

## POLAND

### DELOS GUIDE TO ARBITRATION PLACES (GAP)

CHAPTER PREPARED BY

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**C H A N C E**

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#### JURISDICTION INDICATIVE TRAFFIC LIGHTS

1. Law ●
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There have not been any material changes requiring an update to this chapter (including the traffic lights) since the date of the latest version. Nonetheless, please note that this chapter does not constitute legal advice and its authors, the contributing law firm and Delos Dispute Resolution decline all responsibility in this regard.

## IN-HOUSE AND CORPORATE COUNSEL SUMMARY

Key places of arbitration in the jurisdiction	The key place of arbitration is Warsaw, where the most reputable arbitration institutions in Poland are based. The cases typically concern M&A transactions, construction disputes and disputes arising from commercial leases.
Civil law / Common law environment?	Civil law.
Confidentiality of arbitrations?	Arbitration is confidential (this is not specifically regulated by Polish law, but typically the rules of arbitration of the Polish courts of arbitration provide for confidentiality).
Requirement to retain (local) counsel?	There is no requirement to retain legal counsel.
Ability to present party employee witness testimony?	The parties can present the testimony of their own employees.
Ability to hold meetings and/or hearings outside of the seat?	Meetings and/or hearings can be held outside of the seat.
Availability of interest as a remedy?	The arbitral tribunals typically award interest on the principal amounts claimed.
Ability to claim for reasonable costs incurred for the arbitration?	A party typically can claim any reasonable costs incurred in the course of arbitration including the arbitrators' fees and expenses, the party's costs of legal representation, costs of expert opinions and translations.
Restrictions regarding contingency fee arrangements and/or third-party funding?	Lawyer's fees cannot be based solely on a contingency basis.
Party to the New York Convention?	Yes.
Other key points to note	The arbitration agreement must be in writing (or in electronic communications exchanged between both parties).  The arbitration proceedings usually last from between six and eighteen months.
WJP Civil Justice score (2018)	0.67

## ARBITRATION PRACTITIONER SUMMARY

Date of arbitration law?	The Polish arbitration law was enacted in 2005 and the last revision was made in 2015.
UNCITRAL Model Law? If so, any key changes thereto?	The Polish arbitration law is mainly based on the UNCITRAL Model Law. The key modifications are: the arbitration agreement must be in writing and cannot confer a unilateral right to arbitrate only on one of the parties. Arbitration agreements in respect of disputes with consumers or concerning labour law are valid only if they are concluded after the dispute arises.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	No.
Availability of <i>ex parte</i> pre-arbitration interim measures?	Polish courts can issue <i>ex parte</i> pre-arbitration interim measures.
Courts' attitude towards the competence-competence principle?	
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	The grounds for annulment of an arbitral award are similar to those provided for in the New York Convention.
Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	Under Polish law, the courts cannot recognize and enforce an award annulled at the seat of the arbitration.  Set aside and recognition/enforcement proceedings are single-staged and are held before the Court of Appeal. The decision of the Court of Appeal (concerning the enforcement of a foreign arbitral award or setting aside of local/foreign awards) can be appealed to the Supreme Court, but on very narrow grounds.
Other key points to note?	∅

## JURISDICTION DETAILED ANALYSIS

### 1. The legal framework of the jurisdiction

#### 1.1 Is the arbitration law based on the UNCITRAL Model Law?

Yes, the Polish arbitration law (*Part Five of the Code of Civil Procedure, "CCP"*) is largely based on the UNCITRAL Model Law. The key modifications are:

- The Polish arbitration law applies to all arbitration proceedings which are conducted in Poland (irrespective of whether these are domestic or international arbitrations) (**Art. 1155 CCP**).
- The arbitration agreement must be in writing, which is defined as an exchange of statements by both parties (**Art. 1162 CCP**, see point 2.3 below).
- An arbitration agreement conferring a unilateral right to arbitrate on one of the parties is ineffective (**Article 1161 § 1 CCP**).
- An active national judge cannot serve as an arbitrator (**Article 1170 § 2 CCP**).
- There are some separate rules as to the enforceability of awards issued outside of Poland (**Art. 1215 CCP**, see point 5.5 below).

#### 1.2 When was the arbitration law last revised?

The Polish arbitration law was enacted in 2005 and was subject to the last revision in September 2015, which came into force on 1 January 2016 and limited the post-arbitration proceedings to one-instance proceedings (before the Court of Appeal, with the possibility of a cassation appeal to the Supreme Court).

### 2. The arbitration agreement

#### 2.1 How do the courts in the jurisdiction determine the law governing the arbitration agreement?

Under Polish private international law ("**PIL**"), the arbitration agreement is subject to:

- the law of the parties' choice;
- in the absence of such choice - the law of the seat of arbitration;
- in the absence of the choice of the seat - the law governing the subject matter of the dispute;
- in any event, the arbitration agreement is effective if it is effective at least under the law where the award was issued or the arbitration proceedings are pending (**Article 39 PIL**).

The formal requirements of the arbitration agreement are governed by the law of the seat of arbitration. The arbitration agreement, however, is also effective if it meets the formal requirements of the law governing the arbitration agreement (**Article 40 PIL**).

#### 2.2 Is the arbitration agreement considered to be independent from the rest of the contract in which it is set forth?

Yes, the arbitration agreement is considered to be independent from the rest of the contract (as confirmed by the Polish Supreme Court).<sup>1</sup> Consequently, the invalidity of the contract does not affect the validity of the arbitration agreement.

#### 2.3 What are the formal requirements for an enforceable arbitration agreement?

An arbitration agreement must be in writing (**Article 1162 § 1 CCP**), which encompasses also agreements concluded by way electronic communications e.g. an exchange of e-mails, short text messages.<sup>2</sup>

<sup>1</sup> Judgment of the Supreme Court dated 2 March 2017, case ref. V CSK 392/16.

This requirement is also fulfilled if the arbitration agreement is concluded in an exchange of documents or statements between the parties by means of communication which provides a record of the agreement or, if the written contract refers to a document containing an arbitration clause, making it a part of the contract (**Article 1162 § 2 CCP**). This does not apply to arbitration agreements entered into with consumers and concerning labour law.

The arbitration agreement may also be incorporated in the articles of association of a company, in which case it will bind the shareholders (**Article 1163 CCP**).

#### **2.4 To what extent, if at all, can a third party to the contract containing the arbitration agreement be bound by said arbitration agreement?**

A third party can be bound by the arbitration agreement only in very exceptional cases. For example:

- If a claim or right arising under the contract (which was subject to the arbitration agreement) is transferred to a third party, then such third party is also bound by the arbitration agreement.<sup>3</sup>
- If a contract grants a benefit to a third party (which is subject to an arbitration agreement), then the third party enforcing such benefit is bound by the arbitration agreement.<sup>4</sup>
- An arbitration agreement contained in the articles of association of a company binds its shareholders (even those who did not sign the articles of association but joined the company later) in relation to disputes concerning the company (**Article 1163 CCP**).

#### **2.5 Are there restrictions to arbitrability?**

Yes:

- Disputes concerning spousal and child support (maintenance claims) are not arbitrable (**Article 1157 CCP**) (as well as other disputes concerning rights that cannot be freely disposed of by parties).
- In the case of disputes with consumers and labour disputes, the parties may agree to arbitrate only after the dispute arose (**Article 1164 and 1164<sup>1</sup> § 1 CCP**).

### **3. Intervention of domestic courts**

#### **3.1 Will the courts stay litigation if there is a valid arbitration agreement covering the dispute?**

The Polish courts will dismiss (rather than stay) the case if there is a valid arbitration agreement (irrespective of the seat of the arbitration) (**Article 1165 CCP**).

But the courts will only dismiss the case upon an objection raised by one of the parties. Such objection must be raised in litigation before the party submitted the first statement on the merits.

#### **3.2 How do courts treat injunctions by arbitrators enjoining parties to refrain from initiating, halt or withdraw litigation proceedings?**

The Polish arbitration law does not entitle arbitrators to issue orders enjoining the court to stay litigation because of the pending arbitration proceeding. Therefore, it is rather unlikely that Polish courts would consider themselves bound by such orders.

<sup>2</sup> Jakubecki Andrzej, *Kodeks postępowania cywilnego. Komentarz aktualizowany. Tom II. Art. 730-1217, Komentarz do art. 1162 § 2* (2017).

<sup>3</sup> Judgment of the Supreme Court dated 3 September 1998, case ref. I CKN 822/97.

<sup>4</sup> Art. 393 § 1 and § 2 of the Polish Civil Code.

### 3.3 On what grounds can the court intervene in arbitrations seated outside of the jurisdiction?

The Polish courts can intervene in arbitrations seated outside Poland only if this is expressly provided for by the Polish arbitration law. For example, Polish courts can:

- issue interim injunctions in support of pending arbitration proceedings seated outside of Poland (**Article 1166 CPC**);
- upon the arbitrators' request, Polish courts can examine the evidence or perform other actions which the arbitral tribunal is not able to perform (**Article 1192 CCP**).

## 4. The conduct of the proceedings

### 4.1 Can parties retain outside counsel or be self-represented?

Yes, the parties can be self-represented or represented by another person. The parties are not required to be represented by legal counsel.

### 4.2 How strictly do courts control arbitrators' independence and impartiality?

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

An arbitrator may be challenged only if there are circumstances that raise justifiable doubts as to his/her impartiality or independence or if he/she does not have the qualifications prescribed by the agreement between the parties (**Article 1174 § 2 CCP**).

The parties should first file a challenge to the arbitral tribunal, and only if this challenge is unsuccessful may the parties request the Polish courts to deal with the challenge (**Article 1176 CCP**). There are no statutory time limits for the courts to decide on the challenge.

An arbitrator may not be challenged only because he/she failed to disclose the circumstances which the party considered as proving his/her impartiality. If the circumstances do not cast a justifiable doubt on the arbitrator's independence, the court will not accept the challenge and order the revocation of the arbitrator whose independence is disputed.

### 4.3 On what grounds do courts intervene to assist in the constitution of the arbitral tribunal (in case of *ad hoc* arbitration)?

The court will appoint an arbitrator (or the presiding arbitrator) upon a motion filed by any of the parties, if:

- a party fails to appoint an arbitrator within one month from receiving the other party's request to do so, or
- the arbitrators appointed by the parties failed to appoint the presiding arbitrator within one month from their appointment.

The same rules apply if the parties fail to cooperate in appointing a sole arbitrator (**Article 1171 § 2 CCP**). The parties are free to agree on different appointment mechanism.

### 4.4 Do courts have the power to issue interim measures in connection with arbitration?

Polish courts are entitled to issue interim measures in support of arbitration proceedings if the applicant's case is plausible and it is likely that in the absence of such measure the enforcement of the award or the achievement of the purpose of the proceedings will be prevented or significantly impeded (**Articles 730 and 1166 CCP**). The interim measures may be ordered before the constitution of the arbitral tribunal and *ex parte*.

#### 4.5 Other than arbitrators' duty to be independent and impartial, does the law regulate the conduct of the arbitration?

Unless the parties have agreed otherwise, the arbitral tribunal may conduct the proceedings in the manner it deems appropriate. The arbitral tribunals often rely on the UNCITRAL Arbitration Rules or the IBA Guidelines.

The Polish Code of Civil Procedure (to the extent it governs the litigation before Polish courts) does not apply to arbitration. However, the CCP regulates certain aspects of the conduct of arbitration and key principles:

- At all times, the parties shall be treated equally. Each party has the right to be heard and to present its arguments and evidence for its support (**Article 1183 CCP**).
- The place where the hearing may be held is left to the parties' choice. However, if the parties have not agreed otherwise the arbitral tribunal may regardless of the parties' choice, designate a hearing to be held in any place the tribunal considers appropriate for the arbitrators' deliberation or hearing of evidence (**Article 1185 CCP**);
- The tribunal can hold a hearing or, alternatively, conduct the proceedings on the basis of an exchange of pleadings and documents. The arbitral tribunal is obliged to hold a hearing if any party requests the tribunal to do so (**Article 1189 § 1 CCP**).
- Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party which *prima facie* proved its claim, order the interim measures it considers necessary. The arbitral tribunal may require a party to provide appropriate security in order for the measure to be effective (**Article 1181 CCP**).
- The arbitral tribunal has the power to order the disclosure or discovery of documents. In the event of difficulties with obtaining documents, the arbitral tribunal may request a state court to assist in the taking of evidence (**Article 1192 § 1 CCP**). It is worth mentioning that under Polish law, there are no restrictions as to the presentation of testimony by a party's employees.
- The arbitral tribunal cannot apply coercive measures to obtain evidence (**Article 1191 § 1 CCP**).

Polish arbitration law itself does not provide for any rules on the confidentiality of arbitration. However, the arbitration rules of Polish arbitration institutions often include such confidentiality obligations.

The length of arbitration proceedings is not regulated by law. Practically, it usually fluctuates from between twelve and twenty-four months.

The CCP is silent on costs of arbitration, however, in the absence of an agreement between the parties, the arbitral tribunal will typically order the unsuccessful party to bear the costs (as this is a general rule which applies in Polish litigation). However, the 'pay your own way' rule, pursuant to which each party should bear its own costs irrespective of the outcome of the proceedings, is also recognised by some arbitral tribunals.

The costs typically include: the arbitrators' fees and expenses, costs of legal representation, and other costs of the arbitral proceedings, e.g. costs of expert opinions and translations.

The Polish arbitration law does not regulate the awarding of interest.

#### 4.6 Liability

##### 4.6.1 Do arbitrators benefit from immunity to civil liability?

The Polish arbitration law does not grant arbitrators general immunity to civil liability. The Polish arbitration law only provides that an arbitrator can resign at any time. If, however, such resignation is not justified by important reasons the arbitrator is liable for the losses arising from his/her resignation (**Article 1175 CCP**).

The issue of liability is usually regulated by the particular arbitration rules.

#### **4.6.2 Are there any concerns arising from potential criminal liability for any of the participants in arbitration proceedings?**

There are no specific rules concerning the criminal liability of the participants in arbitration proceedings (for example, witnesses). It is disputable whether witnesses who commit perjury in arbitration proceedings could be subject to criminal liability.

### **5. The award**

#### **5.1 Can parties waive the requirement for an award to provide reasons?**

The Polish arbitration law does not expressly allow the parties to waive the requirement for an award to provide reasons (**Article 1197 § 2 CCP**).

#### **5.2 Can parties waive the right to seek the annulment of the award?**

The parties cannot waive the right to seek the annulment of the award.

#### **5.3 What atypical mandatory requirements apply to the rendering of a valid award rendered at a seat in the jurisdiction?**

Pursuant to the Polish Arbitration Law (**Article 1197 CCP**), the arbitral award should not only provide the reasons, but also:

- include a reference to the arbitration agreement; and
- identify the parties and the arbitrators.

In addition, (and in line with the UNCITRAL Model law), the arbitral award should (**Article 1197 CCP**):

- be made in writing and signed by the issuing arbitrators (if the award is issued by a tribunal composed of three or more arbitrators, the signatures of the majority of the arbitrators, accompanied by an explanation why the other signatures have not been provided are sufficient);
- specify the date and place the award was issued.

#### **5.4 Is it possible to appeal an award (as opposed to seeking its annulment)?**

It is not possible to appeal an award. The annulment proceedings are the only mechanism a party can invoke to set aside an award. However, if the parties have agreed that the arbitration proceedings themselves will consist of two instances, the award rendered in the first instance can be appealed against in the course of the arbitration proceedings.

#### **5.5 What procedure exists for the recognition and enforcement of awards, what time limits apply and is there a distinction to be made between local and foreign awards?**

The Polish arbitration law applies to awards rendered in Poland and in foreign countries which are not signatories of the New York Convention (if the award was rendered in a country-signatory of the New York Convention, the New York Convention applies to its enforcement).

The recognition/enforcement of awards is subject to one-instance proceedings conducted by the Court of Appeal. There are no time limits for filing an application to enforce/recognise awards.

The recognition or enforcement of a domestic award shall be refused if:

- the subject matter of the dispute is non-arbitrable under Polish law; or
- the award violates the basic principles of Polish public policy (**Art. 1215 § 3 CCP**).

The same rules apply to the enforcement of foreign awards, with the following exceptions:

- the court hearing is mandatory (**Art. 1215 § 1 CCP**);

- the decision of the Court of Appeal is subject to a cassation appeal to the Supreme Court (**Art. 1215 § 3 CCP**);
- there are five additional grounds to refuse the recognition/enforcement of the award, i.e. if:
  - there was no arbitration agreement between the parties or the agreement was invalid, ineffective or ceased to be binding in accordance with the law governing the agreement;
  - a party was not duly notified of the appointment of an arbitrator or of the arbitration proceedings or was otherwise unable to present its case; or
  - the award was made in relation to a dispute not contemplated by or not falling within the terms of the arbitration agreement or contains a decision on matters beyond the scope of the arbitration agreement - where only part of an award has been rendered outside the scope of the arbitration agreement, then only that part of the award may be set aside; or
  - the composition of the arbitral tribunal or the basic rules of the arbitration proceedings were contrary to the composition or rules agreed on by the parties or to the CCP; or
  - the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, it was made.

#### **5.6 Does the introduction of annulment or appeal proceedings automatically suspend the exercise of the right to enforce an award?**

The filing of an application to annul an award does not automatically suspend the exercise of the right to enforce the award, but the court may, at its discretion, suspend the enforcement proceedings (**Article 1216**).

#### **5.7 When a foreign award has been annulled at its seat, does such annulment preclude the award from being enforced in the jurisdiction?**

According to **Article 1215 § 1, 5) CCP** the court shall refuse recognition or enforcement, if the party proves that the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, it was made. However, this applies only to awards which are not subject to the New York Convention.

#### **5.8 Are foreign awards readily enforceable in practice?**

Polish courts are rather arbitration-friendly and both foreign and domestic awards are readily recognised and enforced in Poland. The grounds for recognition and enforcement of domestic awards under Polish arbitration law are similar to those under the New York Convention.

Polish courts typically refuse to recognize and enforce awards in case of violation of due process. Polish courts rely on public policy, as a basis to refuse enforcement, only in extreme cases.

### **6. Funding arrangements**

#### **6.1 Are there restrictions to the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction?**

The rules of ethics of Polish advocates and legal advisers state that their remuneration cannot be based solely on a contingency fee.

Third-party funding is still not very common in Poland. Because there is little practice in this regard, there are no legal provisions regulating the issue.

#### **7. Is there likely to be any significant reform of the arbitration law in the near future?**

No, not in the nearest future. The last significant reform came into force in 2016 and limited the post-arbitration proceedings to one-instance proceedings.