incurred by the winning party. There are no strict limits regarding the amount to be reimbursed, but the costs must be justified.

40 Can interest be included on the principal claim and costs? Is there any mandatory or customary rate?

The issue of interest is governed by the applicable substantive law. Polish law provides for statutory interest rates that apply unless the parties agreed on a different rate. However, the interest rate agreed by the parties cannot exceed the current statutory maximum interest rate.

Challenging awards

41 Are there any grounds on which an award may be appealed before the courts of your jurisdiction?

Polish arbitration law does not provide for an appeal against an arbitral award to a state court.

The parties may agree, however, that the proceedings before the arbitral tribunal shall include more than one instance. The appellate proceedings shall be conducted according to the same procedural rules as those applied in the first instance (see Supreme Court judgment of 20 March 2015, case No. II CSK 352/14).

42 Are there any other bases on which an award may be challenged, and if so what?

An arbitral award issued in Poland may be set aside only if the party challenging the award proves that:
- there was no arbitration agreement, or the arbitration agreement is invalid, ineffective or no longer in force under the law applicable to the arbitration agreement;
- the party was not given proper notice of the appointment of an arbitrator or the proceeding before the arbitral tribunal or was otherwise deprived of the right to present its case before the arbitral tribunal;
- the arbitral award deals with a dispute not covered by the arbitration agreement or exceeds the scope of the arbitration agreement; however, if the decision on matters covered by the arbitration agreement is separable from the decision on matters not covered by the arbitration agreement or exceeding the scope thereof, then the award may be set aside only with regard to the matters not covered by the arbitration agreement or exceeding the scope thereof; exceeding the scope of the arbitration agreement cannot constitute grounds for annulment of an award if a party who participated in the proceeding failed to raise an objection against hearing the claims exceeding the scope of the arbitration agreement;
- the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the applicable law or the agreement of the parties;
- the award was obtained by means of a criminal offence or the award was issued on the basis of a forged or altered document; or
- a final court judgment was issued in the same matter between the same parties.

Furthermore, an award should also be set aside if the court finds that:
- in accordance with statute, the dispute cannot be resolved by an arbitral tribunal; or
- the arbitral award is contrary to fundamental principles of the legal order of the Republic of Poland (public policy clause).

Additionally, an award rendered in a consumer dispute may be set aside on the ground that it deprives a consumer of the protection granted under mandatory provisions of the law applicable to the underlying contract. However, if the law governing such contract has been chosen by the parties, an award may be set aside if it deprives a consumer of the protection granted under mandatory provisions of the law that would have been applicable if the governing law had not been chosen.

An application to set aside an award must be filed within two months of the date of service of the award or, if a party requested supplementation, correction or interpretation of an award, within two months of the date of service of the tribunal's decision on such request. If an award is challenged on the ground that it was obtained by means of a criminal offence or issued on the basis of a forged or altered document, or that a final court judgment was issued in the same matter between the same parties, the deadline for filing the application runs from the date when the party filing the challenge learned of those grounds.

43 Is it open to the parties to exclude by agreement any right of appeal or other recourse that the law of your jurisdiction may provide?

The parties may not contractually exclude the right to file an application to set aside an award, nor exclude or limit in advance any of the statutory grounds for setting aside an award.

Enforcement in your jurisdiction

44 Will an award that has been set aside by the courts in the seat of arbitration be enforced in your jurisdiction?

There are no reported cases where Polish courts would recognise awards set aside at the place of arbitration. It can be assumed that Polish courts will generally refuse to recognise an award that has been set aside by a court at the place of arbitration.

45 What trends, if any, are suggested by recent enforcement decisions? What is the prevailing approach of the courts in this regard?

Generally, most arbitral awards are successfully enforced by Polish courts.

As to more specific developments, in a judgment of 28 November 2018 (case No. III CSK 406/16), the Supreme Court of Poland confirmed that the choice-of-remedies doctrine complies with the principle of good faith under the New York Convention. Thus, a respondent who objected to the jurisdiction of the arbitral tribunal in arbitral proceedings can rely on this objection in enforcement proceedings, even though it has not challenged the arbitral award before the courts of the seat of arbitration.

Moreover, the Supreme Court expressly stated that under the New York Convention the requirement to conclude an arbitration agreement in writing excludes the possibility to conclude an arbitration agreement tacitly or impliedly.

The Supreme Court also named the requirements for an arbitration agreement incorporated by reference to general terms and conditions to be effective and binding. The main contract does not have to expressly mention the arbitration clause contained in the general terms and conditions, but the reference must clearly identify the document containing the arbitration agreement. Furthermore, the text of the general terms and conditions must either be attached to the contract signed by the parties (article II(1) of the New York Convention), or it must be sent to the other party and the other party must confirm conclusion of the contract containing reference to the general terms and conditions (article II(2) of the New York Convention).

46 To what extent might a state or state entity successfully raise a defence of state or sovereign immunity at the enforcement stage?

In Poland, a foreign state's immunity from enforcement is not expressly regulated, but widely recognised. It prevents enforcement directed at sovereign assets (ie, assets used for exercising public authority and not for commercial purposes). Enforcement against states or state entities may be allowed if the immunity has been waived. It has not yet been determined by Polish courts whether entering into an arbitration agreement constitutes a waiver by a foreign state of its enforcement immunity.

Further considerations

47 To what extent are arbitral proceedings in your jurisdiction confidential?

Polish arbitration law does not provide a duty to keep arbitral proceedings confidential. Such a duty may be agreed upon in an arbitration agreement or by reference to arbitration rules.

The Rules of the Court of Arbitration at the Polish Chamber of Commerce provide that arbitral proceedings are confidential. Arbitrators as well as employees and representatives of the court are required to keep confidential all information concerning the proceedings, unless the parties agree otherwise. Hearings are closed to the public. Only parties and their attorneys, as well as persons requested by the tribunal (such as witnesses or experts), may be present during hearings. However, upon consent of both parties, the tribunal may permit third parties to attend the hearing. Awards are also confidential. Nonetheless, the Arbitral Council may decide to publish an award (redacted to ensure anonymity of the parties), but only if neither party objects to publication within 14 days of the date of service of the award.

48 What is the position relating to evidence produced and pleadings filed in the arbitration? Are these confidential? Is there any way that they might be relied on in other proceedings (whether arbitral or court proceedings)?

Polish arbitration law does not exclude reliance on evidence produced in arbitration in other judicial or arbitral proceedings. Such evidence generally would not be deemed inadmissible. However, if the parties agreed that arbitration should be confidential (expressly or by reference to arbitration rules that require confidentiality), the party disclosing submissions or evidence in other proceedings may be liable for any damage resulting therefrom.

49 What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your jurisdiction?

Counsel and arbitrators are bound by the ethical rules or standards of their respective professions (eg, attorneys in the Polish bar). Additionally, the Court of Arbitration at the Polish Chamber of Commerce has established the Arbitrator's Code of Ethics for arbitrators serving in proceedings administered by that institution. The Polish Arbitration Association has also adopted an Arbitrator's Pledge, which reflects good practices in the management of arbitral proceedings.

50 Are there any particular procedural expectations or assumptions of which counsel or arbitrators participating in an international arbitration with its seat in your jurisdiction should be aware?

Polish arbitration law is based on the principle of party autonomy and gives the parties flexibility to agree on the procedural rules applicable in their arbitral proceedings. Traditionally, arbitral proceedings in Poland are based largely on written submissions. Although evidentiary hearings are mandatory once requested by at least one of the parties, documentary evidence usually plays a more important role than oral testimony.

When it comes to witnesses, there are no specific rules in Polish arbitration law regulating witness preparation in arbitral proceedings. In practice, witness preparation is widely used and considered permissible, as long as counsel do not inappropriately influence the content of the testimony.

Many Polish arbitrators are inclined to rely on tribunal-appointed rather than party-appointed experts.

Polish arbitrators usually allow document production, but in most cases it is limited to specific documents or specified categories of documents.

51. Is third-party funding permitted in your jurisdiction? If so, are there any rules governing its use?

Neither Polish arbitration law nor the arbitration rules of domestic arbitral institutions provide for any rules on third-party funding, and this question has not yet been considered by the Polish courts. However, third-party funding is believed to be permissible so long as it does not compromise the integrity of arbitral proceedings, for example, in terms of the arbitrators' impartiality or independence.

Maciej Łaszczuk
Łaszczuk & Partners

Founding partner of Łaszczuk & Partners, counsel and arbitrator. For over 30 years he has been advising and representing domestic and international clients in arbitration and litigation.

He has participated in over 300 arbitrations as either the chairman of arbitral tribunal or an arbitrator under the rules of the Court of Arbitration at the Polish Chamber of Commerce, ICC, UNCITRAL, and others. Maciej is a listed arbitrator for several permanent arbitration courts, including the major arbitration court in Poland, the Court of Arbitration at the Polish Chamber of Commerce, where until September 2018 he was the President of the Court's Arbitral Council. He also serves as an arbitrator of the Sports Arbitration Court at the Polish Olympic Committee, as well as a member of its Council, and as of 2020 as the Vice President of this Court.

As a counsel, he has represented clients in high-profile commercial arbitrations, among others in the fields of infrastructure, construction, M&A, real estate and civil contracts. His experience includes co-counselling in ICC arbitration proceeding with seat in London concerning real estate investments with the amount in dispute of over €100 million, as well as in an international arbitration under the UNCITRAL Rules seated in New Delhi, India, on a basis of a joint venture agreement between a Polish and an Indian company, with the amount in dispute exceeding US$30 million. Maciej's experience includes also counselling in an investment arbitration dispute brought against the Polish government by a Dutch investor with the amount in dispute totalling €60 million. He was also co-counselling in a series of post-arbitration litigations regarding the ownership of shares in one of the largest companies in Poland in the telecommunications sector, with amount in dispute reaching €2 billion.

Maciej is a member of the Polish Bar Council, where he serves as the Chairman of the Arbitration Commission and the Chairman of the Legal Practice Commission. He is a member of the Board of the Polish Arbitration Association and a member of the Polish National Committee of the International Chamber of Commerce (ICC Poland), International Association of Lawyers (UIA), International Commercial Arbitration Committee of the International Law Association (ILA), the International Council for Commercial Arbitration (ICCA), the Austrian Arbitration Association (ArbAut) and the Swiss Arbitration Association (ASA). He is the author or co-author of a number of publications on arbitration, and a lecturer on arbitration related topics. He is also Vice Chairman of the editorial board of Palestra, the official publication of the Polish Bar.

He has created www.arbitration.pl, a comprehensive source of information on arbitration in Poland.

For many years, Maciej has been repeatedly recommended by *Chambers Europe* and *Chambers Global* among the top lawyers in the field of dispute resolution in Poland and among the *Most in Demand Arbitrators*. For many years, he has been ranked by *The Legal 500 EMEA* among the leading specialists in the field of dispute resolution in Poland. He has been recommended by the *Best Lawyers® in Poland* ranking in the field of arbitration and mediation and in the field of litigation, where he was named Lawyer of the Year in the ranking for the years 2014–2015. He has also been listed by the *Expert Guides to Commercial Arbitration*.In annual rankings by the largest Polish legal daily *Rzeczpospolita* he has been recognised among the top lawyers in Poland in the fields of litigation and arbitration every year since 2005.

Justyna Szpara

Łaszczuk & Partners

Heads the firm's dispute resolution practice group. Justyna began working with Łaszczuk & Partners in 1999 and became a partner in the firm in 2005. From 2010 to 2019, she was the firm's managing partner. She is an advocate and a member of the Warsaw Bar.

She advises and represents Polish and international clients in disputes held before state courts as well as in domestic and international arbitration disputes, especially regarding construction contracts, investment projects, M&A, real estate, commercial law and commercial contracts. As counsel, she has been involved in high-profile domestic and international arbitrations and litigations, as well as in investment treaty arbitrations and high-profile post-arbitration litigations, including co-counselling in a series of post-arbitration litigations regarding the ownership of shares in one of the largest companies in Poland in the telecommunications sector, with the amount in dispute reaching €2 billion. She has also been co-counselling in investment arbitrations.

Justyna is a listed arbitrator for several permanent arbitration courts, such as the Court of Arbitration at the Polish Chamber of Commerce, VIAC and SCIA. Her experience includes serving as a co-arbitrator or the chair of the arbitral tribunal in hundreds of cases.

She has been involved, as counsel or arbitrator, in the arbitration proceedings under the rules of Court of Arbitration at the Polish Chamber of Commerce, ICC Rules, UNCITRAL Rules, SCC Rules, Vienna Rules, Lewiatan Rules and others.

She is the author or co-author of numerous publications on arbitration, as well as a lecturer on arbitration-related topics.

She has been recommended by *Chambers Europe* and *Chambers Global* in the field of dispute resolution and arbitration (Band 1). She has been recommended by *The Legal 500 EMEA* among leading individuals in the field of dispute resolution. She has been also recommended by the *Best Lawyers in Poland*, the *Expert Guides to Commercial Arbitration* and *Who's Who Legal: Arbitration*.

Since 2018, Justyna has been the Vice-President of the Polish National Committee of the International Chamber of Commerce (ICC Poland) and the chair of its Arbitration Commission.

Jan Ciaptacz

Łaszczuk & Partners

Jan Ciaptacz works as associate at arbitration and litigation team of Łaszczuk & Partners in Warsaw. He is an advocate's trainee at the Warsaw Bar Association.

Jan acts as counsel as well as tribunal's secretary and assists arbitrators in international and domestic arbitral proceedings (including proceedings under the rules of ICC, VIAC, SCC, UNCITRAL, Court of Arbitration at the Polish Chamber of Commerce). He represents clients in proceedings concerning setting aside as well as recognition and enforcement of arbitral awards, and in various complex, cross-border commercial disputes before Polish courts.

Jan is a PhD candidate at the University of Warsaw where he is preparing a dissertation on joinder and consolidation in international commercial arbitration. He graduated from Jagiellonian University in Kraków and studied in Heidelberg, Hamburg and Beijing. In 2022 he participated in the Arbitration Academy in Paris.

Prior to joining Łaszczuk & Partners, Jan gained practical experience at an international law firm in Warsaw and at the Permanent Bureau of the Hague Conference on Private International Law.

Additionally, Jan serves as co-chair of AFM below 40 (Young Arbitration Forum under the auspices of the Court of Arbitration at the Polish Chamber of Commerce).

Łaszczuk & Partners

Łaszczuk & Partners is one of the leading dispute resolution practices in Poland.

Since 1989, the firm has been advising domestic and international clients in complex high-profile arbitrations and commercial litigations. It has advised clients in arbitration proceedings in Poland and abroad under the ICC Rules, the VIAC Rules, the UNCITRAL Rules, the LCIA Rules and others. The firm's expertise also includes counselling in investment arbitration and post-arbitration litigation.

Łaszczuk & Partners is repeatedly recommended by the largest international and Polish legal rankings.

Łaszczuk & Partners is recommended by *Chambers Europe* and *Chambers Global* in the field of dispute resolution in Poland. *Chambers Europe* notes that the firm is a "well-established disputes team reputed for its activity in domestic and international arbitration cases, including investment arbitration. The firm's lawyers also act as arbitrators. Additionally handles litigation cases, assisting clients with a broad range of commercial disputes, including construction and infrastructure-related conflicts" and the team "is valued for its skill in answering clients' needs". The firm is also recommended by *The Legal 500 EMEA* among leading firms in Poland in the field of dispute resolution. The ranking recognises its work in commercial arbitration and litigation, as well as in employment law disputes. The firm's lawyers have been recognised by *Chambers Europe, Chambers Global, Legal 500 EMEA, Expert Guides, Best Lawyers in Poland* rankings in the field of arbitration and in the field of litigation for many years. Year after year, Łaszczuk & Partners has led the field of litigation and arbitration in the annual rankings of law firms by the largest Polish legal daily, *Rzeczpospolita*.

The firm's team is devoted to promoting arbitration as a method of dispute resolution and share their knowledge by maintaining a web portal on arbitration, www.arbitration.pl. This extensive information source on arbitration available at a single internet address features Polish, foreign and international arbitration legislation, an up-to-date collection of more than 400 judicial decisions of Polish and EU courts, a bibliography of more than 1,700 Polish sources on arbitration law, and interesting publications on arbitration.

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