

GUIDE TO ARBITRATION PLACES (GAP)

POLAND

CHAPTER PREPARED BY

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C H A N C E**

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JURISDICTION INDICATIVE TRAFFIC LIGHTS

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| Evolution of above compared to previous year | ☰ |
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| 8. Compatibility with the Delos Rules | ● |

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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 any and all responsibility.

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 commercial disputes, such as M&A transactions, construction disputes and disputes arising from commercial leases.
Civil law / Common law environment? (if mixed or other, specify)	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, but this is recommended.
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 and/or remotely?	Meetings and/or hearings can be held outside of the seat and/or remotely.
Availability of interest as a remedy?	Where requested, 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?	Local lawyer's fees cannot be based solely on a contingency basis.
Party to the New York Convention?	Yes.
Party to the ICSID Convention?	No.
Compatibility with the Delos Rules?	Polish arbitration law is compatible with the Delos Rules.
Default time-limitation period for civil actions (including contractual)?	According to Article 118 of the Polish Civil Code, unless a special provision states otherwise, the default time-limitation period is six years and three years for claims pertaining to periodical performances and claims related to economic activity.
Other key points to note?	<p>The arbitration agreement must be in writing (or in electronic communications exchanged between both parties, for example - emails).</p> <p>The arbitration proceedings usually last from between six and eighteen months.</p>

World Bank, Enforcing Contracts: <i>Doing Business</i> score for 2020, if available?	64.4
World Justice Project, Rule of Law Index: <i>Civil Justice</i> score for 2020, if available?	0.63

ARBITRATION PRACTITIONER SUMMARY

Date of arbitration law?	The Polish arbitration law was enacted in 2005 and the last revision was made in 2019.
UNCITRAL Model Law? If so, any key changes thereto? 2006 version?	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 (such unilateral option clauses are deemed ineffective). 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. However, the set-aside proceedings and enforcement proceedings are single-staged and are held before the Courts of Appeal (see also below).
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?	The competence-competence principle is recognised and accepted, but the positive jurisdictional awards issued by arbitral tribunals are subject to appeal to the state courts.
May an arbitral tribunal render a ruling on jurisdiction (or other issues) with reasons to follow in a subsequent award?	Under Art. 1197 § 2 of the Code of Civil Procedure (" CCP "), an arbitral award must include <i>ratio decidendi</i> . However, arbitration law does not specify whether each ruling (<i>e.g.</i> an order on jurisdiction, order concerning admissibility of evidence) must include written reasons. This is usually specified in the arbitration rules, for example the Arbitration Rules of the Court of Arbitration at the Polish Chamber of Commerce state that the tribunal's rulings on jurisdiction must include written reasons.
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.
Do annulment proceedings typically suspend enforcement proceedings?	Annulment proceedings do not automatically suspend enforcement proceedings. However, the court handling enforcement proceedings may, at its discretion, suspend enforcement proceedings until the annulment proceedings are terminated.
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.
If an arbitral tribunal were to order a hearing to be conducted remotely (in whole or in part) despite a party's objection, would such an order affect the recognition or enforceability of an ensuing award in the jurisdiction?	Such order could potentially affect the recognition or enforceability of an ensuing award in Poland, but only in extreme cases (for example, if the party can prove that such order has effectively violated its right to be heard). The court would specifically analyse the reasons why a party objected to a remote hearing. However, there has been no precedents in the case law. The remote hearings are often conducted by the State courts.
Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction?	<p>There are no specific differences as regards arbitration proceedings with public and private parties. There are no rules allowing to treat public parties more favourably. There are no particular issues with enforcement against public bodies. In enforcement proceedings the court does not analyse whether the action of the public body constituted a commercial act or a sovereign act. These considerations are beyond the scope of the enforcement proceedings, which determine only whether all the prerequisites for enforcement of the award have been met (in accordance with the CCP in the case of a national arbitral award and in accordance with the New York Convention in the case of foreign awards).</p> <p>Public bodies are less willing to enter into arbitration agreements in construction contracts.</p>
Is the validity of blockchain-based evidence recognised?	This issue is largely untested in case law. However, as long as the tribunal/court is equipped with tools that allow such evidence to be accessed, it should be recognised.
Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?	This issue is largely untested in case law. Assuming that an arbitration agreement and/or award recorded on a blockchain could be signed with a qualified electronic signature, such agreement and/or award could potentially be recognized as valid.
Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?	This issue is largely untested in case law. However, assuming that the arbitration agreement and/or award recorded on a blockchain would be recognised as valid, the court could also consider them as originals for the purposes of recognition and enforcement.
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? 1985 or 2006 version?

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). This requirement is met also in case of emails (but there is no need for emails to be signed with official electronic signature).
- 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 July 2019. The revision came into force on 8 September 2019. The key modifications were as follows. First, a new rule was introduced (Art. 1169 § 2¹) stipulating that if an action is brought by or against two or more persons they unanimously appoint an arbitrator, unless the arbitration clause stipulates otherwise (while previously this was not clear whether such joint appointment is to be made). Second, new additional formal requirements were introduced regarding the validity of an arbitration clause contained in the articles of association of a commercial company (Art. 1163 § 2) (see point 2.4. below).

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 In the absence of an express designation of a "seat" in the arbitration agreement, how do the courts deal with references therein to a "venue" or "place" of arbitration?

The Polish arbitration law does not differentiate between the "seat", "place" or the "venue" of arbitration. Art. 1155 of the CCP refers only to the "place" of arbitration, however in this provision the word "place" is used to describe the seat of the proceedings. Therefore, in the absence of an express designation of a "seat" in

the arbitration agreement, the court would consider that the indicators of "venue" or "place" of arbitration also serve to designate the seat of the proceedings.

2.3 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).¹ Consequently, the invalidity of the contract does not affect the validity of the arbitration agreement.

2.4 What are the formal requirements (if any) 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.²

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, the company, the governing bodies of the company and their members (**Article 1163 § 1 CCP**). In cases concerning the revocation or recognition of the invalidity of a resolution of the shareholders' meeting of a limited liability company or a general meeting of a joint-stock company, for an arbitration clause to be effective it must provide for the obligation to announce the commencement of proceedings. The announcements should be made in the same way as required for company announcements, within one month from the date of the commencement of the proceedings at the latest; the announcement may also be published by the claimant. In such cases, each partner or shareholder may join the proceedings on one of the sides within one month from the date of their announcement. (**Article 1163 § 2 CCP**).

2.5 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.³
- 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.⁴
- 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 § 1 CCP**).

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

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

³ Judgment of the Supreme Court dated 3 September 1998, case ref. I KKN 822/97.

⁴ Art. 393 § 1 and § 2 of the Polish Civil Code.

2.6 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 **1164¹ § 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.

The same rule applies to arbitrations seated in Poland and elsewhere.

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.

3.3 On what ground(s) can the court intervene in arbitrations seated outside of the jurisdiction? (Relates to anti-suit injunctions/anti-arbitration injunctions or orders, but not only)

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 foreign 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? For example: does an arbitrator's failure to disclose suffice for the court to accept a challenge or do courts require that the undisclosed circumstances be of a gravity such as to justify this outcome?

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**). This obligation applies not only at the time of the appointment, but is binding on the arbitrator throughout the arbitration proceedings, *i.e.* until the tribunal has rendered the award and closed the proceedings.

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 (or no decision on the challenge is issued within one month) 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. The Polish courts often refer to the IBA Guidelines on Conflicts of Interest in International Arbitration when deciding upon challenges.

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? If so, are they willing to consider *ex parte* requests?

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 court recognizes the application for interim measures *ex parte*.

The interim measures may be ordered both before the constitution of the arbitral tribunal (or even before the start of the arbitration proceedings or during the arbitration proceedings. If interim measures are granted before the commencement of the arbitration, the court will order the applicant to initiate arbitration within prescribed time limit (no longer than two weeks).

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 (in case of *ad hoc* arbitration) or the IBA Guidelines on Conflicts of Interest in International Arbitration.

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 that the tribunal is not allowed to designate the place of the hearing for the purposes of the tribunal's deliberations or the hearing of evidence, 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 Polish arbitration law

does not specify whether an arbitration hearing may be held remotely if a party to the arbitration objects to such hearing. In cases where the parties have not agreed in advance on whether the hearings can be held remotely, the tribunal must take into account objections against a remote hearing and analyse whether the party has possibility to obtain the technical means to participate in the hearing.⁵ The remote hearings are often organised in practice (by both the arbitral tribunals and the state courts).

- 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. Polish arbitration law does not restrict the rules of potential discovery phase, but common-law style discovery is not popular in arbitration proceedings seated in Poland. Typically, tribunals take a narrow approach to document production. 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 same applies to the members of the board of directors.
- 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. Typically, the parties also treat arbitration proceedings as confidential and agree on the confidentiality arrangements at the outset of arbitration.

The length of arbitration proceedings is not regulated by law. It usually fluctuates from between six and eighteen 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 the 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 from civil liability?

The Polish arbitration law does not expressly regulate 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 applicable arbitration rules.

⁵ M. Judkiewicz, *Advantages and Disadvantages of remote arbitration proceedings*; Arbitration Bulletin: New Technologies in Institutional Arbitration, 26 December 2020, page 10, available at: https://sakig.pl/wp-content/uploads/2020/12/Nowe-technologie-arbitrazu_grudzien_2020_15_12.pdf.

Under general rules of civil liability, to bring a claim for damages against the arbitrator, the party will have to prove that (i) the arbitrator violated *recepti arbitrii* (i.e. failed to perform his/her duties, for example, disclosed confidential obligations, resigned without important reasons), (ii) the party suffered damage and (iii) there is an adequate causal link between the arbitrator's behaviour and the damage suffered. However, if a party seeks to claim damages related to the outcome of the case or the content of the award, it will have to prove arbitrators' intentional wrongdoing (as lack of such limitation may undermine arbitrators' independence).⁶

We are unaware of any publicly available cases of Polish courts regarding arbitrators' civil liability.

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. Other criminal offences (such as falsifying documents) are punishable, even if they were committed in the course or for the purposes of arbitration.

5. The award

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

The Polish arbitration law does not 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? If yes, under what conditions?

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?

Considering the requirements for a valid arbitral award pursuant to the Polish Arbitration Law (**Article 1197 CCP**), there are no atypical mandatory requirements that apply.

5.4 Is it possible to appeal an award (as opposed to seeking its annulment)? If yes, what are the grounds for appeal?

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 in the course of the arbitration proceedings. In such a case, the arbitration agreement may determine who the appellate authority will be. On occasions, the applicable arbitration rules mention the framework of the appeal procedure. For example, the Rules of the Court of Arbitration *Lewiatan* envisage that the appellate authority is constituted by three arbitrators or a sole arbitrator, and the arbitrators who rendered the award in the first instance are not allowed to be members of the appellate authority. Under Polish law, the common courts do not hear appeals against arbitral awards.

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).

⁶ T. Ereciński, K. Weitz, 3.5. *Odpowiedzialność arbitra. W: Sąd arbitrażowy*, Wydawnictwo Prawnicze LexisNexis, 2008.

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
- (additionally, in respect of consumer disputes – the award deprives the consumer of mandatory rights granted to the consumer under applicable law) (**Art. 1214 § 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 laws or regulations relating to, or restrictions to, the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction? If so, what is the practical and/or legal impact of such laws, regulations or restrictions?

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

There are no legal provisions regulating the issue of third-party funding, although it is becoming more common in Poland. Recently, one of the regional courts in Poland issued a precedent ruling, dismissing the respondent's motion seeking to secure the costs of the enforcement of the security. The court found that the participation of the financing fund is legally admissible and that the claimant, when hedging the financing, gave a guarantee of solvency (the security). It therefore confirmed the legality of an agreement with a third party for the financing of the costs of the dispute.

7. Arbitration and technology

7.1 Is the validity of blockchain-based evidence recognised?

This issue is untested in the case law. However, recent legal commentaries confirm that blockchain is treated as a storage medium for information *i.e.* single transaction recorded on a blockchain is considered a document.⁷ As documentary evidence is admissible under the Polish law, blockchain-based evidence could be recognized, as long as the court/tribunal would be equipped with the tools which allow to access such evidence.

7.2 Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?

According to Art. 1162 CCP an arbitration agreement must be made in writing. This means that the arbitration agreement must be included in a document containing handwritten signatures⁸ or alternatively qualified electronic signatures.⁹ The requirement for an arbitration agreement to be in writing is also satisfied if the arbitration clause is included in communications exchanged between the parties or statements made by means of remote communication, which enable their content to be recorded.

Arbitration agreement recorded on blockchain does not satisfy the requirement of a handwritten signature. The issue whether information recorded on blockchain may be regarded as communication or statements made by means of remote communication is untested in the case law. Therefore, it is difficult to assess whether arbitration agreement recorded on a blockchain would satisfy the requirements of being in writing.

However, assuming that an arbitration agreement recorded on blockchain could be attested by a verifiable qualified electronic signature, such agreement could potentially be recognized as valid. Nevertheless, this issue has not been tested in the Polish case law yet.

Article 1197 § 1 CCP similarly requires the arbitral award to be in writing. This requirement is satisfied if the award is executed in the form of a document signed by the arbitrators. So far, majority of Polish arbitration doctrine supports the view that only a handwritten signature satisfies a writing requirement imposed by Article 1197 § 1 CCP. However, recently a view that arbitration award may be signed electronically also

⁷ M. Załucki, Civil Code, Commentary, Second edition, Warsaw 2019, Commentary to art. 77³, published: Legalis online.

⁸ T. Ereciński, Code of Civil Procedure, Commentary, Volume VI, International civil procedure. Arbitration, published: LEX online. Commentary to art. 1162.

⁹ M. Małgorzata, Code of Civil Procedure, Commentary Volume II, Art. 478-1217, Fourth edition, published: LEX online, Commentary to art. 1162.

emerged.¹⁰ According to this view, writing requirement is satisfied if the award is signed by qualified electronic signature or advanced electronic signature as defined in EU Regulation no 910/2014 of 24 July 2014 on electronic identification and trust services for electronic transactions in the internal market.¹¹ Therefore, assuming that an arbitral award recorded on blockchain can be signed by qualified electronic signature or advanced electronic signature such award could potentially be recognized as valid. Nevertheless, this issue has not been tested in the Polish case law yet.

7.3 Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?

So far there is no available case law on the issue. However, assuming that the arbitration agreement and/or award recorded on a blockchain would be recognised as valid due to the qualified electronic signature, the court could also consider them as originals for the purposes of recognition and enforcement.

7.4 Would a court consider an award that has been electronically signed (by inserting the image of a signature) or more securely digitally signed (by using encrypted electronic keys authenticated by a third-party certificate) as an original for the purposes of recognition and enforcement?

Article 1197 § 1 of the CCP provides that an award must be "in writing". Some academics interpret this as a requirement for an award to be a written document signed by the arbitrators. The status of awards that have been signed electronically but not secured by an additional encryption key (e.g. signatures made by inserting an image of a handwritten signature into a document) remains uncertain, and is untested in Polish case law. Notably, the interpretation of some provisions of the Polish CCP (e.g. Art. 1162 concerning the form of arbitration agreement) confirms that the requirement of a written form does not necessarily require a handwritten document or a document rendered in a hard copy. However, it remains uncertain whether a non-encrypted e-signature would be considered "an original" for the purposes of recognition and enforcement.

Awards that have been signed with an advanced electronic signature fulfilling the criteria laid down in Article 26 of eIDAS Regulation (910/2014) are likely to be recognised by the Polish state courts. The Polish Civil Code allows declarations of will to be made in electronic form and certified by an encrypted signature (Article 78 Polish Civil Code). Although the CCP lacks a specific regulation regarding arbitral awards issued in electronic form, a state court might be guided by Article 324(4) of the CCP, which provides that in the case of virtual court proceedings, a state court may issue judgements signed with an encrypted electronic signature [podpis kwalifikowany]. Arbitral scholarship indicates that even if the provisions of the CCP regarding state courts do not directly apply to arbitration, the fact that the use of encrypted electronic signature is envisaged for the state courts means that the use of such signature should also be permitted in arbitration proceedings. Therefore, such an award is likely to be considered "an original" for the purposes of recognition and enforcement.

8. 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 2019 and its main purpose was to further specify the provisions the interpretation of which raised doubts among practitioners.

9. Compatibility of the Delos Rules with local arbitration law

The Delos Rules are compatible with the Polish arbitration law.

¹⁰ B. Gessel-Kalinowska vel Kalisz, Arbitral Award during the Pandemic. Permissibility of Contemporary Electronic Forms, Commercial Law Review, no. 7/2020, published: LEX online.

¹¹ Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2014.257.01.0073.01.ENG.

10. Further reading

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ARBITRATION INFRASTRUCTURE AT THE JURISDICTION

Leading national, regional and international arbitral institutions based out of the jurisdiction, <i>i.e.</i> with offices and a case team?	<p>Court of Arbitration at the Polish Chamber of Commerce in Warsaw https://sakig.pl/en/home-page</p> <p>The Lewiatan Court of Arbitration https://www.sadarbitrazowy.org.pl/en-GB</p>
Main arbitration hearing facilities for in-person hearings?	<p>Court of Arbitration at the Polish Chamber of Commerce in Warsaw https://sakig.pl/en/home-page</p> <p>The Lewiatan Court of Arbitration https://www.sadarbitrazowy.org.pl/en-GB</p>
Main reprographics facilities in reasonable proximity to the above main arbitration hearing facilities?	<p>Xero Druk http://xerodruk.com/</p> <p>Drukarnia 24h Lwowska 9 https://lwowska9.com/</p>
Leading local providers of court reporting services, and regional or international providers with offices in the jurisdiction?	∅
Leading local interpreters for simultaneous interpretation between English and the local language, if it is not English?	<p>Ms Karolina Planda karolinaplanda@wp.pl</p> <p>Mr Krzysztof Zabrzęski zabrzęski@wp.pl</p>
Other leading arbitral bodies with offices in the jurisdiction?	∅