The European Arbitration Review 2020

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A Global Arbitration Review Special Report

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The European Arbitration Review 2020

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Overviews

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Welcome to *The European Arbitration Review 2020*, one of *Global Arbitration Review*'s annual, yearbook-style reports.

Global Arbitration Review, for anyone unfamiliar, is the online home for international arbitration specialists everywhere, telling them all they need to know about everything that matters.

Throughout the year, *GAR* delivers pitch-perfect daily news, surveys and features, organises the liveliest events (under our GAR Live banner) and provides our readers with innovative tools and know-how products.

In addition, assisted by external contributors, we curate a series of regional reviews – online and in print – that go deeper into local developments than our journalistic output is able. *The European Arbitration Review*, which you are reading, is part of that series. It recaps the recent past and adds insight and thought-leadership from the pen of pre-eminent practitioners from all across Europe.

Across 15 chapters, and 88 pages, this edition provides an invaluable retrospective from 31 authors. All contributors are vetted for their standing and knowledge before being invited to take part. Together, our contributors capture and interpret the most substantial recent international arbitration events of the year just gone, supported by footnotes and relevant statistics. Other articles provide a backgrounder – to get you up to speed, quickly, on the essentials of a particular seat.

This edition covers Austria, England and Wales, Finland, France, Germany, Italy, The Netherlands, Norway, Poland, Portugal, Russia, Spain, Sweden and Ukraine.

Among the nuggets it contains:

- news of a rule change in the UK that makes it easier to appoint serving judges as arbitrators (and cheaper);
- an update on how arbitration in Italy is being used for 'freedom to operate' rulings, giving entrepreneurs and innovators security that, if they proceed with a particular venture, they would not hit problems with third-party owned IP rights; and
- a Ukrainian perspective on how to enforce awards against Russia by targeting the assets of Gazprom and other – nominally - private companies.

And much, much more. We hope you enjoy the review. If you have any suggestions for future editions, or want to take part in this annual project, my colleague and I would love to hear from you. Please write to insight@globalarbitrationreview.com.

David Samuels
Publisher
October 2019

Poland

Beata Gessel-Kalinowska vel Kalisz, Natalia Jodłowska, Joanna Kisielińska-Garncarek and Konrad Czech
GESSEL

Introduction

The year 2019 in the Polish arbitration landscape is dominated by amendments introduced to part V of the Polish Code of Civil Procedure (CCP). Whereas the reform of 2016 concerned mainly challenges to arbitral awards before state courts as well as recognition and enforcement proceedings,[1] this latest round of amendments has been focused on the arbitrability of corporate disputes and touched various aspects connected with arbitration clauses. Some of the issues addressed by the legislature have been the subject of vigorous disputes among Polish scholars for many years, so these amendments had been highly anticipated by the arbitration community. The question remains whether these amendments can be assessed as a success, or as a half-hearted effort at coming to grips with the doubts raised in legal doctrine.

To give readers a full overview of the Polish arbitration environment in recent months, we also discuss legislative changes in the field of investment arbitration and the most interesting cases in arbitration-related proceedings.

Legislative changes – 2019 reform to the Polish Code of Civil Procedure

On 8 August 2019, the Legislative Act of 31 July 2019 on amending certain acts on reducing regulatory burdens was announced. The new regulations introduced on the basis thereof entered into force on 8 September 2019, considerably changing some aspects of Polish arbitration law.

The feature of dispute arbitrability

In the first place, the Polish legislature decided to put an end to discussions devoted to the feature of disputes arbitrability – in a general context. As a preliminary remark, it should be recalled that arbitrability is a specific feature of a given dispute that determines whether this dispute may be resolved by an arbitral tribunal, giving an indication of the real meaning and practical importance of arbitration.[2]

Under the amended article 1157 CCP, unless otherwise provided for by specific regulations, the parties may bring before an arbitration court:

- disputes involving property rights, except maintenance cases; and
- disputes involving non-property rights that can be resolved by a court settlement.

The previous wording of this provision gave no clear indication whether the precondition of settleability shall be met in the case of both property and non-property disputes, or solely with regard to the latter. The present amendment puts an end to all discussions on this topic,[3] explicitly broadening the scope of potential disputes that may be brought before arbitral tribunals. It is now beyond any doubt that all disputes involving property rights may be decided by an arbitral tribunal, and there is no need to examine whether they might be subject to settlement or not. The practical importance of this provision relates to the extension of arbitrability to disputes regarding repealing or declaring the invalidity of a resolution adopted by a shareholders meeting of a limited liability company or the general meeting of a joint stock company. Ruling while the previous article 1157 CCP remained in force, the Polish Supreme Court expressed the view that all cases arising from company relations, in order to be arbitrable, must also be amenable to settlement.[4] From now on, the feature of settleability remains irrelevant if the case is of a proprietary nature – which happens very often with reference to corporate disputes.

This amendment is closely connected to article 1163 CCP, pertaining expressly to arbitrability of corporate disputes as such.

Arbitrability of corporate disputes

In accordance with article 1163 section 1 CCP, 'the arbitration clause contained in the articles of association (charter) concerning disputes arising from company relations binds the company and its shareholders'. The category of 'disputes arising out of company relations' is not defined under Polish law and encompasses configurations as varied as disputes between shareholders, disputes between shareholders and the company, disputes between the company and specific bodies of the company or members thereof (so-called internal disputes), and disputes between the company and persons causing damage thereto or arising in connection with membership in the company.

As already mentioned, the controversies regarding arbitrability regarded mainly challenging the resolutions of corporate bodies:[5] annulment (articles 249 and 422 of the Polish Commercial Companies and Partnerships Code[6] (CCC)) or determination of invalidity (articles 252 and 425 CCC) of shareholders' resolutions. Most of the doubts pertained to the settleability of these disputes. Following the amendment of article 1157 CCP, these arguments became irrelevant to proprietary resolutions. It was also emphasised that submission of disputes from this category to arbitration might cause potential risks to the legitimate interests of third parties who are not subject to the arbitration clause.[7]

In accordance with the newly introduced article 1163 section 2 CCP, in disputes regarding repealing or declaring invalidity of a resolution adopted by a shareholders meeting of a limited liability company or the general meeting of a joint stock company, an arbitration clause is effective if it provides for the obligation to announce the initiation of proceedings in a manner required for company announcements within one month from the date of its initiation. Before this amendment, arbitration practice grappled with the question of whether company boards and their members are covered by the relevant arbitration clause contained in the articles of association. Now it has been expressly clarified that such a clause shall cover disputes based on the corporate relationship

not only between shareholders and the company, but also between the company's governing bodies and their individual members.

Apart from that, the amendment merits assessment in two further aspects.

As a rule, it is a welcome development that the legislature has come to appreciate the far-reaching benefits of solving corporate disputes by way of arbitration,[8] including the professionalism of nominated arbitrators, as well as their knowledge of corporate law and commercial practice – which might make for a considerable impact on case law in the field of corporate matters. Submitting a case to arbitration may cause not only change in the dispute resolution forum, but also a significant modification of the axiology constituting the basis of the given judgment. Another important factor is the prolonged duration of proceedings before the state courts, as contrasted with the relative speed of arbitral proceedings. From this point of view, resolving corporate disputes before the general courts sometimes causes pathological situations comprising the deliberate adoption of resolutions in violation of law – defective resolutions remain in force and binding upon corporate bodies and shareholders even for several years until the relevant court proceedings are concluded.[9] In this context, the arbitrability of corporate disputes, perceived as broadly as it is now, is significant from the perspective of the development of arbitration and its growing importance in business practice.

More controversial is the second part of the amended provision addressing procedural problems with the due participation of all interested parties in repealing or declaring the invalidity of a resolution adopted by a company shareholders. Specifically, an arbitration clause is effective if it provides for the obligation to announce the initiation of proceedings in the same manner as is required for company announcements within one month from the date of its initiation. Such an announcement may be published by the company or the claimant. Each shareholder may join the claimant or respondent in the proceedings within one month of such an announcement. This does not, however, impact upon the composition of the arbitral tribunal. The tribunal appointed in the case before subsequent parties joined in will retain its jurisdiction. This conclusion follows from the more general statement that, where there are multiple cases concerning the same resolution, the tribunal appointed in the earliest case shall be competent in all other cases relating to the same resolution. This solution is likely to have as many proponents as objectors. Furthermore, based on the newly introduced article 1169 section 2(1) CCP, if two or more persons file a claim or are sued, they shall appoint the arbitrator unanimously, unless the arbitration agreement provides otherwise. The consequences of failure to present a unanimous decision (ie, appointment of all the arbitrators by an appointing body) was not introduced.

What is striking in this solution is the fact that the authors of the amendment did not take into consideration all the arbitration clauses that have been included in the articles of association of many companies before the change, making them in fact ineffective. It would have been easy enough to envisage solutions to validate all such clauses, but there is nary a word about it.

Applicable rules of the permanent arbitration court

The legislature also introduced an important amendment regarding applicable rules of the permanent arbitration court. Under the new wording of article 1161 section 3 CCP, unless the parties have agreed otherwise, they are bound by the rules of the permanent arbitration court applicable as at the submission date of the claim (whereas previously the CCP gave priority to the rules applicable on the date of the arbitration clause).

It seems that this particular change is rooted in the relatively reasonable assumption that new rules are simply better and more well-considered than the previous ones. On the other hand, the parties to an arbitration agreement are always allowed to choose whatever rules they deem to be most suitable for them.

Legislative changes – goodbye to intra-EU BITs

The judgment of the Court of Justice of the European Union (CJEU) of 6 March 2018, in case C284/16, *Slovak Republic v Achmea BV*, triggered a discussion among Polish arbitration practitioners of the future of intra-EU bilateral investment treaties (BITs). However, even before this judgment, and following recommendations of the European Commission, significant legislative changes in the field of arbitration could be observed in Poland as regards investment arbitration (eg, in 2017, Poland started terminating intra-EU BITs). Combined with the outcome of *Achmea*, this begs the question of the availability of treaty protection to foreign investors from EU member states.

After Italy (in 2012) and Ireland (in 2013) terminated their intra-EU BITs, and after it was reported that the president of Romania had submitted to the Romanian parliament draft legislation approving the termination of Romania's intra-EU BITs (in 2015), it was reported (in February 2016) that the Polish government would likewise review the usefulness of its intra-EU BITs, bearing in mind their likely incompatibility with EU primary law. In January 2017, the prime minister of Poland issued a regulation by which a special working group was formally appointed towards this end.

During 2016 and 2017, several sources reported that Poland was considering the mutual termination of its intra-EU BITs with the Czech Republic, Denmark, Estonia, Latvia and Romania. In September 2017, a bill was announced that empowered the president of Poland to unilaterally terminate the intra-EU BIT with Portugal and, in November 2017, a notice of termination of the intra-EU BIT with Portugal was issued. Moreover, in April and June 2018, a number of similar bills empowered the president of Poland to unilaterally terminate the intra-EU BITs with Austria, Belgium, Luxembourg, Bulgaria, France, Croatia, Cyprus, Germany, Greece, Finland, Hungary, Lithuania, the Netherlands, Spain, Sweden and the United Kingdom. The notices of termination of those various intra-EU BITs have been either published in the Journal of Laws in 2018–2019 or will be published within the coming months.

The justification for this step is that the European Commission has requested that all EU member states terminate their intra-EU BITs. The Polish government also emphasised the fact that the termination of these treaties would not have negative implications for the economic relationships between Poland and other EU member states, including the volume of foreign direct investments in Poland and the volume of Polish direct investments abroad. According to the Polish government, the intra-EU BITs had outlived their usefulness already during the transition period after 1989 and were no longer necessary after 2004 (when Poland joined the EU). Interestingly, none of the five national commercial chambers approached by the Polish government to comment on the plan to terminate the intra-EU BITs objected to this move with any degree of firmness. The chambers of commerce considered the intra-EU BITs to be helpful for Polish business enterprises (even though they rarely launch investor-state arbitrations) but, at the same time, the social partners duly noted the EC

position on the intra-EU BITs in the process of preparatory consultations. Therefore, it appears that *Achmea* was only a nail in the coffin of Poland's intra-EU BITs – which, after Poland joined the EU in 2004, generated 13 intra-EU disputes against Poland and caused a further two disputes launched by Polish investors against EU member states (although it did not constitute the direct, or only, reason for their termination).

What implications will termination of the intra-EU BITs have on the rights of foreign investors in Poland? In the short term, realistically, any changes caused by termination of the intra-EU BITs in and of itself are unlikely to be dramatic, at least as far as foreign investors are concerned. This is to say, during the notice period as stipulated in most of the intra-EU BITs, all the obligations assumed by Poland thereunder will remain in force. Moreover, most of the intra-EU BITs contain sunset clauses that prolong the treaty protections (however, in the cases of the mutual termination of intra-EU BITs with the Czech Republic, Denmark, Estonia, Latvia and Romania, one can assume that the relevant sunset periods may be shortened).

As proved by the case of Airbus, which has withdrawn its intra-EU investment treaty claim against Poland over a cancelled contract with the Ministry of Defence, it is the *Achmea* ruling (referred to by the government in its announcement summarising the *Airbus* decision), rather than the termination of the intra-EU BIT itself, that is keeping investors awake at night. In the wake of *Achmea*, the enforceability of awards issued on the basis of intra-EU BITs in the EU member states, including Poland, has become questionable.

Significant cases

Below, we present several interesting decisions rendered by Polish courts in 2018 and 2019, including precedent-setting rulings, decisions confirming positions consistently presented by the Polish courts as well as solutions of problems not tackled in Polish arbitration practice so far.

No substantive resettlement of the dispute in proceedings for setting aside

It is well established in Polish jurisprudence that, in the course of proceedings for setting aside an arbitral award, a general court does not examine appropriateness of the manner of dispute resolution adopted by the arbitral tribunal, in particular with regard to assessment of the evidence or correctness of the facts established. In other words, the proceedings for setting aside an arbitral award do not lead to substantive reconsideration of the dispute between the parties to the arbitration.

The above position was upheld by the Polish Supreme Court in its judgment of 24 May 2018 in case No. V CSK 6/18. An application for setting aside the arbitral award was made by the respondent in arbitral proceedings, who cited the public policy clause in the context of an evidentiary agreement concluded between the parties.

It was emphasised by the Polish Supreme Court that the public policy clause, having as it does a general character and leaving wide discretion to the state court, does not entitle this court to re-examine the case pending earlier before the arbitral tribunal. While applying the public policy clause, the state court is not entitled to assess whether the judgment is consistent with all applicable legal provisions. Only the fundamental rules of the Polish legal order might be taken into account, without substantive evaluation of the decision rendered by the arbitral tribunal. The procedural public legal order might be taken into account in two aspects:

- compliance of steps leading to issue of the arbitral award with basic procedural rules enshrined in the legal order; and
- compliance of the arbitral award's effects with basic rules of procedural order (such as *res judicata*).

The above judgment upholds the existing line of rulings concerning the public policy clause and the extent of proceedings for setting aside. Dotting the final 'i' by the Supreme Court in this regard increases the stability of jurisprudence and builds confidence among entities choosing Poland as the place of arbitration.

Interpretation of provisions regarding limitation period outside the scope of the public policy clause

The Polish courts have confirmed many times over that the public policy clause, constituting a basis for setting aside arbitral awards, covers legal rules of a constitutional and fundamental nature. This approach was followed, among other cases, in the judgment of the Polish Supreme Court of 9 January 2019 (I CSK 743/17). The general nature of these rules requires *ad casum* verification of each particular situation in which the public policy clause is to be applied.

A significant award concerning the scope of the public policy clause was issued by the Court of Appeal in Łódź on 25 October 2018, case No. I AGa 220/18. In the given case, a party contesting an arbitral award claimed that the arbitral award had wrongly interpreted and applied provisions regarding a limitation period by holding that the claim submitted in the arbitration had become time-barred upon elapse of a one-year, rather than a three-year, period. The Court of Appeal in Łódź stated that, even assuming that the interpretation of the provisions regarding the limitation period had been incorrectly applied by the arbitral court, such a shortcoming would not have constituted violation of the public policy clause.

The above judgment is in line with the previous jurisprudence respecting the wide autonomy of arbitral tribunals and showing little inclination to interfere with their decisions as to the merits of the case.

Plea on violation of a party's right to defence: in arbitration, or never

An interesting judgement on possible grounds for setting aside an arbitral award was also issued by the Court of Appeal in Warsaw on 2 August 2019 in case No.VII AGa 1162/18, in which a party claimed that the arbitral tribunal had violated its right to defend its case. The Court of Appeal in Warsaw stated, in the first place, that it had not been proven that the party's right to defence had been violated in arbitral proceedings at all. Even more importantly, the party's plea regarding violation of its right submitted in an application for setting aside the arbitral award could not have been successful since the party had had a chance to submit its plea in the course of the arbitral proceedings, but had not availed itself of this possibility.

The above position presented by the Court of Appeal in Warsaw confirms the arbitration-friendly approach of Polish courts, especially when analysing the wording of the Polish rules on setting aside arbitral awards. To wit, in accordance with article 1206 section 1 point 2 of the CCP, a party may file an application for setting aside an arbitral award if a party was deprived of the possibility to defend its rights before an arbitral tribunal.[10] The aforementioned provision does not explicitly require that a party submits the respective allegation before an arbitral tribunal. On the other hand, in the case of another prerequisite (ie, touching

issues not covered by an arbitration clause or falling beyond its scope by an arbitral tribunal),[11] the law explicitly provides that the court cannot set aside an arbitral award unless a party submits the relevant allegation before the arbitral tribunal. The above inconsistency of the CCP seemed not to be crucial for interpretation of grounds for setting aside arbitral awards which, as if the aforementioned judgment of the Court of Appeal in Warsaw were in guidance, must be interpreted very narrowly.

Awarding beyond a claim as a ground for setting aside the arbitral award

A restrictive interpretation of grounds for setting aside arbitral awards has also been applied by the Polish Supreme Court in its judgment of 8 February 2019, case No. I CSK 757/17. Here, a party contesting an arbitral award indicated that the arbitral tribunal had capitalised interest in a manner different from that requested by the claimant, awarded interest for a different period from that requested and, as a consequence, ended up awarding more than had actually been claimed. The Supreme Court noted that awarding beyond a claim does not constitute explicit grounds for setting aside an arbitral award pursuant to the Polish Code of Civil Procedure. In particular, the Supreme Court cited article 1206 section 1 point 3 CCP, whereunder a party may file an application for setting aside an arbitral award if the arbitral award concerns a dispute that is not covered by an arbitration clause or falls beyond its scope, or does not apply to the case at hand because awarding beyond a claim does not mean the claim itself falls beyond the scope of that clause. The Supreme Court, however, stated that going beyond a claim by an arbitral tribunal shall be subject to examination by state courts in the post-arbitration proceedings. In the Supreme Court's view, such a shortcoming might constitute violation of the basic principles of proceedings before an arbitral tribunal and of a party's right to defence.

Detriment to a third party as a basis for refusal to enforce an arbitral award

Following the approach that general courts should not examine the merits of the case in setting aside proceedings, one may pose the question in what kinds of situations the enforcement of arbitral awards is likely to be challenged or refused in Poland. In its decision of 19 March 2018, case No. V AGo 3/18, the Court of Appeal in Katowice refused to enforce an arbitral award because of the possible detriment to a third party, contradictory to the public policy clause.

In the view of the Court of Appeal, the business activities conducted by and between the parties to the arbitration were questionable as to their factual goals and legal effects. The Court ruled that there was no real dispute between the parties and that the conduct of the parties was in fact meant to hinder enforcement conducted by other creditors against one of the parties to the arbitration. As a consequence, enforcement of the award would be detrimental to third parties (the other creditors) and, therefore, circumvent the applicable law.

The Court of Appeal indicated that, within the scope of the public policy clause, a court is empowered to verify the existence and validity of the acknowledgement of debt that constituted the basis of an arbitral award. The purpose of the public policy clause is not to protect the interests of a party to arbitration, but to protect the state's public policy.

Lack of diligent consideration of the case as grounds for setting aside the arbitral award

Despite the fact that, as a rule, the state courts are not entitled to re-examine the arbitration case, an arbitral award might be set aside in Poland if the arbitral tribunal has failed to diligently consider the substance of the case, as set forth in the Supreme Court's decision of 7 February 2018, case No. V CSK 301/17.

In this case, the application to set aside the arbitral award cited lack of diligent consideration of the case and of the gathered evidence, as well as incorrect apportionment of the burden of proof that led to the violation of public policy clause. The Supreme Court, admitting that the application was justified and that the arbitral award should be annulled, pointed out several important issues.

The evidence submitted by parties to the arbitral proceedings shall be assessed within the arbitral award regardless of whether it supports the final decision of the tribunal or not – it enables the parties and the state courts to retrace the reasoning of an arbitral tribunal. This becomes even more important in light of the fact that arbitration proceedings are mainly conducted at one instance. If the justification for the arbitral award does not reflect the reasons for the decision, the tribunal appears unreliable to both parties to the proceedings – especially for the party losing the case. Obviously, it is not necessary to describe every single piece of evidence separately, especially if the number of documents is large. However, significant evidence (including expert opinions) cannot be simply ignored by the arbitral tribunal, even if it is assessed as unreliable.

The mere fact that the justification of a partial award is (at approximately 100 pages) voluminous does not, in and of itself, mean that the arbitral tribunal has duly heard the case on its merits. The motives presented in the arbitral award must be convincing and must always address the substance of the case. This necessity of comprehensive consideration of the case, including diligent assessment of all circumstances and evidence gathered in the course of the proceedings, must be upheld as a fundamental rule of the Polish procedural legal order.

In general, this decision of the Polish Supreme Court presents a very balanced approach towards the public policy clause. On the one hand, it is confirmed that the state court cannot control the merits of the case pending before the arbitral tribunal. On the other hand, there remains the possibility of setting aside an award that does not address the substance of the case. This case marks the first occasion that the view emphasising the necessity to consider the case diligently by the arbitral tribunal was expressed so categorically in Polish jurisprudence. However, as the text of the arbitral award has not been published, it is impossible to comment on the Supreme Court's assessment of arbitral proceedings. The question also arises of how far the general courts will go in the future in determining whether the substance of a case has been addressed by an arbitral tribunal.

Conclusions

Analysis of the recent judgments presented above leads to the conclusion that the Polish state courts generally respect the wide autonomy of arbitral tribunals and show little inclination to interfere with their decisions as to the merits of the case. The arbitral awards are likely to be set aside only in extreme cases. As a rule, in post-arbitral proceedings, Polish courts do not address the merits of the cases decided by arbitral tribunals – the established lines of authority are clear in this respect.

Notes

1 For details, please see *GAR European Arbitration Review 2019*.
2 A W Wiśniewski [in:] System Prawa Handlowego, Arbitraż handlowy, A Szumański (ed), vol. 8, 2015, pp. 282–283.
3 See, eg, R. Morek, Mediacja i arbitraż. Komentarz, Warszawa 2006, p 115; KA Piwowarczyk, Umowa o arbitraż w świetle ustawy z 28 lipca 2005 r. o zmianie ustawy kodeks postępowania cywilnego, Pr. Spółek. 2006, nr 6, s. 51, claiming that only non-property disputes must be amenable to settlement in order to be referred to arbitration; the opposite view was taken by K Weitz [in:] Kodeks postępowania cywilnego. Komentarz. Międzynarodowe postępowania cywilne. Sąd polubowny, Warszawa 2017; T Ereciński, Zdatność arbitrażowa (art. 1157 k.p.c.) [in:] Międzynarodowy i krajowy arbitraż handlowy u progu XXI wieku. Księga pamiątkowa dedykowana doktorowi habilitowanemu Tadeuszowi Szurskiemu, Warszawa 2008, pp. 9–10; judgment of Polish Supreme Court dated 23 September 2010, III CZP 57/10.
4 Judgment of Polish Supreme Court dated 7 May 2009, III CZP 13/09, OSNC 1/2010, item 9; see also K Weitz [in:] Kodeks postępowania cywilnego. Komentarz. Międzynarodowe postępowania cywilne. Sąd polubowny (arbitrażowy), T Ereciński (ed), vol. 6, 2017, p. 875.
5 S Sołtysiński, Granice zdatności arbitrażowej sporów korporacyjnych ze szczególnym uwzględnieniem zaskarżania uchwał organów spółek: zarys najważniejszych kwestii spornych [in:] Spory korporacyjne w praktyce arbitrażowej – perspektywa polska i niemiecka, W Jurcewicz, K Pörnbacher, C Wiśniewski (eds), 2017, p. 31 et seq.
6 The Legislative Act – Commercial Companies and Partnerships Code dated 15 September 2000, Journal of Laws of the Republic of Poland of 2019 item 505, with subsequent amendments.
7 W Popiołek, Rozstrzyganie sporów korporacyjnych w postępowaniu arbitrażowym na gruncie obowiązującego prawa polskiego [in:] Spory korporacyjne w praktyce arbitrażowej – perspektywa polska i niemiecka, W Jurcewicz, K Pörnbacher, C Wiśniewski (eds), 2017, pp. 48–49.
8 S Sołtysiński, Granice zdatności arbitrażowej . . ., pp. 43-44.
9 Judgment of Supreme Court dated 24 February 2011, III CSK 150/10, OSNC – Additional Compilation 2012, item 12, p. 92.
10 Article 1206 § 1 point 2 CCP.
11 Article 1206 § 1 point 3 CCP.

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A managing associate in the GESSEL arbitration team, Natalia Jodłowska's practice encompasses arbitration and litigation in the fields of commercial and civil law in a broad range of subject areas, in particular M&A, construction and energy disputes. She also advises clients on construction and infrastructure projects. Her practice has been consistently focused on arbitration and litigation. She has represented Polish and foreign clients in domestic and international arbitration proceedings before, among other bodies, the ICC, LCIA, IAA, FCC, the Polish National Chamber of Commerce (KIG), the Lewiatan Court of Arbitration, and in ad hoc arbitration. In a number of cases, she has served as administrative secretary to arbitration tribunals in Polish and international arbitration proceedings before the ICC, the KIG, the Lewiatan Court of Arbitration and in ad hoc arbitration. She has represented clients in several dozen proceedings before Polish general and administrative courts. Natalia graduated from the Faculty of Law and Administration at Jagiellonian University in Krakow (2010). She was admitted to practise as an attorney in 2015.

Joanna Kisielińska-Garncarek
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A senior associate in the GESSEL arbitration team, Joanna Kisielińska-Garncarek specialises in commercial arbitration and dispute resolution, acting as counsel in domestic and international arbitral proceedings (before, inter alia, the ICC, IAA, Lewiatan Court of Arbitration and Arbitration Court at the Polish Chamber of Commerce) as well as commercial and civil proceedings pending before the state courts. Joanna represents Polish and foreign clients in a wide range of cases, including M&A and construction disputes. She serves as administrative secretary of arbitral tribunals in Polish and international proceedings.

She is the author of numerous publications in the field of obligation law and is preparing her PhD thesis at the Law Faculty of Nicolaus Copernicus University in Toruń, titled 'Legal effectiveness of actio pauliana in Polish and German legal system'.

Joanna graduated from the Faculty of Law of Nicolaus Copernicus University in Toruń (2014). She completed a course in English and European law as well as the German law programme offered by the University of Gdańsk in cooperation with the University of Cologne. She was admitted to practise as an attorney in 2018.

Konrad Czech
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An associate at GESSEL arbitration team, Konrad Czech specialises in commercial and investment arbitration, and dispute resolution. He also advises on international trade and investment matters. He has built up comprehensive experience in international arbitration, having participated in a number of investment and commercial arbitration cases (under, among other rules, ICC, UNCITRAL, SCC, Copenhagen Arbitration). Before joining GESSEL, Konrad worked for the Office of General Counsel to the Republic of Poland, he was a member of the International and European Law Department. He is a graduate of the Faculty of Law and Administration at the University of Warsaw (summa cum laude, 2010) and also holds a dual LLM degree in global business law from the New York University School of Law and in international and comparative law from the National University of Singapore Faculty of Law (2014). He received his PhD (cum laude) in legal studies from Kozminski University in Warsaw in 2016. His recent monograph, which is the publication of his PhD dissertation, titled 'Evidence and Evidentiary Proceedings in International Commercial and Investment Arbitration. Selected Issues' (original title: Dowody i postępowanie dowodowe w międzynarodowym arbitrażu handlowym oraz inwestycyjnym. Zagadnienia wybrane, Wolters Kluwer Poland 2017), is the most comprehensive Polish-language writing on evidence in arbitration.

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