CIVIL LITIGATION

1. In what language(s) may court proceedings be conducted? What arrangements can be made for translation/interpreter services?

The official language used in public courts in Poland is Polish. Therefore, all proceedings (except for arbitration) shall be conducted in this language. A person whose command of Polish language is insufficient has the right to speak in a language known to him/her and to be assisted by an interpreter.

Although it is not mandatory to submit documents together with their sworn translations, usually courts require documents to be translated by a sworn translator. While hearing a witness, the court usually summons an official interpreter to be present on the hearing.

The parties may agree on the language or languages in which they wish to proceed before an arbitration court. In absence of such agreement the language of the proceedings is decided by the arbitration court. In case the parties decided on a particular language of the proceedings, the same language applies to all written statements, notices, courts' rulings etc.

2. What types of pre-action measures are available and what are their limitations? Must you send a warning letter before issuing any proceedings?

As a result of the latest amendment to the Code of Civil Procedure, currently the warning letter is not required in any proceeding. Please note that although it is not compulsory it is still advisable. In case the opponent accepts the claim at the initial part of the proceeding and by its conduct has not given reasons to bring the case to the court, the plaintiff must reimburse the defendant for its costs of such unprovoked trial.

The pre-action discovery is not recognized under Polish law. Nonetheless, it is possible to preserve evidence before commencement of a judicial proceeding. Prior to initiation of the proceedings, a party may request for securing evidence under following grounds: (i) there is a risk that it will be impossible or too difficult to procure this evidence in the future, or (ii) for any other reason establishment of the current status is needed.

A request for securing evidence shall be submitted to a court of first instance. If for preservation of evidence, an immediate action is needed, the request may be filed with the district court competent for the place where the evidence will be carried out. A party which demands security of evidence shall justify its demand and indicate facts which are alleged to be established.

Moreover, in each civil case it is possible to obtain an interim relief (a pre-trail injunction) with the aim of securing satisfaction of a pursued claim. In order to procure a court's injunction, the a plaintiff is required to prove credibility of the claim and a legal interest in granting him/her the interim remedy.

The plaintiff may assert its legal interest in the situation where the lack of injunction would prevent or seriously frustrate enforcement of the judgment or attainment of other objectives in the litigated case.

There is a whole variety of interim reliefs. It all depends on the nature of a particular claim. In case of a pecuniary claim, the following interim measures are available to the plaintiff:

1) seizure of a movable property, wages garnishment, attachment of a bank account or other defendant's claims or seizure of other property rights;
2) establishment of a compulsory mortgage over the defendant's real estate;
3) issuance of a prohibition on selling or encumbering defendant's real estates, which are not equipped with a land and mortgage registers or whose land and mortgage registers have been lost or destroyed;
4) sequestration of a ship/vessel or a ship/vessel under construction (a sea mortgage);
5) enjoining a sale of cooperative ownership right to an apartment;
6) seizure of a defendant's enterprise, farm or factory which makes up the enterprise.

If a claim is not pecuniary in nature, then the following measures can be applied by the court:

1) parties' rights and obligations may be temporary determined;
2) issuance of a ban on selling certain items or rights;
3) suspension of an enforcement proceeding or other action designed to enforce a judgment;
4) inscription of a warning in the relevant land and mortgage register.

A particular measure can be applied only if it is adequate in circumstances of the case and not too onerous on a defendant. The court is obliged to verify whether it is admissible to secure the claim in the way requested by the plaintiff. Therefore, depending on the case some measures shall be available as appropriate and some shall not as too excessive.

Please note that the interim relief can be also issued after the commencement of a trial. However, if a final

judgment has already been issued, the plaintiff may demand issuance of the injunction only with regards to a claim which is not yet due and payable.

3. What are the costs of civil and commercial proceedings? Who bears the costs?

In the majority of cases, when a claim concerns a specific sum of money (pecuniary claims), the court fee is 5 percent of the claim value (in class actions – 2 percent). Under no circumstances the court fee may exceed PLN 100.000 and be less than PLN 30. For other sort of claims, a party which brings a case to the court is charged with a fixed fee, a basic fee (PLN 30) or a temporary fee. As for the temporary fee, it shall be paid upon submitting a lawsuit to the court. In such case, a final fee is determined by the court in the ultimate judgment.

The court fee is always temporarily born by the party which initiates a lawsuit. In situation when the plaintiff wins the case, the defendant shall reimburse the plaintiff for its proceedings' costs (all necessary costs incurred in connection with proper pursuit of its rights e.g. attorney's fees, court fees).

Please note that the ultimate decision on costs' reimbursement rests always with the court. The court has also authority to decide in what amount the prevailing party shall be reimbursed.

As regards attorney's fees, they are set by the parties (client and attorney). It is possible to agree upon a lump sum (retainer), success fee or remuneration based on hourly rate.

A part of the attorney's fees can be covered by a losing party. The losing party may be obligated by the court to pay to the winning party its attorney's fees (in amount decided by the court - there are statutory minimal and maximal fees). In case the attorney's fee attributed by the court should be less than the amount agreed, the client will have to pay the difference.

4. What are the basic rules of disclosure of documents in civil and commercial proceedings? Which documents do not require disclosure? Is electronic disclosure of documents normal?

In general, both parties have to support the proceedings in disclosing facts or circumstances that could be relevant for deciding the case. They should cooperate in good faith, explain their positions and submit all relevant documents.

However, there is no disclosure proceedings. When a person in its writing refers to a document, the other party may demand submitting original before the first court's hearing. In lieu of the original, the party may submit a copy certified by a notary public or by the attorney who is an advocate, legal advisor, patent attorney or attorney general counsel of the State Treasury, if he/she represents the party in this proceeding.

At court's request, each person is obliged to provide the court with a document which is in his/her possession and constitutes a proof of the fact material to the outcome of the case. The document should be submitted within time specified by the court. In case a third party fails to present the document, the court may impose a fine on him/her. Generally, the third person may refuse to produce a document in the event that as a witness he/she could refuse to testify. If an original is possessed by a public institution, a party may provide the court with a certified copy or an extract from such original. In addition, the court may require the documents directly from the relevant institution.

Internal correspondence between attorneys and their clients is confidential and therefore cannot be disclosed.

There is no electronic disclosure of documents.

5. What is the process for witness evidence (namely, is it deposition based in advance, or witness statement, or examination or cross-examination)? Can a witness be compelled to attend to give evidence?

Each party bears the burden of proper designation of witnesses. The party shall indicate facts that are to be proved by witness deposition. The usual process is an examination of witnesses. Firstly, each witness is questioned by the judge and secondly by parties' attorneys starting by the attorney who asked for the witness. There is no formal cross-examination but it is possible to ask questions directly to the witness (subject to clarification sought by the judge). The court may decide that some questions are not admissible because not related to the facts that are to be established by the deposition.

Moreover, every person called by the court has a duty to appear before the court and testify. If the witness has not appeared at the court's session without due reason (e.g. sickness), the court may impose a fine on him/her and summon him/her once again. In case the situation recurs, the court may order its compulsory presence at the next court session.

No one can refuse to give testimony, unless he/she has the right to do so (e.g. closely related person). A witness may also decline to answer the question if by his/her testimony he/she would expose a closely related person to the danger of criminal liability, dishonor or direct and severe damages.

6. How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties/counsel privileged (i.e: may not be disclosed to the court)?

Settlement discussions may be carried out orally or in writing, in or out of court, with or without the presence of the parties. Generally, in the situation when the parties are represented by attorneys, settlement discussions are conducted by attorneys. In such case, the parties are briefed by their attorneys about the proposal presented by the other party.

It is advisable to conduct settlement discussions by professional representatives. Advocates and legal advisors are obliged to keep professional secrecy regarding all facts which were brought during negotiations. Normal settlement discussions conducted between parties (on their own) are not privileged. Discussions conducted during the mediation proceedings are confidential and no one can rely on settlement proposals submitted during this proceedings. Correspondence regarding settlement discussions is also privileged an cannot be used in court.

It is common to inform the court of the outcome of settlement discussions and the settlement is often recorded in minutes of court's session. If a settlement has been achieved before a mediator, it should be acknowledged by the court.

7. How can foreign judgments be enforced?

A foreign judgment can be enforced either on the basis of the Code of Civil Procedure or a legislative act of European Union or an international treaty to which Poland is a party. In the majority of cases, the provisions of the Code of Civil Procedure will be superseded by provisions of a relevant international treaty or an EU regulation.

The most significant is the EU regulation concerning jurisdiction, the recognition and enforcement of judgments in civil and commercial matters (the Council Regulation (EC) No 44/2001 of 22 December 2000 (*Brussels-I Convention*)). The Brussels I Convention applies in the majority of cases in which one of the parties is domiciled in a member state. Under this regulation any judgment issued in a member state is recognized without any special procedure. The judgment is enforceable in another member state when it is declared enforceable in the country where the judgment was issued.

For foreign judgment issued in a non-EU country, an enforcement title should be obtained on the basis of the Hague Convention or other multilateral or bilateral treaties.

If neither an EU regulation nor an international treaty apply, an enforcement title may be obtained pursuant to the Code of Civil Procedure which provides for autonomous regulations concerning the recognition and enforcement of foreign judgments.

ARBITRATION

1. Are mediation clauses in commercial contracts binding and enforceable?

In principle, mediation clauses in commercial contracts are binding. However, it is not possible to coerce a party to enter into settlement negotiations. Each party may refuse to participate in mediation procedure, as well as reject any settlement offer.

When a party had agreed to mediation proceedings and later on declined to mediate, it may be charged with the costs of mediation irrespective of the final court's ruling. It is also possible to claim damages incurred in connection with the initiation of mediation procedure when the other party without due cause refused to mediate.

Note that in case a claim is filed with the court within 3 months from completion of an unsuccessful mediation proceeding, costs of mediation shall be included in the costs of the court's proceedings and on demand awarded to the prevailing party.

2. What is the procedure for mediation? Is it a popular method for resolving commercial disputes?

Mediation as a form of alternative dispute resolution (ADR) was introduced to the Polish Code of Civil Procedure in 2005. In any matters where reaching a settlement is possible, the court should attempt to resolve them amicably, regardless of the stage of the proceedings, therefore, in all such cases, the parties may enter into the settlement before a mediator.

Mediation can be carried out before or in the course of a trial.
Its implementation interrupts the running of the limitation periods for pursuing claims. Mediation can be initiated by the parties or by court's order which directs the parties to mediation. If mediation is conducted under a mediation agreement, the party which files a motion for mediation shall enclose the mediation agreement to it. There are no particular requirement regarding the form of the mediation agreement. It can entered into *per facta concludentia*. In the agreement the parties should indicate the mediator (or method of his/her selection) and the subject matter of the mediation. The mediation agreement should also set forth time limits for mediation proceedings.

The judge can direct parties to mediation only at the first hearing session. Afterwards, it is up to the parties whether they want to initiate the mediation or not (except for family law issues). Notwithstanding, it is always decision of the parties whether they want to take part in mediation or not. It is a basic principle that mediation constitutes an entirely voluntary solution.

A settlement concluded during mediation proceedings shall be recorded in the minutes and lodged with a relevant court. Upon a motion filed by one of the parties, the public court recognizes the settlement which becomes binding. If the settlement lends itself to enforcement proceedings it shall be also declared enforceable by a public court.

There is no specific method for resolving commercial disputes. Method or rules used during mediation proceedings depend on the mediator and his/her mediation techniques. The mediator decides how the parties should approach each other and how to hammer out the final settlement.

3. Are arbitration clauses in commercial contracts binding and enforceable?

As a rule, arbitration clauses in commercial contracts are binding and enforceable. However, for arbitration clause to be binding it has to comply with requirements and scope of application specified in Article 1157 and 1161 of the Code of Civil Procedure.

Firstly, a given case must be arbitrable, i.e. must be appropriate for arbitration. All disputes relating to property rights (which can be expressed in money), and those disputes concerning non-property rights where reaching a settlement is possible, may be subject of arbitration proceedings.

Secondly, if parties wish to resolve disputes before an arbitration court, they must conclude an agreement specifying the subject matter of the legal relationship from which a dispute arose or could arise. Provisions of the arbitration clause which violate the principle of equality of the parties, in particular provisions which entitle only one party to bring a dispute before an arbitration court are deemed to be void.

Thirdly, the arbitration clause should be made in writing. Requirements concerning the form of the arbitration clause are also met if the clause is included in letters exchanged between the parties or statements made by means of remote communication which enable their content to be recorded.

If in spite of the fact that the arbitration clause is binding, one of the parties takes a dispute to the common court, the court (upon the other party's objection) shall reject the lawsuit/motion. The objection shall be filed before entering the litigation as to the merits.

4. What type of arbitration is commonly used for resolving commercial disputes: ad hoc arbitration or institutional arbitration?

Both types are commonly used but in practice with a strong tendency to use institutional arbitration (both domestic and international). Institutional proceedings are generally preferred due to reputation, understanding of procedure and parties' convenience. In some sectors ad hoc arbitration are more popular than in others (shipping, construction works).

5. Which arbitration institutes are most popular?

The most popular are the Court of Arbitration at the Polish Chamber of Commerce in Warsaw (KIG) and Court of Arbitration at the Polish Confederation of Private Employers "Lewiatan".

International institutions are used in few cases involving significant amount of the claim.

6. What influence can the parties have on the identity of the arbitrator(s)?

The parties may determine the number of arbitrators. As a rule either one or three arbitrators are nominated. Where the number of arbitrators is not set by the parties an arbitration court of three arbitrators is appointed.

The parties are free to establish a method of appointment of arbitrators. If the parties have not

established the method, arbitrators are nominated according to special procedural rules.

In case of odd number of arbitrators each party shall appoint the same number of arbitrators and those arbitrators shall appoint a presiding arbitrator; if a party does not appoint arbitrators within one month from the day on which he/she receives a request from the other party to do so, or if the arbitrators appointed by the parties do not appoint a presiding arbitrator within one month from the day of being appointed, an arbitrator or arbitrators, or the presiding arbitrator, shall be appointed by the common court at the request of either of the parties.

In case of even number of arbitrators each party shall appoint the same number of arbitrators and those arbitrators shall nominate among themselves the presiding arbitrator. If they fail to do so, an arbitrator or arbitrators, or the presiding arbitrator is appointed by the public court.

In case of one arbitrator, the parties shall appoint him/her jointly, otherwise he/she will be appointed by the public court.

7. In what language is an arbitration proceedings conducted?

The parties may agree on the language to be used during the arbitration proceedings. Should the parties fail to agree on the language of the proceeding it will be determined by the arbitration court. The language determined either by the parties or by the arbitration court shall be used in all statements, motions, during court's sessions and in any other measures of communication between the parties and the arbitration court.

8. What types of pre-arbitration measures are available and what are their limitations?

The parties have the choice to apply for interim measures to the public court or to the arbitration court. It does not matter whether the arbitration proceedings is pending or has not started yet.

Unless the parties have agreed otherwise, the arbitration court decides to apply such interim relief as it deems reasonable considering the matter at issue.

Each party may also request all kinds of possible interim measures from the public court. The court may order measures to safeguard evidence, to suspend or freeze certain actions for a certain period of time, or secure a party's claims in other way.

9. What are the costs of arbitration proceedings and who bears these costs?

Costs of arbitration proceedings depend on various factors like: (i) decision of the arbitration court, (ii) rules of the relevant arbitration institution, and (iii) the arbitration agreement. Institutional arbitration rules usually provide for fees which are proportionate to the value of the case. Typically, arbitrators' fees vary in the same manner.

If no agreement has been reached by the parties, the arbitration court decides at its own discretion who will bear the costs of the proceedings and who will have to refund the costs of the other party, taking into consideration the circumstances of the case (*inter alia:* a party's conduct throughout the proceedings, the outcome of the proceedings, costs caused by the party).

10. What are the basic rules of document disclosure in arbitration? Which documents do not require disclosure?

"Discovery" rules are not applicable in Polish arbitration proceedings. If the parties fail to establish discovery rules, it is the arbitration court's decision how it wants to proceed. As a rule, the requested party must produce the documents on which it relies. The arbitration court may also order a party to disclose documents or provide a witness expert with them. Depending on the case, the rules for the protection of trade secrets or sensitive materials may be applied. If the arbitration court cannot carry out an evidence, it may ask an appropriate public court to conduct it.

11. What is the procedure for witness evidence in arbitration (namely, is it deposition based or witness examination or cross-examination)?

There are no specific provisions concerning witnesses. The procedure for witness evidence is subject to the parties' agreement. The parties may agree on both: oral testimonies and written statements, witness examination and cross examination. If the parties do not set the relevant procedure, the arbitration court will decide how to proceed.

In practice, the most popular form of witnesses' examination is a direct examination conducted both by arbitrators and the parties. A written testimony is rather an exemption to the general rule of oral testimonies.

Please note that cross examination and out-of-court depositions likewise are actually not used. It is also rather rare to use written statements produced before a formal initiation of the arbitration proceedings.

12. How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties and/or counsel privileged (i.e., may not be disclosed to the Arbitrator)?

There are no statutory provisions on the conduct of settlement discussions. Therefore, the parties are free to decide on whether they wish to have settlement discussions and if so, how they want to proceed. Settlement discussions can be conducted orally, in writing, between the parties or their representatives, in or out of court. All the mentioned alternatives are possible. The method of conducting depends on the circumstances of the actual case.

Generally, if the parties are represented by attorneys, the discussions are conducted by those representatives. Under the Advocates' Code of Ethics, all out of court settlement discussions, as well as correspondence concerning those negotiations carried out between the parties' advocates is privileged.

13. Under what circumstances can an Arbitration Award be enforced, challenged or annulled?

A ruling of the arbitration court (the award) or a settlement reached before the arbitration court, have the same legal effect as a common court ruling or a settlement reached before it, upon their recognition or declaration of their enforceability by the public court. The ruling of the arbitration court (or a settlement) declared enforceable by the public court constitutes a writ of execution.

The public court recognizes a judgment of the arbitration court or a settlement reached before it (both foreign and domestic) or declares them to be enforceable on the petition of a party. In case the award or the settlement reached before the arbitration court, or the arbitration clause, are not made in Polish, the Party shall provide their certified translation into Polish.

The award cannot be appealed to the public courts, but it may be set aside on the following grounds:

1) an arbitration agreement is void, invalid, has expired or has never been concluded,
2) a party was not properly advised of the appointment of an arbitrator or arbitration proceedings, or was otherwise deprived of the possibility to defend his/her rights,
3) an award concerns a dispute which falls beyond the subject-matter and scope of an arbitration agreement,
4) a composition of an arbitration court was improper or basic rules of the arbitration proceedings have been infringed,
5) a ruling was achieved by means of an offence or on the basis of a false or faked document,
6) a final court ruling has been issued in the same case and between the same parties (*res judicata*),
7) a dispute between litigants cannot be settled by an arbitration court,
8) an award is contrary to the basic principles of the legal order of the Republic of Poland.