



# Arbitration

in 50 jurisdictions worldwide

# 2010

Contributing editors: Gerhard Wegen and Stephan Wilske



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# Poland

Justyna Szpara and Paweł Chojecki

Łaszczuk & Partners

## Laws and institutions

### 1 Multilateral conventions

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 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 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 treaties

Do bilateral treaties relating to arbitration exist with other countries?

Poland is a party to bilateral treaties relating to arbitration (recognition and enforcement) with the following countries: Algeria (treaty of 9 November 1976), Bosnia and Herzegovina (treaty of 6 February 1960, binding since 22 December 2006), China (treaty of 5 June 1987), Croatia (treaty of 6 February 1960, binding since 13 April 1995), Iraq (treaty of 29 October 1988), Macedonia (treaty of 9 May 2007), Morocco (treaty of 21 May 1979), Serbia (treaty of 6 February 1960), Slovenia (treaty of 6 February 1960, binding since 1 March 1995), Syria (treaty of 16 February 1985) and Turkey (treaty of 12 April 1988).

Poland has also entered into 66 bilateral investment treaties, most of which provide for arbitration of disputes between an investor and the host state.

### 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?

Arbitration law is contained in part V of the Polish Civil Procedure Code. Generally, Polish arbitration law applies 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. The most significant differences include additional grounds for setting aside an award and the concept of the place of issuance of the award as the place where the award was signed by the arbitrators, not the place of arbitration.

### 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 which the parties cannot contract around, 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 article 4 of the UNCITRAL Model Law).

### 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 respect the parties' choice of law. The arbitral tribunal decides according to general rules of law or equity only if the parties have expressly authorised it to do so.

### 7 Arbitral institutions

What are the most prominent arbitral institutions in your country?

The most prominent arbitral institutions in Poland are:

#### 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

### Court of Arbitration at the Polish Confederation of Private Employers (PCPE LEWIATAN)

ul. Flory 9 lok. 3  
00-586 Warsaw  
Poland  
Tel: +48 (22) 565 20 70  
Fax: +48 (22) 565 20 95  
www.pkpplewiatan.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. Thus certain intellectual property and competition matters are not arbitrable. The law also excludes disputes involving alimony. An arbitration agreement concerning employment disputes may be made only after the dispute has arisen.

It is recognised that the intra-company disputes as such are arbitrable, but it is debatable whether the settleability criterion must be met. The majority view is that settleability is required, which makes certain types of corporate disputes non-arbitrable, for example, disputes involving the validity of corporate resolutions.

##### 9 Requirements

What formal and other requirements exist for an arbitration agreement?

An arbitration agreement must be made in writing, signed by the parties, or contained in correspondence (including electronic correspondence). It may be incorporated by reference (eg, in general terms and conditions).

##### 10 Enforceability

In what circumstances is an arbitration agreement no longer enforceable?

An arbitration agreement may be 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

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

An arbitration agreement is generally binding only on the parties. Exceptions extending the arbitration clause to third parties include assignment of the underlying contract, general succession, and extension of an arbitration clause included in articles of association to the company and any subsequent shareholder.

##### 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?

The arbitration law does not contain any provisions regarding third-parties. This could be addressed in arbitration rules or the arbitration agreement, but in any event the third party would have to be a party to a valid arbitration agreement.

##### 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.

#### Constitution of arbitral tribunal

##### 15 Appointment of arbitrators – restrictions

Are there any restrictions as to who may act as an arbitrator?

Generally, any person may act as an arbitrator. There are no nationality restrictions. 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 list of arbitrators, but usually the list is not binding on the parties. Under the rules of both the Court of Arbitration at the Polish Chamber of Commerce and the Court of Arbitration at the PCPE LEWIATAN, the sole arbitrator or presiding arbitrator must be selected from the chamber's list.

##### 16 Appointment of arbitrators – default mechanism

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 another 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. Under the rules of the the Court of Arbitration at the PCPE LEWIATAN in such instances the nomination is made by the Nomination Committee.

##### 17 Challenge and replacement of arbitrators

On what grounds and how can an arbitrator be challenged and replaced?

The 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 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 at the 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, a party may seek removal by the court.

As in article 14 of the UNCITRAL Model Law, there are no specific grounds for replacement of an arbitrator. General grounds are that it is obvious that the arbitrator will not fulfil his duties in a given time or is in 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 alternative at the beginning if the first-choice arbitrator must be replaced.

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#### 18 Relationship between parties and arbitrators

What is the relationship between parties and arbitrators?

When the arbitrator accepts the appointment, an agreement is 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.

Arbitrators may resign at any time, but if an arbitrator resigns without serious grounds, he or she may be liable for damages.

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#### Jurisdiction

#### 19 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 must be raised before joining issue on the merits (typically the objection must be raised in the reply to a 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.

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#### 20 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 the award on 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.

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#### Arbitral proceedings

#### 21 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.

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#### 22 Commencement of arbitration

How are arbitral proceedings initiated?

Arbitration proceedings may be commenced by filing a notice for arbitration, designating the parties, the dispute, and the arbitration agreement or clause, and also appointing an arbitrator if the party is entitled to do so. The tribunal serves the notice for arbitration on the other party. 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 of the Polish Chamber of Commerce provide for a different way of initiating proceedings, by filing a statement of claim with the Court designating the parties (with a register transcript for corporate bodies), the arbitration agreement or other grounds for jurisdiction of the tribunal, the amount in dispute, the nature and grounds for the claim, and evidence in support of the allegations. The statement of claim may include appointment of an arbitrator. 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 address. A statement of claim should be filed in the language of the proceedings, with enough copies for each respondent and each arbitrator. Similarly, the Rules of the Court of Arbitration at the PCPE LEWIATAN provide that the proceeding is initiated by filing statement of claim with the Court; the rules contain also similar requirements as to the content of the statement of claim.

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#### 23 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 request of any party.

Under the Rules of the Court of Arbitration of the Polish Chamber of Commerce, a hearing is the norm, but the parties dispense with a hearing, or the tribunal may decide that a hearing is unnecessary because the case is clear from the submissions. Under the Rules of the Court of Arbitration at the PCPE LEWIATAN the hearing is mandatory, unless the parties waived the hearing.

**24 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 evidentiary matters. Relevant evidence in any form (eg, 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.

**25 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 arbitration proceedings. The tribunal may also request a court to examine evidence (a document) in the possession of a third party. The court may then require the third party to present the document.

**26 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 of the Polish Chamber of Commerce provide that proceedings before the arbitral tribunal are confidential. This applies to all participants, but the parties may decide on the scope of confidentiality – for example that the fact of commencement of proceedings is confidential. During the hearing only parties, attorneys, and witnesses may be present, and, with the consent of the parties and the tribunal, other persons.

**Interim measures****27 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.

**28 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 which 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 enforcement proceedings). Also, because the law does not govern the effect of interim measures ordered by a tribunal that are not judicially enforceable (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 arbitration tribunal.

**Awards****29 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 shall 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.

**30 Dissenting opinions**

How does your domestic arbitration law deal with dissenting opinions?

A dissenting arbitrator might indicate that fact in the award, together with his or her signature. A dissenting opinion requires a justification.

**31 Form and content requirements**

What form and content requirements exist for an award? Does the award have to be rendered within a certain time limit?

The arbitration award shall be in writing and signed by all arbitrators. If there are three or more arbitrators, it is sufficient if the majority of arbitrators sign the award, indicating why the rest did not. The award shall designate the parties and arbitrators, the arbitration agreement or other grounds for jurisdiction, the date and place the award is issued, and the reasons for the decision.

Polish law does not provide time limits for issuance of an arbitral award. However, the Rules of the Court of Arbitration of the Polish Chamber of Commerce provide that an award should be issued within one month after the close of the case. This deadline may be extended for a specific period due to the complexity of the issues, or other circumstances of the case. Under the Rules of the Court of Arbitration at the PCPE LEWIATAN the tribunal should make efforts to issue the award within 30 days from the close of the hearing.

**32 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?

An arbitration award shall state the date on which it was made. However, it is the date of service of the award on the party that commences the period for a challenge (three months from service) or a motion to correct the award (two weeks from service). 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.

**33 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 and partial awards, at its discretion. The tribunal may issue a consent award if the parties reach a

settlement and request the tribunal to convert the settlement into an award. The tribunal may also issue a supplementary award if a party, within one month after service of the award, 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 of the Polish Chamber of Commerce) provide for the possibility of issuing a preliminary award, namely, an award upholding a claim in principle while continuing the proceedings. It is questionable, however, whether such a decision constitutes an arbitral award and thus can be separately challenged.

#### 34 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 provide 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.

#### 35 Cost allocation and recovery

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

What costs are recoverable?

Polish law does not provide for rules on cost allocation or recovery. However, according to the Rules of the Court of Arbitration of the Polish Chamber of Commerce, a final award should contain a decision on costs and attorneys' fees. Attorneys' fees should be assessed per attorney, according to his or her work input, up to the maximum of half of the arbitration fee in the case, but no more than 100,000 zloty.

#### 36 Interest

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

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

#### Proceedings subsequent to issuance of award

#### 37 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 and on its own motion. The party must request the 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).

#### 38 Challenge of awards

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

The arbitral award may only be challenged in a proceeding to set aside an award, which may be instituted in court by a party, a party's legal successor, a public prosecutor or the ombudsman. Only an award issued in Poland may be subject to a proceeding 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 the basis for issuance of the award was 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.
- (viii) The award is contrary to public policy.

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

#### 39 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 appeal. 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 zloty at each instance (including the Supreme Court). The court fee must be paid by a 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, namely, 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.

#### 40 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?

Both recognition and enforcement of the award (domestic and foreign) require a court decision, issued in a proceeding that may be

### Update and trends

One of the hot topics in arbitration is the issue of extension of the effects of arbitration clause to third parties. The trend is for the state court to restrict it only to cases of the assignment, succession, and extension of the effects of the clause in the articles of association of the company and its shareholders. Another heavily discussed issue is the arbitral tribunal's jurisdiction in cases where the merits of the dispute affect the tribunal's jurisdiction as well as resolution of the dispute.

The Republic of Poland has been party to several high-profile investment disputes that have been arbitrated pursuant to investment treaties. The dispute between Poland and Dutch insurer Eureko BV seems to be ending with a settlement, while the dispute between Poland and the French-based Vivendi group appears to be going at full steam.

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 enforcement 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. It is recognised, although not undisputed, that in the case of foreign awards, recognition or enforcement has the same *res judicata* effect as under the law of the country of origin of the award (the 'extension of effect' theory). 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 actual enforcement 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 Art. 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 also be based on one of the grounds indicated in the New York Convention, or in the case of non-convention awards, for the following reasons.

- 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.
- 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 mentioned in 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.

#### 41 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?

The domestic courts tend to accept that an award has been set aside by the court at the place of arbitration, and refuse to recognise an award that has been set aside. There are no reported cases recognising awards set aside at the place of arbitration.

#### 42 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 fee for enforcement 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.

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**Other**

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**43 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.

**44 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 for foreign counsel to take 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 remuneration.



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