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Contributing Editor:
Ted Greeno

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PREFACE

Since the last edition of this book, the global business community has been forced to face the many new challenges that have been thrown up by the Coronavirus pandemic and the almost universal lockdown measures that have been taken in response to it. Courts all over the world have also had to adapt and change.

It might be said that the lockdown strategies pursued by governments would not have been sustainable but for the internet and the ability it affords us to work remotely. Certainly, courts around the world have adapted to this way of working, with procedural hearings and depositions, and even full-scale trials, being conducted exclusively on videoconference platforms. The use of video technology to take witness evidence is, of course, not new. It goes back 20 years or more. However, it was not embraced by commercial litigators because its lack of immediacy impaired the quality of the evidence and sometimes last-minute technical hitches could disrupt and delay trials. Over the last few months, however, the improved technology available and the need to make remote hearings work have shown that they are a reasonable, if not ideal, substitute for in-person attendance.

It remains to be seen how permanent the move to remote hearings becomes. I doubt that trials will be held remotely once all Coronavirus restrictions are lifted. Courts will revert to in-person hearings, but it is surely likely that videoconferencing technology will be used more than it was before the lockdown for procedural hearings and other hearings where no oral evidence is required, both in international litigation and arbitration. The saving of the time and cost of travel, as well as the environmental benefits, will be a significant incentive.

One factor that may play on the need for remote hearings is the potentially sharp increase in litigation that is likely to flow from the forthcoming lockdown-induced recession. A growing volume of cases will inevitably put pressure on the capacity of courts to cope with the increased demand. We are yet to know how serious a recession it will be, but the stress on contracts and cash flows that recessions bring always leads to an increase in commercial disputes. Litigation, even of a weak defence, is sometimes the least worst option for cash-strapped companies. Recessions also tend to expose long-running fraudulent schemes, as the money moved around to create an impression that nothing is missing ultimately runs out. As Warren Buffett famously said, albeit in a different context, it is only when the tide goes out that you discover who has been swimming naked.

In such times, a swift and efficient commercial court system is all the more essential to the economic health of a nation. This time round, disputes will be even more international in nature than in the last recession. Countries can therefore help themselves and each other by easing cooperation between them for the service of process, the taking of evidence, the enforcement of judgments or awards and the swift resolution of jurisdiction challenges.

To that end, this book aims to provide an insight into how such issues are managed by the court systems and procedures of jurisdictions around the world, with a particular focus on practical considerations. I hope it is a useful guide for all lawyers who advise businesses that trade internationally.

Finally, I am grateful to all the contributors from across the globe for the clarity and expertise of their contributions.

Ted Greeno
Quinn Emanuel Urquhart & Sullivan

Poland

Łukasz Doktór, Adriana Palczewska & Maciej Rzepka
DOKTÓR JERSZYŃSKI PIETRAS

Efficiency of process

Polish civil procedure is generally two-tiered. An appeal to a court of second instance may be based on points of fact and/or points of law. Although the ruling issued by a second instance court is final, it may be challenged through a cassation appeal to the Supreme Court which may be based only on points of law and is limited to certain types of disputes (i.e. most non-monetary claims as well as monetary claims exceeding PLN 50,000 (approx. EUR 11,000)). Even if the formal criteria of a cassation appeal are met, the appellant must demonstrate a major legal issue requiring resolution or guidance, qualified errors in proceedings or a manifestly legitimate nature of the appeal. If any of those circumstances are successfully demonstrated, the case is remanded for the Supreme Court's examination, and if not – the case is dismissed. Although the Polish legal system is based on statutory law, the Supreme Court's rulings play an important role in shaping the jurisprudence of lower courts.

Polish law provides for several simplified and low-cost procedures for categories of monetary claims if the plaintiff provides sufficient documents supporting the claim in which a summary judgment may be issued based on these documents, without a comprehensive evidence-taking process.

The plaintiff may apply for a summary judgment (payment order) if it provides the court with qualified evidence confirming the debt. In case of claims based on commercial agreements of goods supply/service provision, the plaintiff must only confirm that it has performed its contractual obligations and has not obtained remuneration despite properly invoicing the debtor. A summary judgment is issued without hearing. It may be appealed to the issuing court, which then sets a hearing and conducts regular proceedings – which may result in upholding or revocation of the summary judgment. However, even if the summary judgment has been appealed against, it may be used to secure the claim, e.g., by attachment of the defendant's bank accounts.

Application for a summary judgment is also possible even if a plaintiff does not produce qualified evidence as described above. In such cases, a summary judgment is issued unless the court finds the claim clearly unfounded or doubtful. Unlike in the procedure referred to above, this type of summary judgment itself does not constitute a basis for securing the claim – the plaintiff must separately apply for interim measures. If the defendant does not appeal against the summary judgment within two weeks, it becomes final.

Monetary claims may also be pursued in an electronic summary judgment procedure, provided that: (i) the claim became due within three years before initiating the proceedings; and (ii) the defendant has a service address in Poland. In this procedure, a statement of

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claim is submitted online in an electronic form, via the website provided by the Ministry of Justice. Any court decisions, including the summary judgment, are also prepared and delivered to the parties via electronic means.

Moreover, mechanisms intended to streamline all types of judicial proceedings are continuously being introduced in Poland. A major amendment to the Code of Civil Procedure, adopted in 2019, provides for several new procedural solutions aimed at speeding up the proceedings, including a preliminary organisational hearing, a rule of single court hearing in simple cases, or a possibility for the witnesses to testify in writing.

Court hearings in Poland are recorded on a sound or audio-visual recording – a solution that helped reduce the duration of court hearings by an average of 30%. Further enhancements of the procedure include videoconferences used to hear witnesses residing outside the locality of the court seized.

The parties and their attorneys may access online information on the status of court proceedings via an online platform provided by the Ministry of Justice. Use of the system is free of charge and enables parties to view court orders, download recordings of the hearings, access information on the planned court hearings and recent actions of the court.

Further developments are also being planned, aiming at the digitalisation of court proceedings, e.g., enabling parties and their attorneys online reception of official correspondence from courts and other public authorities. The Polish Code of Civil Procedure already contains provisions enabling the parties to lodge pleadings electronically, but an IT system necessary to make use of such possibility has not yet been implemented.

Integrity of process

The judicial system in Poland has been undergoing reforms since 2015. Some of the reforms have sparked controversies and led to opinions that they do or may jeopardise independence and impartiality of the judiciary. The most debated elements of the said reforms were:

- a new system of appointment of judges to the National Judiciary Council (a body that appoints and promotes common court judges which are then nominated by the President), after reform appointed by the lower chamber of parliament by a majority of ⅗ votes;
- appointment of presidents of common courts (judges who supervise and manage the administrative affairs of a given court) by the Minister of Justice;
- lowering the retirement age of common court judges as well as judges of the Supreme Court (to the general retirement age applicable to all workers) with the right of the Minister of Justice or the President to allow an extension of the term of office beyond retirement age;
- introduction of a new chamber of the Supreme Court overseeing disciplinary proceedings against judges with the members of the chamber appointed by the National Judiciary Council, elected pursuant to amended rules; and
- enactment of legislation extending the grounds for disciplinary sanctions against judges, e.g., to include activities that question the status of other judges or the legitimacy of a constitutional body, or activities that may render the functioning of a court impossible or substantially impeded.

As a result, some of the reforms have been withdrawn, e.g., application of new retirement age to the current judges of the Supreme Court accompanied by a discretionary right of the President to allow a Supreme Court judge to continue his or her duties beyond the retirement age. The Court of Justice of the European Union (CJEU) also ruled that the Polish Supreme

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Court should ascertain whether its new Disciplinary Chamber is independent in the context of reviewing retirement of Supreme Court judges (joined cases C-585/18, C-624/18 and C-625/18). Following that, the Polish Supreme Court ruled its Disciplinary Chamber not to be independent and, in addition, challenged the independence of the National Judiciary Council, opening a way for parties to court proceedings to challenge the authority of the judge if appointed by the National Judiciary Council after the reform (case III PO 7/18 and Resolution No BSA I-4110-1/20). On the other hand, the Constitutional Tribunal of Poland ruled the Supreme Court's Resolution No BSA I-4110-1/20 to be in violation of the Polish Constitution, the Treaty on the Functioning of the European Union (TFEU) and the European Convention on Human Rights (ECHR) (case U 2/20).

Despite the present controversies, the Polish judiciary remains independent and impartial and the government's or parliament's powers in respect of the appointment or promotion of judges are not greater than those existing in many EU countries, e.g., Germany or France. The level of corruption is low, as evidenced by the "no corruption" factor in civil justice amounting to 0.78 in the WJP Rule of Law Index 2020. There is no visible trend on the part of judges to favour government in disputes with third parties, including foreign investors, and there are no reasons to assume lack of impartiality of the court in a regular commercial dispute driven by government influence.

Polish law provides for two main instruments related to the concept of natural justice. First, it is possible to assert a transaction invalid on equitable grounds, in an action seeking to declare the transaction invalid as well as through a defence raised in response to an action seeking enforcement of terms of such transaction. According to the judicature of the Supreme Court, the application of these instruments requires two criteria to be met, i.e. there must be a specific equitable rule grossly infringed by the disputed transaction, e.g., loyalty in business dealings, basic contractual balance, etc. and the infringement in question must result from specific circumstances adversely affecting the broadly understood freedom of contract of the injured party, e.g., emergency situation or lack of proper information, etc.

The other instrument is equivalent to an estoppel in common law systems, i.e. it may be used only as a defence and enables the court to prevent a party from asserting its rights under law or contract on equitable grounds. This may happen only in specific circumstances which may be temporary or permanent. Theoretically, the estoppel may be invoked both in private as well as in business disputes, although the courts tend to allow it only exceptionally in the latter.

Privilege and disclosure

The Polish legal system provides for attorney-client privilege. Professional lawyers (i.e. advocates and legal advisers) are obliged to maintain the secrecy of all information learned in connection with the provision of legal assistance to a client for an unlimited period of time. According to the prevailing view of the doctrine, the privilege can be waived by its holder (the client). Consequently, a lawyer summoned as a witness in a court proceeding has the right, and at the same time, an obligation, to refuse to answer a question relating to the privileged information. A lawyer is also entitled and obliged to refuse the court order requesting him or her to produce a document if it contains privileged information. A lawyer disclosing privileged client information bears civil, disciplinary, and in certain cases even criminal, liability.

Other forms of privilege relate to mediation, provided for in the Polish Code of Civil Procedure as a method of alternative dispute resolution. A mediator, the parties and other persons participating in mediation proceedings are obliged to maintain secrecy of

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facts disclosed to them in connection with the mediation. Only the parties may release the mediator and other persons participating in the mediation proceedings from the said confidentiality obligation. Any settlement proposals, mutual concessions or other statements made in mediation have no effect when invoked by a party in the course of court or arbitration proceedings. As regards informal settlement negotiations, their confidentiality is not addressed in the provisions of law. The Advocates' Code of Ethics (enacted by the Advocate Bar Association) stipulates that an advocate is obliged to keep such negotiations confidential if other advocates or legal advisers participate in such negotiations.

As a rule, court hearings in Poland are open to the public. However, in certain circumstances, a court may order the whole or part of a hearing to be held *in camera*. An announcement of a judgment is always public. By contrast, access to case files is restricted only to the parties and their attorneys. Judicial decisions, including their written grounds, are made public after being anonymised. A vast number of them are regularly published on http://orzeczenia.ms.gov.pl/, a website run by the Ministry of Justice, as well as in commercial databases.

Evidence

With regard to evidence, Polish civil procedure is predominantly adversarial. It is primarily the parties' responsibility to present evidence in order to support their claims. Theoretically, a court is permitted by law to admit evidence that has not been presented by a party. However, according to the established view, this may be done only in exceptional circumstances, e.g., when a case can hardly be resolved without additional evidence.

In 2019, a major reform of Polish civil procedure was implemented which introduced several changes to the rules of evidence. First, it brought back the once existing division into standard court proceedings and proceedings in commercial cases where procedural burdens imposed on parties (generally professional entrepreneurs) are higher. Secondly, it introduced a new procedural institution, i.e. a pre-trial hearing. During this hearing, the parties and the court, *inter alia*, are to prepare, and the court is then to approve, a trial plan which must contain the court's decisions regarding evidence presented by the parties. Consequently, if a pre-trail hearing is scheduled in standard proceedings (which is a rule), parties may not put forward further allegations or evidence after the court's approval of the trial plan. If a pre-trial hearing is not scheduled, parties generally may do so up to the end of the trial. The presiding judge, however, may oblige a party to present all allegations and evidence in a pleading under the pain of losing the right to invoke them at a later stage, unless demonstrated that it was not possible to present them in the pleading or that the need to present them arose later.

Stricter rules apply in commercial cases. First, parties are obliged to present all allegations and evidence early on. Those represented by professional attorneys should do so in their opening briefs (plaintiff in statement of claim, defendant in its response to it), and those not represented by professionals should do so within a deadline specified by the judge; not shorter, however, than one week. Allegations and evidence presented in breach of these rules are disregarded, unless a party can prove that that it was not possible to present them in due time or that the need to do so arose later. In such cases, further allegations and evidence to support them should be presented within two weeks from the day on which it became possible to present them or the need to present them arose. Secondly, parties may invoke an agreement on evidence, i.e. a contract excluding specific evidence in the dispute arising out of a certain transaction, executed before or during the dispute, in writing or orally before the court. Thirdly, the role of witness testimony is reduced as to supplementary

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evidence, admissible by the court only after all other evidence has been exhausted or, if in their absence, there are material facts that remain unclarified. And fourthly, parties' actions, especially statements of intent or knowledge, resulting in acquisition, loss or change of their legal rights, may be proven only by documents, unless a party can demonstrate that it is unable to present a document due to reasons beyond its control.

Polish law does not recognise disclosure or discovery procedures, other than in antitrust damages claims where Polish law implements the provisions of EU Directive 2014/104/EU relating to damages claims for infringements of competition law. It is up to the parties whether they want to produce certain evidence during the proceedings or not. There are, however, some general procedural mechanisms in place to help a party obtain evidence that is not under its control.

First, a party may apply to a court for ordering the other party or a third party to produce a document in its possession if such document constitutes evidence relevant for the case. If the addressee of the order, being the other party to a trial, refuses to produce the document, a court may assume that factual allegations that a party seeking the order wanted to prove with this document are true. If the addressee of the order is a third party, unjustified refusal to produce a document is sanctioned with a fine imposed by the court.

Secondly, if a party relies on the records of a commercial enterprise and the delivery of such records to the court poses major difficulties, the court may order their review in the place where they are kept – either by the entire panel or by one delegated judge.

Costs

The general principle is that costs of the dispute are paid by the losing party, including the obligation to reimburse the opponent with the costs incurred. There are, however, a number of exceptions to that principle. Firstly, if the claim is not awarded in full, the costs should be proportionally shared between the parties. Moreover, the court may decide not to charge the losing party with the costs if it finds it justified on the grounds of equity. Also, the obligation to reimburse the costs may be imposed on the plaintiff winning the case, if the defendant gave no reason to bring an action and admitted the claim upon being sued. In commercial disputes, the court may impose, fully or partially, the costs on the party that refused to attempt to resolve the dispute amicably, if that led to unnecessary initiation of court proceedings.

Each party may also apply for a full or partial exemption from the litigation costs, if it demonstrates that it is unable to bear them. A party exempt from the costs may also request a legal aid attorney, but it remains obliged to reimburse the opponent for the incurred costs on general terms.

If the plaintiff resides outside of the EU, it may be obliged, upon a defendant's request, to pay bail securing litigation costs, subject to certain specific exceptions. If the plaintiff does not pay the ordered bail, the claim will be rejected.

Litigation costs in Poland are reasonably predictable and comprise:

- court fees payable on the pleading initiating the case in a particular instance, e.g., statement of claim, appeal, etc. The amount of the court fee varies depending on the subject matter of a dispute and may either be fixed (in specific cases listed in the Polish Act on Court Fees in Civil Proceedings) or calculated as a percentage of the total claim value, i.e. 5%, but not more than PLN 200,000 (approx. EUR 44,000);
- expenses incurred in relation to the proceedings (which may include, *inter alia*: remuneration of an expert or interpreter appointed in the case; other expenses related

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to evidence; travel expenses of the parties; and witnesses and attorneys attending the hearings); and
- costs of legal representation subject to maximum amounts provided for in the provisions of law in respect of particular types of cases, depending on the subject matter of a dispute or total claim value. As a result, the legal representation costs agreed upon with the attorney and actually incurred by the party may – and usually do – exceed the lawyer's fees awarded by the court.

Litigation funding

Third-party litigation funding is not common in Poland, except for claim purchasing by specialised debt recovery companies and securitisation funds. The relatively high number of overdue receivables in the Polish market (depending on the industry) is a key driver, and financial institutions and telecom operators use this option frequently. The COVID-19-related economic slowdown and liquidity problems experienced by many firms and individuals are likely to further boost this industry.

Contingency fee arrangements between lawyers and their clients are, in principle, legal and permitted by the Bar Associations, subject to a requirement according to which a contingency fee should not be the only remuneration of an advocate or legal adviser.

Legal expense insurance policies are offered by many insurance companies, but their use is not very popular. According to public domain data, the total number of outstanding legal expense insurance policies as at the end of 2019 amounted to 1,575,434 and it is likely that an overwhelming majority constituted add-ons on car insurance.

Third-party claim financing is present on the Polish market only to a limited extent and there are no specific regulations addressing this type of financial service. There are only a few firms advertising claim financing in Poland and there are no data in the public domain on the number of cases financed or the overall value of financing. It is probable that this market segment will experience dynamic growth especially if, in the wake of the COVID-19 pandemic, the number of complex disputes increases.

Class actions

Polish legislation provides for an opt-in model of class actions, which means that each plaintiff must clearly express its will to join the proceedings. Only certain types of claims may be asserted through class action lawsuits, i.e.: claims for damage caused by a hazardous product; tortuous liability claims; claims resulting from a breach of contract; claims on account of unjust enrichment; and consumer protection claims.

A class action may be brought by at least 10 persons, whose claims are based on the same or identical factual grounds. The group is represented in the proceedings by one representative who exercises the plaintiff's powers. Upon submission of a class action, the court orders publication of a relevant notice on initiation of the proceedings online and/or in the nationwide press, so as to enable the persons concerned to join the case on the plaintiff's side. The merits of the case are examined upon the expiry of a deadline for joining the group. Any significant procedural measures, such as withdrawal, waiver or limitation of a claim or conclusion of a settlement with the defendant, require the consent of more than 50% of the members of the group in order to be effective. The awarding judgment in class action proceedings lists the relevant amounts due to each particular member of the group. An extract from such judgment enables each member to initiate enforcement proceedings against the defendant.

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Introduction of an opt-out model of class actions has been under consideration for some time, intended to coexist with the current opt-in model and to be available in certain types of cases relating to infringement of consumer rights or competition law.

Interim relief

A range of interim measures available differs depending on the type of claim. For monetary claims, there is an exhaustive list of available interim measures, e.g., seizure of the defendant's assets, establishment of a mortgage, prohibition of real property alienation and establishment of receivership over the defendant's enterprise. As regards non-monetary claims, the plaintiff is free to choose and request its preferred interim measure.

A plaintiff may apply for an interim order after, upon or even before initiation of the legal proceedings. In the latter case, the plaintiff will have to initiate legal proceedings properly within a deadline set by the court, not exceeding two weeks. Interim measures may also be sought from a common court when the dispute is subject to arbitration, including foreign arbitration, with the court sometimes requiring that the arbitration proceedings be pending upon application for the interim measure.

Interim orders may be issued only at the plaintiff's explicit request and the relevant proceedings are conducted *ex parte* (without the defendant which is notified of the interim order upon its enforcement). To obtain such an order, the plaintiff must demonstrate the plausibility of its claim and its interest in obtaining the interim measure. However, no demonstration of "legal interest" is required if the plaintiff seeks payment based on commercial transactions (i.e. supply of goods or provision of services between entrepreneurs), provided that the claim does not exceed PLN 75,000 (approx. EUR 16,500) and the delay in payment does not exceed three months.

In each case, the court takes into account the interests of both parties and grants a requested interim relief only if it is adequate to secure the plaintiff's interest on the one hand and, on the other, is not excessively onerous to the defendant. An order on interim measures may be appealed against to the court of higher instance.

Interim measures awarded by foreign courts are generally enforceable in Poland. The injunctions issued in EU Member States are enforceable in Poland without *exequatur*, provided that the injunction in question is enforceable in the issuing country. If such injunction contains interim measures not known to Polish law, such measure will be modified by the Polish court or bailiff to correspond to the measures permitted in Poland that have equivalent effects.

On the other hand, in order to enforce a non-EU originated injunction, its enforceability must first be confirmed by a Polish court, which will examine the terms of the injunction and verify its enforceability in the country of origin.

Enforcement of judgments/awards and cross-border litigation

The enforcement of judgments, enforceable awards and interim measures is effected by bailiffs and district courts (*sąd rejonowy*). In principle, only judgments of second instance courts are enforceable (except for interim orders which are, in principle, immediately enforceable), but in certain cases a first instance court may rule its judgment immediately enforceable. Such immediate enforceability may be made conditional upon the enforcing party providing adequate security.

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Not only court judgments or arbitral awards are subject to enforcement. Other enforceable titles include court settlements, settlements executed in mediation, and certain notarial deeds providing for voluntary submission to enforcement.

In general, all kinds of assets may be subject to enforcement save for specified exceptions, such as certain household items, food, 50% of monthly wages, etc. Garnishee orders are widely used by court bailiffs without the need to obtain court approval.

Remedies available to debtors include a complaint against a bailiff to the relevant district court or challenging enforceability of the judgment or other relevant title in separate proceedings, e.g., based on events occurring after issuance of the judgment. The 2019 reform of civil procedure has increased the level of debtor protection, imposing on courts a duty to refuse to issue a declaration of enforceability of a given title (otherwise enforceable) if it is clear that the limitation period applicable to the relevant claim has passed, unless demonstrated otherwise by the creditor.

The enforcement of judgments issued by courts of EU Members States in civil and commercial matters is regulated by EU Brussels I Regulation Recast, i.e. they are recognised and directly enforceable in Poland without any *exequatur* requirement or separate proceedings confirming enforceability. Poland is also bound by the EU legal framework relating to, *inter alia*, cross-border service of court documents (Regulation (EC) No 1393/2007) and cross-border taking of evidence (Regulation (EC) No 1206/2001).

In respect of non-EU countries (other than those that are signatories to bilateral treaties relating to enforcement of judgments), foreign judgments are granted *exequatur* by virtue of law unless they qualify as one of the specified exceptions, which include the relevant judgment not being final, the case belonged to exclusive jurisdiction of Polish courts, a party was deprived of a right to defend themselves, the judgment violates *ordre public* in Poland, etc. Lack of reciprocity does not preclude a foreign court judgment from being granted *exequatur* in Poland.

A foreign court judgment must be declared enforceable by a Polish regional court (*sąd okręgowy*) before it is enforced in Poland. Enforceability in Poland requires only enforceability in the country of issuance and lack of exceptions which would preclude *exequatur* by virtue of law.

Anti-suit injunctions are generally not available under Polish law. As between the EU Member States, anti-suit injunctions, issued by common courts, are ruled by the CJEU as incompatible with EU law (case C-185/07 *West Tankers Inc*.). Anti-suit injunctions issued by a foreign arbitration tribunal or a non-EU common court would most probably not be enforced in Poland based on *ordre public* defence and the Polish court generally refuses to issue anti-suit injunctions.

Under EU law (Regulation (EU) No 655/2014), an EU-wide bank account freezing order issued by any EU court will be directly enforceable in Poland. Freezing orders issued by a court of a non-EU country may be enforced in Poland based on general terms applicable to interim measures. Asset tracing is generally possible only within the enforcement proceedings.

International arbitration

The Polish legal system is arbitration friendly. In general, practically any claim, whether monetary or not, except for claims for maintenance/alimony, may be subject to arbitration.

The Polish Code of Civil Procedure includes provisions regarding arbitration, reflecting the UNCITRAL Model Law on International Commercial Arbitration. Arbitral awards,

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whether issued in Poland or abroad, are recognised and enforceable in Poland based on an *exequatur* order of a Polish court, issued at the request of a party to the arbitration proceedings. The court may refuse to declare the enforceability of an arbitral award only in certain situations, e.g., in absence of a valid arbitration agreement, or if the award relates to a matter excluded from arbitration or if the award infringes *ordre public* in Poland. The proceedings before a Polish court regarding *exequatur* of an arbitral award are formal in nature and the court is not allowed to review the substance of the award, except for instances of *ordre public* violations.

Moreover, Poland has been a party to the 1958 New York Convention on Recognition and Enforcement of Foreign Arbitration Awards. Arbitral awards granted in countries signatory to the convention are recognised and enforceable in Poland based on an *exequatur* (which is subject to conditions equivalent to those set out in the Polish Code of Civil Procedure). In turn, Polish arbitral awards are recognised in signatory countries, following a similar *exequatur* procedure carried out by a relevant foreign common court.

Currently, there are approximately 50 permanent arbitration courts in Poland. The largest number of cases are submitted to the Court of Arbitration at the Polish Chamber of Commerce in Warsaw, which also happens to be the oldest arbitration tribunal in Poland, functioning since 1950. This tribunal also handles cross-border cases (such cases account for approx. 20% of the total number of cases) and conducts proceedings in Polish, English, French, German or Russian, depending on the parties' choice.

Mediation and ADR

Despite numerous mediation centres operating in Poland, this method of dispute resolution is not very popular. Generally, the parties may attempt to mediate both before and during legal proceedings.

A dispute may be submitted to mediation at any stage, pursuant to the parties' agreement or a court order. In any case, mediation is voluntary and requires the consent of both parties. Mediation is conducted by a mediator, either appointed by the court or chosen by the parties.

If the mediation is successful and leads to a settlement, a common court validates such a settlement by issuing an appropriate order. Upon the issuance of such order, the settlement is equivalent to an in-court settlement, in particular entitling the parties to initiate enforcement proceedings.

Although the courts encourage parties to settle disputes amicably, statistics show that mediation is not particularly effective as regards court disputes. In the first half of 2019, only 1% of civil cases were submitted to mediation, out of which 36% ended in reaching a settlement in the course of mediation.

Regulatory investigations

The Polish government agency responsible for enforcement of competition and consumer protection laws is the President of the Office for the Protection of Competition and Consumers (OPCC). Other important regulatory agencies include the Financial Supervision Commission (supervising financial institutions), the Office for the Protection of Personal Data, the Office for Energy Regulation (overseeing the fuel and energy market), and the Office for Electronic Communication (the telecom and postal services regulator).

The OPCC has relatively broad competences and effective enforcement powers in the areas of competition law (enforcing Polish and EU competition laws), consumer protection

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(declaring general terms and conditions as ineffective due to infringement of consumer rights and issuing decisions on infringement of collective consumer rights), combatting undue abuse of contractual advantage in contracts regarding agricultural produce and food products, as well as undue payment delays in commercial transactions. It is entitled to impose significant fines, demand all requisite information and documents from entrepreneurs, publish information on entrepreneurs infringing consumer rights, and carry out dawn raids at entrepreneurs' premises in search of evidence (also at the request of the EU Commission). Upon prior approval of the court, the OPCC may also request that the Police carry out a search of premises or means of transportation or even, in case of alleged infringements of consumer rights, carry out an undercover controlled purchase.

In connection with the COVID-19 pandemic, additional competences have been vested in the OPCC to control compliance with price and margin regulations concerning selected products. In case of large-scale or repeated infringements of such regulations, the OPCC may impose fines (up to 10% of annual turnover).

The activities of the OPCC (as well as the Office for Energy Regulation and the Office for Electronic Communication), including investigations, are subject to judicial review by a specialised common court, i.e. the Court for the Protection of Competition and Consumers (Competition Court), except for decisions on undue payment terms which are reviewed by administrative courts (which exercise judicial review of most administrative decisions). Decisions of the OPCC are subject to appeal to the Competition Court which acts as a court of first instance and applies rules of civil procedure. As a result, judgments of the Competition Court are then subject to an appeal to a court of second instance and cassation appeal to the Supreme Court. Due to the specialised nature of the Competition Court, the judicial review of OPCC decisions is active and vigorous, with the Competition Court overturning such decisions relatively frequently and modifying the amounts of imposed fines.

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Łukasz Doktór
Tel: +48 22 460 55 93 / Email: ldoktor@djp.pl
Łukasz Doktór is a partner and one of the founders of DJP with nearly 20 years of experience in litigation and is the co-head of the firm's Dispute Resolution department. He now focuses on disputes regarding derivative financial instruments as well as cases involving competition and corporate issues. In addition, his experience extends to representing clients in ADR proceedings, mainly out-of-court mediation proceedings. Łukasz Doktór also has over 20 years of experience in mergers, acquisitions and restructurings and has been involved in numerous M&A transactions of varying complexity, advising financial and strategic investors. He also advises on competition law, both from the perspective of merger control, anticompetitive practices and private enforcement.

Adriana Palczewska
Tel: +48 22 460 57 84 / Email: apalczewska@djp.pl
Adriana Palczewska has been an associate at DJP since 2015 and an attorney-at-law at the Warsaw Attorneys-at-Law Bar Association since 2019. Adriana has six years of experience in litigation and in the field of intellectual property and new technologies. As regards litigation, she focuses on disputes regarding unfair competition acts, trademarks and copyrights. She is also involved in drafting contracts relating to film production and in various transactions relating to the transfer, licensing and services of IT and media products. She has worked with business clients from various industries including energy supply, industrial automatics solutions, press publishing, cinematography and cosmetics production.

Maciej Rzepka
Tel: +48 22 460 55 99 / Email: mrzepka@djp.pl
Maciej Rzepka joined DJP in 2011. He holds a Master of Laws Degree from the University of Warsaw (2014) and finished advocate training at the Warsaw Advocates Bar Association (2018). In the area of litigation, he focuses mainly on disputes between financial institutions and entrepreneurs regarding derivatives and agency agreements. Maciej Rzepka has also been involved in drafting and negotiating contracts underlying numerous transactions in the field of intellectual property and new technologies, including transfer, licensing and maintenance services of IT and media products, hosting services and others.

DOKTÓR JERSZYŃSKI PIETRAS

ul. Ursynowska 62, 02-605 Warsaw, Poland
Tel: +48 22 460 55 90 / Fax: +48 22 460 55 91 / URL: www.djp.pl

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