Poland

Justyna Szpara and Andrzej Maciejewski
Łaszczuk & Partners

Laws and institutions

1 Multilateral conventions relating to arbitration

Is your country a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Since when has the Convention been in force? Were any declarations or notifications made under articles I, X and XI of the Convention? What other multilateral conventions relating to international commercial and investment arbitration is your country a party to?

Poland has been a party to the New York Convention since 1 January 1962. Although the issue is debatable, the majority view is that Poland effectively asserted a reciprocity reservation and a commercial nature of disputes reservation.

Poland is also a party to the European Convention on International Commercial Arbitration of 1961 (since 14 December 1964) and the Energy Charter Treaty (since 23 July 2001).

2 Bilateral investment treaties

Do bilateral investment treaties exist with other countries?

Poland has entered into 62 bilateral investment treaties, which provide for arbitration of disputes between an investor and the host state (the treaties with Albania, Montenegro and the Russian Federation have never entered into force).

3 Domestic arbitration law

What are the primary domestic sources of law relating to domestic and foreign arbitral proceedings, and recognition and enforcement of awards?

Polish arbitration law is included in a separate chapter of the Polish Civil Procedure Code. The arbitration law applies as a rule only to domestic arbitration proceedings (ie, when the place of arbitration is in Poland). If the place of arbitration is abroad or undetermined, the arbitration law will apply only as expressly provided.

Generally, recognition and enforcement of domestic and foreign awards is governed by the same set of provisions, but there are significant differences in recognition and enforcement of domestic and foreign awards, both procedural and in the grounds for denial of recognition or enforcement.

4 Domestic arbitration and UNCITRAL

Is your domestic arbitration law based on the UNCITRAL Model Law? What are the major differences between your domestic arbitration law and the UNCITRAL Model Law?

Polish arbitration law is based on the UNCITRAL Model Law. However, unlike the Model Law, Polish arbitration law is not limited to international commercial arbitration, but applies to all arbitration proceedings. The most significant differences include additional grounds for setting aside an award and the concept of the place of issuance of the award.

5 Mandatory provisions

What are the mandatory domestic arbitration law provisions on procedure from which parties may not deviate?

The Polish Civil Procedure Code provides certain mandatory provisions that the parties cannot override in the contract, including:

- equal treatment of parties;
- the requirement to inform the parties of scheduled hearings;
- the requirement to serve all submissions on the other party;
- failure to file a statement of defence may not result in discontinuance or be treated as an admission of the claimant's allegations; and
- waiver of the right to object (adopting Model Law article 4).

6 Substantive law

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?

The arbitral tribunal decides the dispute under the law applicable to the underlying legal relation. There are no specific choice of law rules in arbitration, but the tribunal should always respect the parties' choice of law. The arbitral tribunal may decide the dispute under general rules of law or rules of equity only if it is authorised to do so by the parties.

7 Arbitral institutions

What are the most prominent arbitral institutions situated in your country?

The most prominent arbitral institution in Poland is:

Court of Arbitration at the Polish Chamber of Commerce
ul Trębacka 4
00-074 Warsaw
Poland
Tel: +48 22 827 47 54
Fax: +48 22 827 94 01
www.sakig.pl

Arbitration agreement

8 Arbitrability

Are there any types of disputes that are not arbitrable?

Only disputes that could be heard by civil courts are arbitrable, and they must be disputes of a sort that could be subject to a court settlement, namely, regarding rights the parties may freely dispose of. However, the settleability of a dispute should be assessed in the abstract, apart from the concrete circumstances and legal conditions and considerations of whether a particular settlement might be concluded by the parties. Due to the settleability requirement, certain intellectual property and competition matters are not arbitrable. The law also excludes disputes involving claims for support (eg, spousal support or child support). An arbitration agreement concerning employment disputes may be made only after the dispute has arisen.

It is recognised that internal corporate disputes as such are arbitrable, but the settleability criterion must be met.

9 Requirements

What formal and other requirements exist for an arbitration agreement?

An arbitration agreement must be made in writing, or contained in correspondence (including electronic correspondence if it enables the content to be recorded). It may be incorporated by reference (eg, in general terms and conditions). An arbitration agreement concerning an employment dispute must be signed by the parties. An arbitration agreement may also be included in the charter of a commercial company, cooperative or association and is binding on that entity as well as its members in relation to disputes relating to legal relationships connected with the company, cooperative or association.

The arbitration agreement may be signed by a proxy; however, the power of attorney must be granted expressly to sign an arbitration agreement, except in the case of a power of attorney granted by a business entity, where a power of attorney granted to perform a legal act is deemed to include the power to agree to submit disputes arising out of such legal act to arbitration.

10 Enforceability

In what circumstances is an arbitration agreement no longer enforceable?

An arbitration agreement may be declared invalid, avoided or terminated based on general rules of civil law. Invalidity or termination of the underlying contract does not affect the arbitration agreement. If a party to an arbitration agreement is declared bankrupt, the arbitration clause is terminated by operation of law. It is debatable whether in the case of a multiparty arbitration agreement the bankruptcy of one of the parties terminates the whole arbitration agreement or only with respect to the insolvent party.

11 Third parties – bound by arbitration agreement

In which instances can third parties or non-signatories be bound by an arbitration agreement?

An arbitration agreement is generally binding only on the signatories. Exceptions extending the arbitration clause to third parties include various cases of singular succession (eg, assignment of a receivable debt under the underlying contract; it has also been held that the acquirer of an enterprise is bound by an arbitration agreement previously made by the seller of the enterprise, with its creditor covering disputes relating to the enterprise), various cases of general succession and extension of an arbitration clause included in articles of association to the company and any subsequent shareholder. On the other hand, a joint and several debtor is not bound by an arbitration agreement executed by any other joint and several debtor.

12 Third parties – participation

Does your domestic arbitration law make any provisions with respect to third-party participation in arbitration, such as joinder or third-party notice?

Polish arbitration law does not contain any provisions regarding third parties, but it is generally accepted that third parties may participate if both the parties and the third party consent. This could be addressed in the arbitration rules or the arbitration agreement. Under the rules of the Court of Arbitration at the Polish Chamber of Commerce, the participation of third parties in arbitration is allowed.

13 Groups of companies

Do courts and arbitral tribunals in your jurisdiction extend an arbitration agreement to non-signatory parent or subsidiary companies of a signatory company, provided that the non-signatory was somehow involved in the conclusion, performance or termination of the contract in dispute, under the 'group of companies' doctrine?

The 'group of companies' doctrine is not recognised in Poland.

14 Multiparty arbitration agreements

What are the requirements for a valid multiparty arbitration agreement?

There are no special regulations regarding multiparty arbitration agreements and no published case law on this issue. However, it is accepted that such agreements may be concluded and should generally assure equal treatment of the parties, in particular with respect to appointment of the arbitrators.

Constitution of arbitral tribunal

15 Eligibility of arbitrators

Are there any restrictions as to who may act as an arbitrator? Would any contractually stipulated requirement for arbitrators based on nationality, religion or gender be recognised by the courts in your jurisdiction?

Generally, any person with full legal capacity may act as an arbitrator. There are no nationality restrictions. The parties to the arbitration agreement should be regarded as entitled to decide on the nationality of the arbitrators as well as other characteristics of the arbitrators; however, it is debatable and not yet decided in the case law whether the parties may require characteristics that have no substantive justification. Judges may not act as arbitrators, however, unless they are retired.

There is no common list of arbitrators. The recognised arbitration institutions maintain their own lists of arbitrators, but usually such lists are not binding on the parties. Under the rules of the Court of Arbitration at the Polish Chamber of Commerce, the sole arbitrator or presiding arbitrator must be selected from the chamber's list.

16 Default appointment of arbitrators

Failing prior agreement of the parties, what is the default mechanism for the appointment of arbitrators?

The parties are free to set the number of arbitrators and the appointment mechanism. If the number of arbitrators is not set by the parties, there will be three arbitrators.

The default procedure is that each party appoints one arbitrator, and those arbitrators jointly appoint a presiding arbitrator. If a party fails to appoint an arbitrator within one month from receipt of the request from the other party, or the appointed arbitrators fail to appoint a presiding arbitrator, such arbitrators may be appointed by the court, upon motion of a party.

If the arbitral tribunal is a single arbitrator, he or she is appointed jointly by the parties. If they fail to appoint the arbitrator within one month, the arbitrator is appointed by the court, upon motion of a party.

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 makes the appointment.

17 Challenge and replacement of arbitrators

On what grounds and how can an arbitrator be challenged and replaced? Please discuss in particular the grounds for challenge and replacement, and the procedure, including challenge in court. Is there a tendency to apply or seek guidance from the IBA Guidelines on Conflicts of Interest in International Arbitration?

Polish arbitration law provides three grounds for challenging an arbitrator: lack of impartiality, lack of independence and lack of the qualifications agreed by the parties. The party that appointed the arbitrator may challenge the arbitrator only if the party became aware of the grounds for challenge after the appointment.

The parties are free to agree on the procedure for challenging arbitrators. Usually the rules of the arbitration institution provide their own procedures for challenging arbitrators, but such rules or the parties' agreement may not waive the party's right to challenge the arbitrator in court.

Under the default procedure for challenging arbitrators provided in the arbitration law, the party seeking to remove an arbitrator must notify all arbitrators and the opposing party of the grounds. If the arbitrator does

not resign or is not removed by the parties within two weeks, the party may seek removal by the court.

As in the UNCITRAL Model Law article 14, there are no specific grounds for replacement of an arbitrator. General grounds are that it is obvious that the arbitrator will not fulfil his or her duties by the given time or is causing an unjustified delay. Examples include illness, long-term absence, or loss of a qualification required by the parties in their agreement.

The parties may jointly dismiss an arbitrator at any time, and any party may apply to the court to dismiss an arbitrator.

If an arbitrator is replaced, a new arbitrator is appointed under the same rules as the original appointment. The parties may also appoint an alternate at the beginning in case the first-choice arbitrator must be replaced.

The IBA Guidelines are commonly acknowledged by the arbitration community in Poland; however, they are not directly applied by arbitration institutions or in their rules or guidelines. Thus it is up to the arbitrators' discretion whether to seek guidance from the IBA Guidelines when assessing a conflict of interest.

18 Relationship between parties and arbitrators

What is the relationship between parties and arbitrators? Please elaborate on the contractual relationship between parties and arbitrators, neutrality of party-appointed arbitrators, remuneration and expenses of arbitrators.

When the arbitrator accepts the appointment, a contract is deemed to be formed between the parties and the arbitrator under which the arbitrator must act impartially and decide the dispute without undue delay. The arbitrator has a right to a fee and reimbursement of expenses. The parties are jointly liable for the fee and expenses.

19 Immunity of arbitrators from liability

To what extent are arbitrators immune from liability for their conduct in the course of the arbitration?

Polish arbitration law does not regulate the arbitrators' immunity or liability for their conduct in the course of arbitration. The only provision in the arbitration law related to the arbitrators' liability is that an arbitrator may be liable for damages if he or she resigns without serious grounds. Without provisions on arbitrators' immunity or liability, it is commonly understood that arbitrators are liable under general rules of contractual liability, which extends to intentional fault as well as negligence.

Limitations of liability are regulated in the rules of arbitration institutions. For example, under the rules of the Court of Arbitration at the Polish Chamber of Commerce, arbitrators shall not be held liable for any damage arising out of any acts or omissions in connection with the arbitration proceedings, unless such damage was caused intentionally.

Jurisdiction and competence of arbitral tribunal

20 Court proceedings contrary to arbitration agreements

What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an existing arbitration agreement, and what time limits exist for jurisdictional objections?

An objection to jurisdiction in a court proceeding must be raised before joining issue on the merits (typically the objection must be raised in the response to the statement of claim). If the objection is raised, the court must dismiss the suit, unless the arbitration agreement is invalid, ineffective, unenforceable or expired, or if the arbitral tribunal has already ruled that it lacks jurisdiction. If the objection is asserted late, the court must reject it.

Filing of a lawsuit in court does not prevent the case from being considered by the arbitral tribunal.

21 Jurisdiction of arbitral tribunal

What is the procedure for disputes over jurisdiction of the arbitral tribunal once arbitral proceedings have been initiated and what time limits exist for jurisdictional objections?

The arbitral tribunal is competent to rule on its own jurisdiction. Jurisdictional objection must be raised at the latest in the response to the statement of claim, or other time indicated by the parties, or as soon as a party becomes aware of the grounds. An objection that a new claim exceeds the scope of the arbitration agreement must be raised immediately.

It is disputed whether lack of a timely jurisdictional objection precludes the party from relying on the lack of an arbitration agreement or exceeding the scope of the arbitration agreement in a proceeding to vacate the award. The majority view supports preclusion.

The tribunal may decide to rule on the jurisdictional objection in a separate order before issuing an award on the merits. If the arbitral tribunal upholds its own jurisdiction, a party has two weeks to seek a ruling in a state court, which may in turn be appealed. An application to the court for a ruling on jurisdiction does not preclude the tribunal from issuing an award on the merits.

A decision by the tribunal finding that it lacks jurisdiction may not be challenged in court, and in this sense a negative decision is final.

Arbitral proceedings

22 Place and language of arbitration

Failing prior agreement of the parties, what is the default mechanism for the place of arbitration and the language of the arbitral proceedings?

The parties may determine the place of arbitration, or the tribunal will do so based on the nature of the dispute and the convenience of the parties. Otherwise, the place of arbitration is deemed to be in Poland if the award was issued in Poland.

The parties may also choose the language of the proceedings, or it will be chosen by the tribunal. The choice of language generally applies to all actions of the parties and the tribunal; thus, all submissions, hearings and decisions should be in that language. The tribunal may order that any submission be accompanied by a translation into the language chosen by the parties or the tribunal.

23 Commencement of arbitration

How are arbitral proceedings initiated?

Arbitration proceedings may be commenced by serving a notice for arbitration on the other party, designating the parties, the dispute and the arbitration agreement or clause, and also appointing an arbitrator if the party is entitled to do so. Unless otherwise agreed, the date of service is deemed to be the time of commencement of the 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 deadlines for submitting the statement of claim and the statement of defence.

24 Hearing

Is a hearing required and what rules apply?

The parties may decide whether a hearing is held; otherwise, the arbitral tribunal will decide whether a hearing is held or the case is to be decided on written submissions. However, if the parties have not agreed that a hearing may not be held, the arbitral tribunal is required to schedule a hearing upon the request of any party.

Under the rules of the Court of Arbitration at the Polish Chamber of Commerce, a hearing is the norm. However, upon consent of the parties, the arbitral 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.

25 Evidence

By what rules is the arbitral tribunal bound in establishing the facts of the case? What types of evidence are admitted and how is the taking of evidence conducted?

The parties may enter into stipulations concerning evidence. The tribunal has broad discretion on evidential matters. Relevant evidence in any form (documents, inspections, etc) may be admitted, but the arbitral tribunal is not empowered to use any coercive measures to obtain evidence.

The arbitral tribunal is not authorised to administer an oath to witnesses, and a witness cannot be accused of perjury for false testimony before an arbitral tribunal.

There is a tendency to appoint party experts or to file expert opinions obtained by the parties. The IBA Rules on the Taking of Evidence in International Arbitration are sometimes applied.

It is generally accepted and expressly stated in the rules of the Court of Arbitration at the Polish Chamber of Commerce that the tribunal shall assess the reliability and strength of evidence in its own judgment, after comprehensive consideration of the evidence. The tribunal assesses on that basis how to react to any refusal by a party to produce evidence or to any obstacles a party may raise to taking of evidence.

26 Court involvement

In what instances can the arbitral tribunal request assistance from a court and in what instances may courts intervene?

An arbitration tribunal may request a court to take evidence or take other actions that are beyond the authority of the tribunal. The tribunal may request a court to examine a witness who has refused to testify, but the tribunal may not request that the court sanction the witness for refusal to testify in the arbitration proceeding. The tribunal may also request a court to examine evidence (or a document) in the possession of a third party. The court may then require the third party to present the document.

27 Confidentiality

Is confidentiality ensured?

There is no express provision in Polish law providing for confidentiality of arbitral proceedings. The rules of the Court of Arbitration at the Polish Chamber of Commerce provide that proceedings before the arbitral tribunal are confidential. Arbitrators and all the employees and representatives of the Court are obligated to keep confidential all the 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 a member of the Arbitral Council can attend all the hearings.

Interim measures and sanctioning powers

28 Interim measures by the courts

What interim measures may be ordered by courts before and after arbitration proceedings have been initiated?

The court may order any type of interim measure available under the law, at any time, before or after the arbitration proceeding is initiated. If a party requests an interim measure before the arbitration proceeding is initiated, however, the court will give the party no longer than two weeks to commence the proceeding, or the interim measure will lapse. It is debatable whether the parties may agree to exclude the court's authority to grant interim relief; the majority view is that they cannot.

29 Interim measures by an emergency arbitrator

Does your domestic arbitration law or do the rules of the domestic arbitration institutions mentioned above provide for an emergency arbitrator prior to the constitution of the arbitral tribunal?

The institution of an emergency arbitrator is not recognised in Polish law or in the rules of the Court of Arbitration at the Polish Chamber of Commerce.

30 Interim measures by the arbitral tribunal

What interim measures may the arbitral tribunal order after it is constituted? In which instances can security for costs be ordered by an arbitral tribunal?

Unless otherwise agreed by the parties, the arbitral tribunal, upon motion of a party that has substantiated its claim, may order such interim measures as it deems proper, and may require security. There are no limitations under the law on the types of interim measures that may be ordered by the tribunal. Limitations may be agreed by the parties; the parties may also agree to exclude the tribunal's authority to issue interim measures. There are certain limitations that arise in practice, however. An arbitral tribunal may not order interim measures that interfere with the activities of the courts or other state institutions (eg, a stay of judicial execution proceedings). Also, because the law does not govern the effect of interim measures ordered by a tribunal that are not enforceable by execution (such as injunctive relief), there is an area of legal dispute that makes it impracticable for the parties to seek interim relief of this type from the arbitration tribunal.

31 Sanctioning powers of the arbitral tribunal

Pursuant to your domestic arbitration law or the rules of the domestic arbitration institutions mentioned above, is the arbitral tribunal competent to order sanctions against parties or their counsel who use 'guerrilla tactics' in arbitration?

There are no specific regulations in the arbitration law or the rules of the Court of Arbitration at the Polish Chamber of Commerce authorising the arbitral tribunal to order sanctions against parties or their counsel who use 'guerrilla tactics' in arbitration.

Awards

32 Decisions by the arbitral tribunal

Failing party agreement, is it sufficient if decisions by the arbitral tribunal are made by a majority of all its members or is a unanimous vote required? What are the consequences for the award if an arbitrator dissents?

A majority decision is sufficient. The award should be signed by all arbitrators, but it may be signed by only a majority of the arbitrators (if there are three or more) with an indication of why the other arbitrators did not sign the award. However, unanimity may be required by the arbitration agreement.

33 Dissenting opinions

How does your domestic arbitration law deal with dissenting opinions?

A dissenting arbitrator may indicate the dissent in the award, together with his or her signature. A dissenting opinion requires a justification.

34 Form and content requirements

What form and content requirements exist for an award?

The arbitration award shall be in writing and signed by all of the arbitrators (or a majority, if allowed). The award shall designate the parties and arbitrators, the arbitration agreement, the date and place the award is issued, and the reasons for the decision.

35 Time limit for award

Does the award have to be rendered within a certain time limit under your domestic arbitration law or under the rules of the domestic arbitration institutions mentioned above?

Polish law does not provide time limits for issuance of an arbitral award. However, 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. These deadlines may be extended by the Secretary General of the Court of Arbitration for a specific period due to the complexity of the issues or other important considerations, and the parties' consent is not required for such extension.

36 Date of award

For what time limits is the date of the award decisive and for what time limits is the date of delivery of the award decisive?

The date of service of the award on the party commences the period for an action to set aside the award or a motion to correct, interpret or supplement the award. The date of the award marks the commencement of the one-month period for the arbitral tribunal to correct obvious mistakes on its own motion.

37 Types of awards

What types of awards are possible and what types of relief may the arbitral tribunal grant?

An arbitral tribunal may issue final or partial awards, at its discretion. The tribunal may issue a consent award if the parties reach a settlement and request the tribunal to reduce the settlement to an award. The tribunal may also issue a supplementary award if, within one month after service of the award, a party requests the tribunal to supplement the award to address claims raised in the proceeding that were omitted from the award.

Certain arbitration rules (eg, at the Court of Arbitration at the Polish Chamber of Commerce) provide for the possibility of issuing a preliminary award upholding a claim in principle while continuing the proceedings. It is questionable, however, whether such a decision can be separately challenged.

The arbitral tribunal is free to grant any kind of remedy or relief available under substantive law, provided that such remedy or relief is not in breach of public policy. For example, it is generally accepted that punitive damages are contrary to Polish public policy.

38 Termination of proceedings

By what other means than an award can proceedings be terminated?

The arbitral tribunal shall terminate the proceedings if:

- the claimant fails to file a statement of claim within the prescribed time;
- the parties enter into a settlement before the arbitral tribunal;
- the claimant withdraws the statement of claim, unless the respondent objects and the tribunal finds that the respondent has an interest in obtaining a final resolution of the dispute; or
- the tribunal finds that continuation of the proceedings is for any other reason moot or impossible.

39 Cost allocation and recovery

How are the costs of the arbitral proceedings allocated in awards? What costs are recoverable?

Polish law does not provide rules for cost allocation or recovery. In practice, the 'loser-pays' rule is typically applied. According to the rules of the Court of Arbitration at the Polish Chamber of Commerce, a final award should contain a decision on costs and attorneys' fees. 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.

40 Interest

May interest be awarded for principal claims and for costs and at what rate?

An arbitral tribunal may award interest only if allowed by the substantive law applicable to the dispute.

Proceedings subsequent to issuance of award

41 Interpretation and correction of awards

Does the arbitral tribunal have the power to correct or interpret an award on its own or at the parties' initiative? What time limits apply?

The tribunal may correct any clerical, typographical or computational errors, or other obvious mistakes, either at the request of a party or on its own motion. A party must request a correction within two weeks from service of the award, unless otherwise agreed. If the tribunal considers the request to be justified, it shall make the correction within two weeks. The tribunal may correct the award on its own within one month from the date of the award.

The tribunal may issue an interpretation to clarify an award only at the request of a party (with time limits as for correction of an award).

42 Challenge of awards

How and on what grounds can awards be challenged and set aside?

An arbitral award may only be challenged in a proceeding to set aside the award, which may be instituted in court by a party or legal successor. Only an award issued in Poland may be subject to Polish proceedings to set aside the award. The motion must be filed within three months from service of the award, or, if a party requested supplementation, correction or interpretation of the award, within three months from service of the tribunal's decision on such request.

If the motion to set aside the award is based on the grounds mentioned under point (v) or (vi) below, the period for filing the motion runs from the date the party learned of such grounds, up to five years from service of the award.

There is an exhaustive list of grounds for vacating an award:

(i) there was no arbitration agreement, or the arbitration agreement is invalid, is ineffective or has expired;
(ii) the party was not given proper notice of the appointment of an arbitrator or of the proceedings before the arbitral tribunal, or was otherwise unable to present its case;
(iii) the award deals with a dispute not covered by the arbitration agreement or beyond the scope of the agreement, but if the decisions on matters covered by the arbitration agreement can be separated from those not covered, then the award may be set aside only with regard to the matters not covered by the arbitration agreement; exceeding the scope of the arbitration agreement is not grounds for setting aside the award if a party who participated in the proceeding failed to object to consideration of the claims exceeding the scope of the arbitration agreement;
(iv) requirements for composition of the arbitral tribunal and basic rules of procedure before the tribunal, under statutory law or the arrangements agreed by the parties, were not observed;
(v) the award was obtained by means of a crime or on the basis of a forged document;
(vi) a final and binding judgment was already issued in the same case between the same parties;
(vii) the dispute is not legally arbitrable; or
(viii) the award is contrary to public policy.

The last two grounds may be raised by the court on its own motion.

43 Levels of appeal

How many levels of appeal are there? How long does it generally take until a challenge is decided at each level? Approximately what costs are incurred at each level? How are costs apportioned among the parties?

There may be two or three levels of review. The decision of the court of first instance is appealable. The decision of the court of second instance, depending on the nature of the legal dispute resolved by the arbitral award and the amount in dispute, may be subject to a cassation appeal to the Supreme Court, but cassation is an extraordinary form of review and the decision of the court of second instance is already final.

The wait for a decision depends on each court's docket, but would typically be on the order of several months at each instance.

The court fee depends on the nature of the dispute and the amount in dispute. The maximum court fee is 100,000 zlotys at each instance (including the Supreme Court). The court fee must be paid by the party initiating the proceeding or filing the appeal. However, in the decision at each instance the court must decide on apportioning the costs of the proceeding; typically the losing party is required to cover the costs (ie, to reimburse the other party or forfeit the fee already paid). Apart from the court fee, attorneys' fees are recoverable from the losing party within limits provided for in the law.

Update and trends

Currently, there is a trend in Polish legislation to promote the development of alternative dispute resolution. In line with this, Poland's Ministry of Economy has recently published the proposed guidelines for an act promoting alternative methods of dispute resolution. The goal of the act, which is now being drafted, is to increase the percentage of commercial disputes resolved using mediation and arbitration.

Firstly, the guidelines address the effect of bankruptcy on arbitration agreements and arbitration proceedings. International arbitration involving Polish parties or arbitration agreements concluded under Polish law have sometimes suffered from the current provisions of the Polish Bankruptcy and Recovery Law, which invalidate an arbitration agreement upon declaration of bankruptcy and prohibit arbitration proceedings from continuing. Although every jurisdiction places limits on how court or arbitration proceedings involving a bankrupt debtor can be conducted, Polish law may be unique in providing for the automatic invalidity of an arbitration agreement and any ongoing arbitration proceedings. The guidelines seek to equalise the consequences of declaration of bankruptcy for proceedings before state courts and arbitration courts. Notwithstanding the declaration of bankruptcy, pending arbitration proceedings would be continued and the arbitration agreement would remain in force. Provisions of the Bankruptcy and Recovery Law concerning the effect of bankruptcy on judicial and administrative proceedings would be supplemented by regulations concerning pending arbitration proceedings. However, the bankruptcy trustee would be empowered to avoid an arbitration agreement if arbitration was not commenced before declaration of a liquidating bankruptcy. The other party could also renounce the arbitration agreement, but only if the bankruptcy trustee refused to participate in the costs of the arbitration. The Bankruptcy and Recovery Law would be amended accordingly.

Secondly, the Ministry of Economy's proposal aims at elimination of appellate review in proceedings to set aside an arbitration award and for recognition or enforcement of an arbitration award, in order to shorten and simplify post-arbitration proceedings. Interestingly, an application to set aside an arbitration award or for recognition or enforcement of a foreign arbitration award would be heard by the court of appeal with geographical jurisdiction as a court of single instance.

It is also proposed to shorten the period for seeking to set aside an arbitration award from the current three months to two months.

Finally, new guarantees of arbitrators' independence and impartiality are being considered. A person appointed as an arbitrator would be required to disclose to the parties promptly any circumstances that could raise doubts as to the arbitrator's impartiality or independence, submitting a written declaration of impartiality and independence to the parties and the other arbitrators.

44 Recognition and enforcement

What requirements exist for recognition and enforcement of domestic and foreign awards, what grounds exist for refusing recognition and enforcement, and what is the procedure?

Recognition or enforcement of an award (domestic or foreign) requires a court decision, issued in a proceeding that may be initiated by either of the parties (recognition) or by the creditor entitled to performance under the award (enforcement). Proceedings may also be initiated by the legal successor of a party. Polish law distinguishes between enforcement and recognition. Enforcement pertains only to awards that may be enforced in judicial execution proceedings (eg, an award ordering payment of money or release of goods). Other awards are subject to recognition. A court decision on recognition or enforcement gives an award legal effects that are the same as those of a judgment, in particular res judicata effect. An enforcement order also has the effect of converting the arbitral award into a writ of enforcement, which may then serve as the basis for initiating execution by the bailiff.

To obtain recognition or enforcement, the party must provide the court with the original award, or a copy certified by the arbitral tribunal, as well as the original arbitration agreement or certified copy. If the award was made in a foreign language, the party must enclose a certified Polish translation. In case of foreign awards subject to the New York Convention, only the documents mentioned in article IV must be submitted. The court shall refuse recognition if the dispute is not legally arbitrable or the award is contrary to public policy.

In the case of foreign awards, refusal may be based on one of the grounds indicated in the New York Convention, or in the case of non-Convention awards, the following grounds:

- there was no arbitration agreement, or the arbitration agreement is invalid, ineffective or expired;
- the party was not given proper notice of the appointment of an arbitrator or of the proceedings before the arbitral tribunal, or was otherwise unable to present its case;
- the award deals with a dispute not covered by the arbitration agreement or beyond the scope of the agreement, but if the decisions on matters covered by the arbitration agreement can be separated from those not covered, then recognition or enforcement will be denied only with regard to the matters not covered by the arbitration agreement;
- the composition of the arbitral tribunal or the proceedings before the tribunal were inconsistent with the agreement of the parties, if any, or inconsistent with the law of the country where the arbitration was held; or
- the award has not yet become binding on the parties, or the award was vacated or denied enforcement by a state court of the country where the award was issued or under whose laws the award was issued.

These grounds essentially match the grounds for refusal under the New York Convention, with certain variations.

A decision on recognition or enforcement may be appealed to the court of second instance. In the case of recognition or enforcement of a foreign award, a cassation appeal to the Supreme Court may also be available.

Łaszczuk

Justyna Szpara — **justyna.szpara@laszczuk.pl**
Andrzej Maciejewski — **andrzej.maciejewski@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

45 Enforcement of foreign awards

What is the attitude of domestic courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

Polish courts will generally refuse to recognise a foreign award that has been set aside by a court at the place of arbitration. There are no reported cases recognising awards set aside pursuant to a legally final judgment at the place of arbitration. However, the law could allow for recognition of an award set aside at the place of arbitration, in the (very rare) cases where article IX of the European Convention of 1961 would apply.

46 Cost of enforcement

What costs are incurred in enforcing awards?

There is a court fee of 300 zlotys on a motion for recognition or enforcement. There is a fee in the same amount on an appeal from the decision of the court of first instance, as well as on a cassation appeal to the Supreme Court (available only in case of foreign awards).

The fees for execution proceedings by a court bailiff are generally the same as in the case of enforcement of a judgment; the general rule is that they are charged to the debtor.

Other

47 Judicial system influence

What dominant features of your judicial system might exert an influence on an arbitrator from your country?

Polish arbitration practice endorses the parties' autonomy and flexibility. There are no specifically dominant features of arbitration proceedings. Arbitration proceedings are based largely on written submissions supported by exhibits, as well as witness statements. Full-blown, US-style discovery is not common, although there are procedures for obtaining documents from third parties. Party officers may testify.

48 Professional or ethical rules applicable to counsel

Are specific professional or ethical rules applicable to counsel in international arbitration in your country? Does best practice in your country reflect (or contradict) the IBA Guidelines on Party Representation in International Arbitration?

Counsel representing parties in arbitration (both domestic and international) are usually advocates or legal advisers subject to rules of ethics and professional conduct established by the mandatory professional associations of advocates or legal advisers. There are no specific ethics rules relating only to arbitration proceedings. The rules are based on elementary principles commonly applied to members of the legal profession, such as confidentiality and the obligation to act with due care, in the best interest of the client, and to avoid conflicts of interest. The rules applied by the professional associations generally share the principles adopted in the IBA Guidelines on Party Representation in International Arbitration. However, the rules are more general and do not regulate issues as specifically as the IBA Guidelines, such as communication between a party representative and an arbitrator.

49 Regulation of activities

What particularities exist in your jurisdiction that a foreign practitioner should be aware of?

There are no legal, administrative or other restrictions on foreign counsel taking part in arbitration in Poland. However, there may be visa requirements for citizens of non-EU countries. In case of ad hoc arbitration, the arbitrator may face a complex issue of settling the personal income tax on the arbitrator's fee.