The Polish Chamber of Commerce

Justyna Szpara and Maciej Łaszczuk

Łaszczuk & Partners

The Court of Arbitration (the Court) at the Polish Chamber of Commerce (the PCC) has been in continuous operation since 1 January 1950, when it was created for the purpose of resolving disputes in international trade. In relations between entities from the former Eastern Bloc, arbitration at the chambers of commerce in the relevant countries was mandatory, as reflected by the Moscow Convention of 1972. Thus, at the beginning the Court acted on the basis of arbitration agreements between the parties (typically Polish entities trading with western European businesses), but it also had mandatory jurisdiction over cases brought against Polish commercial entities (state-controlled) by commercial entities from other countries that were parties to the Moscow Convention.

After 1989 the Court smoothly transformed into the most prominent modern arbitration institution in Poland, for both domestic and international cases. The Court handles around 300 to 400 cases yearly, about 20 per cent of them international, and is one of the most important arbitration institutions in the region.

The Court also provides mediation services, through its Mediation Centre. The Court may also administer ad hoc arbitrations.

What is the Court of Arbitration at the PCC?

The Court of Arbitration at the PCC is an arbitration institution affiliated with the Polish Chamber of Commerce, but is a separate organisational unit. The seat of the Court is Warsaw. One of the organisational units of the Court is its Mediation Centre.

The activities of the Court are run by its president, appointed for a four-year term by the Executive Board of the Polish Chamber of Commerce, upon nomination by the president of the Chamber and in consultation with the Arbitral Council of the Court. The current president of the Court is Marek Furtek. The Arbitral Council is responsible for, among other things, adopting and amending the Rules of the Court, as well as default appointment of arbitrators and deciding on challenges to arbitrators. The members of the Arbitral Council are appointed by the Executive Board of the Chamber, upon nomination by the president of the Chamber, for a four-year term. The current members of the Arbitral Council are Maciej Łaszczuk (president), Krystyna Szczepanowska-Kozłowska (vice president), Andrzej Szlęzak (vice president), Zbigniew Banaszczyk, Zbigniew Ćwiąkalski, Marian Kępiński, Andrzej Koźmiński, Małgorzata Modrzejewska, Rafał Morek, Wojciech Popiołek, Andrzej Szumański, Maciej Tomaszewski, Cezary Wiśniewski and Krzysztof Zakrzewski.

Arbitration under the Rules of the Court of Arbitration at the Polish Chamber of Commerce

Rules

On 14 October 2014, the Arbitral Council of the Court of Arbitration at the Polish Chamber of Commerce adopted new Rules. The Rules entered into force on 1 January 2015. The new Rules correspond to changes in the law and practice of arbitration that have developed in Poland and in the world, and to the new expectations of participants in arbitration proceedings. The Rules provide parties and arbitrators with tools to manage arbitration proceedings quickly and efficiently and expand the parties' opportunities to shape the arbitration proceedings. The Rules impose new obligations on arbitrators, yet at the same time give them opportunities to shape the proceeding in a manner best suited to the specifics of the particular dispute.

The new Rules were drafted by a committee appointed for this purpose, led by Maciej Łaszczuk. The other members of the committee were Witold Jurcewicz, Rafał Morek, Łukasz Rozdeiczer, Justyna Szpara, Andrzej Szumański and Maciej Tomaszewski.

The new Rules apply to all proceedings commenced after 1 January 2015, unless the parties agreed otherwise. A tribunal constituted in accordance with the Rules has jurisdiction over a dispute if the parties agreed to institutional arbitration under the Rules or the respondent consented to arbitration after it was served with a request for arbitration. Moreover, under any arbitration agreement referring to the Court or the Rules, the parties are deemed to agree on institutional arbitration pursuant to the Rules unless otherwise specifically stipulated. In ad hoc arbitrations administered by the Court, the Rules do not apply unless agreed by the parties.

The Rules give effect to the parties' autonomy to regulate the conduct of the proceeding. The parties may agree at any time, in a manner binding on the tribunal, on rules of procedure different from those provided in the Rules, so long as they do not violate mandatorily applicable legal norms. However, the provisions of the Rules concerning the competencies of the authorities of the Court and the rules for appointment of a sole arbitrator or the presiding arbitrator, as well as the provisions of the Fee Schedule, cannot be the subject of different rules agreed by the parties.

Arbitrators

The Court maintains a list of recommended arbitrators, prepared and reviewed by the Arbitral Council. The Council seeks to list recommended arbitrators of high quality and exceptional skills. The list is not binding on the parties, except that a sole arbitrator or presiding arbitrator must be named from the list, and when the Arbitral Council appoints an arbitrator it will select from the list. There are now almost 250 arbitrators on the list, including the most prominent members of the Polish arbitration community as well as arbitrators from such countries as Austria, Belgium, the Czech Republic, France, Germany, Hungary, India, Italy, Slovakia, Switzerland, the United Kingdom and the United States. Interestingly, under the Rules, persons included in the list of arbitrators are not allowed to represent parties in arbitrations at the Court. Moreover, the arbitrators are required to follow the Code of Ethics adopted by the Arbitral Council. Under the default rule, cases are heard by three-member tribunals. A sole arbitrator is appointed:

- if the parties so agreed; or
- if the amount in dispute does not exceed 40,000 zlotys, unless the parties agreed to hearing of the dispute by an arbitral tribunal.

The Rules provide the following grounds for challenge of an arbitrator: justified doubts as to the independence or impartiality of the arbitrator, or if the arbitrator does not have the qualifications specified in the agreement of the parties. A party may challenge an arbitrator within 14 days after having learned of the grounds for challenge. After this period, the party is deemed to have waived its right to challenge the arbitrator on that basis. The Arbitral Council decides on the challenge upon a written application of a party stating the grounds for the challenge.

An arbitrator may also resign at his or her own initiative, or be removed by the parties, or be removed by the Arbitral Council if it finds, upon an application of a party, that the arbitrator is not properly performing his or her duties.

The 2014 Rules introduce a new way of dealing with the problem of a 'truncated tribunal'. The general rule is that a new arbitrator should be appointed and he or she will decide if there is a need to repeat all or only

part of the proceeding. However, if an arbitrator's appointment is terminated after completion of the submission of evidence, the Arbitral Council may, after considering the positions of the parties and the remaining arbitrators, order that the dispute be resolved by the remaining arbitrators in the tribunal.

Multiparty proceedings and joinder of additional parties

The Rules contain provisions regarding multiparty proceedings and joinder. If there are multiple parties on one side, they must jointly name one arbitrator, and if they do not agree, the arbitrator will be named by the Arbitral Council.

The Rules also allow joinder of an additional party. A third party may be admitted to participate in a pending proceeding as a party, upon consent of the existing parties to the proceeding, if on the basis of the arbitration agreement it may pursue claims against a party or parties to the proceeding, or if a party to the proceeding may pursue claims against the third party. An application for joinder may be filed by the third party or any party to the proceedings.

Place of arbitration

Under the default rule, the place of arbitration under the Rules is Warsaw. However, the tribunal may, after seeking the opinions of the parties, order that specific activities be conducted at a place other than the place of arbitration.

Language of arbitration

The parties may agree on the language of the proceeding. If the parties do not agree otherwise, the proceeding will be conducted in Polish. Nevertheless, the arbitrators may decide that particular activities will be conducted in another language, for example, the language of the witnesses or experts or the language of the contract.

Commencement of arbitration

The rules of the Court of Arbitration at the Polish Chamber of Commerce provide for two different ways of initiating proceedings: by filing a statement of claim or a request for arbitration. Both of them should designate the parties and their contact details, the arbitration agreement or other grounds for jurisdiction of the tribunal and the amount in dispute. The statement of claim is expected to describe the nature and grounds for the claim and contain a prayer for relief together with justification therefor and an indication of the evidence in support of factual allegations. It may include appointment of an arbitrator. Moreover, if the party is represented by counsel, the statement of claim should be accompanied by the original power of attorney or a certified copy, together with the attorney's contact details.

On the other hand, the request for arbitration should contain only a summary of the subject of the dispute. If the proceeding is commenced by filing a request for arbitration, the tribunal will fix the deadlines for submitting the statement of claim and the statement of defence.

The Rules do not require terms of reference to be prepared by the tribunal and signed by the parties. However, after seeking the opinions of the parties, the tribunal should establish a schedule for the proceedings by issuing an order in this respect. The schedule may specify the order and dates for written submissions by the parties, the dates for submission and admission of evidence, the dates of hearings, and the anticipated date for issuance of an award. Additionally, it may state particular rules of procedure.

The tribunal may decide not to establish a schedule if it determines that it is unnecessary to do so in light of the nature of the dispute.

Moreover, the tribunal may order an organisational session, which may be held using telecommunications, to discuss with the parties issues concerning the proceedings.

Jurisdiction

The Rules fully respect the *Kompetenz-Kompetenz* principle, and the arbitral tribunal is exclusively authorised to rule on its own jurisdiction (subject to judicial review as provided in the arbitration law). Nonetheless, the Rules also provide that if the statement of claim raises doubts whether a tribunal appointed in accordance with the Rules will have jurisdiction to resolve the dispute, the secretary general of the Court shall, prior to summoning the claimant to cure any deficiencies in the statement of claim and pay the registration fee and the arbitration fee, and without ruling on the existence, validity, effectiveness or enforceability of the arbitration agreement, promptly draw this to the attention of the claimant, asking it to take a position in writing within a specified period of no more than 14 days. If the claimant maintains its demand that the dispute be heard by an arbitral tribunal appointed in accordance with the Rules, or if the deadline is not met, the secretary general will proceed with the case.

Consolidation, set-off and counterclaim

The Rules allow for consolidation of cases for decision in one proceeding. Consolidation requires an order by the tribunal that should be made with due consideration of all relevant circumstances and the interests of the parties, particularly the need to ensure efficiency of the proceeding. If one party asks for consolidation, the following conditions must be met:

The composition of the tribunal in each of the proceedings is the same. The parties' claims in the proceedings subject to consolidation are based on the same arbitration agreement, or the claims are related, even if based on different arbitration agreements.

Furthermore, cases in which the parties are not identical may also be consolidated if the composition of the tribunal in each of the proceedings is the same, the condition concerning the claims is met, and the parties to all of the proceedings consent.

The Rules allow the tribunal to hear a defence of set-off regardless of whether the right of setoff arises out of the same agreement or is covered by an arbitration agreement. Nonetheless, the tribunal may refuse to consider a defence of setoff asserted later than the first session if it would excessively prolong the proceeding, unless the respondent could not assert the defence earlier.

Evidence

The tribunal may admit evidence from documents, witnesses, expert opinions and other evidence indicated by the parties which it deems relevant for clarification of the case. However, refusal to admit evidence indicated by a party requires issuance of an order, which may be subject to amendment depending on the circumstances. The tribunal may also specify a period for assertion of evidence after which the parties' applications to admit evidence will not be considered.

The new Rules introduce a provision empowering the tribunal to decide on the method of taking evidence. More specifically, it may order that evidence from a witness be taken in two stages: first on the basis of a written statement by the witness and then by supplementary questioning at a hearing. Upon consent of the parties, the tribunal may take evidence from a witness solely on the basis of the witness's written statement.

Hearings

A hearing is standard. Upon consent of the parties, the tribunal may resolve the dispute without scheduling a hearing, on the basis of the parties' allegations set forth in their written submissions and the documents or other evidence presented by them, if it finds that the dispute is sufficiently clarified.

Awards

The general rule is that the tribunal shall resolve the dispute in accordance with the law mutually indicated by the parties. In the absence of such indication, the law most closely connected with the legal relationship being considered shall be applied. The tribunal may resolve the dispute according to general principles of law or equity (ex æquo et bono) only if the parties have expressly authorised it to do so.

The Rules recognise the principle of jura novit arbiter. That is, the tribunal is deemed to know the law, which implies that the law is not the subject of evidence. Nonetheless, the Rules prohibit taking the parties by surprise as to the legal grounds of the award: the award cannot be based on legal grounds different from those relied on by either of the parties, unless the tribunal notifies the parties in advance and gives them an opportunity to be heard concerning such legal grounds.

The Rules provide certain time limits for issuing an award. 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 secretary 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 invalidate an award.

The award is made in writing and served on the parties following payment of all costs. All originals of the award must bear the signatures of all members of the arbitral tribunal, or at least two members, stating the reason for the absence of the signature of the third arbitrator.

The Rules provide for limited review of the award by the institution. The award is then signed by the secretary general of the Court and the president of the Court. By signing the award, the secretary general of the Court and the president of the Court certify that the arbitral tribunal was appointed in accordance with the Rules and that the signatures of the members of the tribunal are authentic. Before signing the award, the president may, without interfering in the merits of the decision, return the award to the presiding arbitrator to make any necessary formal corrections or correct obvious errors.

Confidentiality

The Rules expressly provide for the confidentiality of proceedings. Arbitrators and employees and representatives of the Court are required to keep confidential all information concerning the proceeding, 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. The president of the Court, the secretary general and any member of the Arbitral Council may attend any hearing. Awards are also confidential. Nonetheless, the Arbitral Council may decide to publish a ruling (redacted to assure the anonymity of the parties), but only if neither party objects to publication within 14 days after service of the ruling.

Costs

The Court may be seen as competitive in terms of costs of arbitration. The fees payable to the Court include a fixed registration fee of 2,000 zlotys (or less in certain cases) and an arbitration fee. The arbitration fee is calculated based on the amount in dispute, on a sliding scale (regressive, from 8.0 per cent to 0.3 per cent). In any final award on the merits, the tribunal shall, upon application of a party, decide on allocation of costs, including attorneys' fees. The tribunal shall resolve the costs of the arbitration proceeding in a way that reflects the result of the proceeding and other relevant circumstances. Typically the 'loser pays' rule is applied. Attorneys' fees should be awarded in a reasonable amount, considering in particular the result of the proceeding, the work input of the attorney, the nature of the case, and other relevant circumstances. This means that allocation of attorneys' fees is not necessarily based on the actual costs incurred by the parties, and each of the parties should expect that even if they win the case, they will be required to bear some part of these costs.

Mediation

Together with the change of the Arbitration Rules, new Mediation Rules were adopted. They are now a separate set of rules and no longer part of the Arbitration Rules. Mediation under the Rules may be started prior to commencement of arbitration or litigation. Mediation may be conducted based on a written agreement between the parties or upon consent of both parties. The mediator should be appointed jointly by the parties, but if they do not agree the mediator will be appointed by the Arbitral Council from the Court's list of recommended mediators. If mediation leads to a settlement, it should be recorded by the mediator and signed by both the mediator and the parties. There is also an option for the parties to request jointly that the mediator be appointed as an arbitrator authorised to resolve the dispute or to convert the settlement into an award. In such case the restrictions preventing a person who has served as a mediator in the dispute from serving as an arbitrator in the same dispute do not apply. Although not expressly stated in the Rules, a joint application of the parties to appoint the mediator as an arbitrator should be deemed to be an arbitration agreement (unless the parties have already signed an arbitration agreement covering the dispute). The possibility of the case being heard in arbitration by the same person who served as a mediator is an innovative approach to dispute resolution known as 'med-arb'.

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The Court of Arbitration at the PCC is the most important institution on the Polish and regional arbitration market, and is witnessing a constant increase in the number of cases, both domestic and international. The Court is also involved in promoting arbitration, organising arbitration seminars and other events on a regular basis, as well as through publications related to arbitration. Since 2012, the Court has held the biennial Draft Common Frame of Reference Warsaw International Arbitration Moot for law students. Since 2003, it has also organised a competition for law students for the best master's thesis on arbitration.

More information on the Court can be found at www.sakig.pl.

Łaszczuk

Justyna Szpara **justyna.szpara@laszczuk.pl**
Maciej Łaszczuk **maciej.laszczuk@laszczuk.pl**

Pl Piłsudskiego 2
00-073 Warsaw
Poland

Tel: +48 22 351 00 67
Fax: +48 22 351 00 68
www.laszczuk.pl
www.arbitration.pl