Chambers AND PARTNERS

CHAMBERS GLOBAL PRACTICE GUIDES

Litigation 2024

Definitive global law guides offering comparative analysis from top-ranked lawyers

Poland: Law & Practice

Rafał Waszkiewicz and Bartosz Pyzder
Sołtysiński Kawecki & Szlęzak

POLAND

Law and Practice

Contributed by:
Rafał Waszkiewicz and Bartosz Pyzder
Sołtysiński Kawecki & Szlęzak

Contents

Sołtysiński Kawecki & Szlęzak is one of Poland's leading full-service law firms. With more than 180 attorneys, the firm provides legal services in all areas of business activity and is known for its work and innovative approach to complex legal problems. Its litigation and arbitration practice specialises in resolving complex and landmark cases. It is capable of handling large-scale complex disputes in any sector. Additionally, it is often called upon to act in precedent-setting disputes and is regularly called upon to handle particularly complex matters. As a result, its lawyers have been involved in several important Supreme Court precedents that have influenced legal practice. It has represented clients before domestic and international arbitration tribunals, as well as European courts under Polish and most international law, whether the arbitration proceedings were seated in Poland or outside the country.

Authors

Rafał Waszkiewicz is an attorney-at-law and a partner in the litigation and arbitration practice at Sołtysiński Kawecki & Szlęzak. He specialises in proceedings before common courts and arbitration tribunals concerning civil law, including disputes relating to the implementation of large construction investments and commercial law. His expertise includes bankruptcy proceedings and administrative proceedings, including proceedings before administrative courts.

Bartosz Pyzder is an attorney-at-law and senior associate in the litigation and arbitration practice at Sołtysiński Kawecki & Szlęzak. He is experienced in handling court proceedings in civil and commercial law, including corporate disputes, information technology disputes, and disputes related to financial markets and accounting. His responsibilities include advising clients in administrative proceedings, including those before administrative courts.

Sołtysiński Kawecki & Szlęzak

Jasna 26
00-054
Warsaw
Poland

Tel: +48 22 608 7000
Fax: +48 22 608 7070
Email: office@skslegal.pl
Web: www.skslegal.pl

1. General

1.1 General Characteristics of the Legal System

The Polish legal system is based on civil law. In civil proceedings, the adversarial principle applies but the court is allowed to admit evidence on an ex officio basis.

During the proceedings, the parties submit written pleadings in which they express their positions on the case together with the evidentiary motions. The parties also submit documents that prove their positions. The submitted documents are the most important pieces of evidence.

The court generally hears cases at oral hearings. The parties are allowed to present their positions at the hearing. The court and the parties examine the witnesses and expert witnesses. Although judgments are announced publicly, the court may decide to announce the verdict in a closed session.

As a civil law system, the Polish legal system does not recognise the concept of binding precedents. Even so, the legal opinions expressed in the judgments of the Supreme Court and the courts of appeal are usually followed by the courts of lower instances, particularly when there is an established line of case law.

1.2 Court System

In Poland, the administration of justice is administered by common courts, which include:

- district courts, which are the courts of first instance;
- regional courts, which are the courts of first instance in cases in which the dispute exceeds PLN100,000 and in some other cases, regardless of the amount at dispute, as well as the courts of second instance in all other cases;
- courts of appeal, which are the courts of second instance for the cases heard by the regional courts in first instance; and
- the Supreme Court.

The courts are divided into divisions, eg, civil, criminal, family, commercial and labour. The administrative courts are separated from the common courts.

1.3 Court Filings and Proceedings

All parties have access to the case file. The court can grant access to the file to a third party when that person has demonstrated a legal interest. The hearings and the announcement of judgments are public, so third persons may appear. This entitlement is excluded when the hearing is conducted "in camera". In camera hearings are mandatory in some cases, eg, when the public hearing of the case threatens public order. The parties may request that the hearing is conducted in camera if the commercial secrecy of the parties may be disclosed.

1.4 Legal Representation in Court

Parties may participate in the proceedings on their own or they may be represented by:

- an attorney-at-law;
- legal counsel;
- a patent attorney if the case concerns intellectual property;
- a person holding a certificate of a restructuring adviser if the case concerns restructuring or insolvency;
- a close family member;
- an employee; or
- a co-participant of the case.

Certain matters, such as the filing of a cassation appeal and participation in cassation proceedings, require representation by a licensed lawyer. The foreign lawyers from the EEA countries may occasionally represent the parties in court. The foreign lawyers can also conduct a permanent practice in Poland when they obtain registration on the list of foreign lawyers.

2. Litigation Funding

2.1 Third-Party Litigation Funding

Polish law does not provide for regulations or restrictions on litigation funding.

2.2 Third-Party Funding: Lawsuits

As Polish law does not provide for regulations on litigation funding, there are no restrictions on third-party funding with respect to the type of lawsuits, matters in dispute, etc.

2.3 Third-Party Funding for Plaintiff and Defendant

As Polish law does not provide for regulations or restrictions on litigation funding, nor does it restrict the availability of funding for the claimant or for the defendant.

2.4 Minimum and Maximum Amounts of Third-Party Funding

Currently, Polish law does not provide any regulations or restrictions on the maximum amount that a third-party funder may contribute.

2.5 Types of Costs Considered Under Third-Party Funding

The third-party funder may fund all the costs of litigation, eg, court fees and expenses, and costs of legal representation. Polish law does not provide for any restrictions in this matter.

2.6 Contingency Fees

Polish law does not provide for regulations or restrictions on litigation funding. Therefore, as a rule, the contingency fees due to the third-party funder are allowed and the fees are not limited.

According to the professional rules binding on licensed attorneys, a success fee is allowed but it can only constitute a part of the attorney's remuneration (not the whole remuneration).

2.7 Time Limit for Obtaining Third-Party Funding

Polish law does not provide for regulations or restrictions on time limits by when a party to the litigation should obtain third-party funding.

3. Initiating a Lawsuit

3.1 Rules on Pre-action Conduct

The Polish court cannot impose any rules on the parties in relation to pre-action conduct. There is a requirement by law that the statement of claim includes information regarding mediation attempts or the lack of mediation. Neither mediation nor any other pre-action conduct is compulsory.

3.2 Statutes of Limitations

In Poland, different limitation periods apply depending on the nature of the claim. The general period of limitation for civil claims is six years and three years for commercial claims. However, substantive law provides for many shorter limitation periods for specific claims.

If the period of limitation is two years or longer, the end of the period of limitation falls on the last day of the calendar year.

A creditor's accrual of limitations begins when the claim becomes due. If the maturity of the claim depends on an act of the creditor, the limitation begins on the day when the claim would have become mature if the creditor undertook the act at the earliest possible opportunity. However, in specific cases, substantive law may provide for other triggers of limitation.

Limitation is taken into account only if the debtor raises the statute of limitations. However, the time limitation of a claim against the consumer is taken into account ex officio.

3.3 Jurisdictional Requirements for a Defendant

The jurisdiction of the Polish courts in international cases is guided by:

- the Code of Civil Procedure;
- international agreements; and
- Regulation (EC) No 1215/2012 (the "Recast Brussels Regulation").

A defendant residing, sitting or domiciled in Poland will be subject to the jurisdiction of Polish courts. In specific cases, the Polish courts have jurisdiction determined based on the place where the contract was performed, the location of the real estate, or the location where the damage occurred. Moreover, in most cases, the parties can agree on the jurisdiction of the Polish courts.

The Code of Civil Procedure provides for the regulations of local and functional jurisdictions. Local jurisdiction depends, as a rule, on the domicile or the seat of the defendant but, in specific matters, the local jurisdiction depends on the matter in dispute. If the local jurisdiction is not exclusive, the parties can agree on the jurisdiction of another court.

Functional jurisdiction depends on the matter in dispute; it cannot be changed by the parties.

3.4 Initial Complaint

The letter initiating the proceedings is the statement of claim. It must meet formal requirements and must contain the claim, an indication of the facts supporting it and evidentiary motions. It determines the scope of the case, but the claimant may put forward additional facts and arguments after the statement of claim has been lodged if a possibility or a need to mention them occurred later. The statement of claim does not have to contain the legal analysis of the case. When filing the statement of claim, the claimant is obliged to pay the court fee.

The documents proving the claim should be attached to the statement of claim.

In general civil proceedings, the statement of claim can be amended; however, this possibility is severely limited in commercial disputes. The claimant can withdraw the statement of claim during the proceedings but, in some cases, the defendant's consent is required.

3.5 Rules of Service

The claimant must send a copy of the statement of claim for the defendant to the court (together with the copy for the court). The court then serves a copy on the defendant via mail. Then, during the proceedings, professional attorneys are obliged to send the copy of their pleadings directly to the attorney of the opposite party (with some exceptions, ie, an appeal, a complaint, a cassation appeal, the amendment to the claim).

The court sends all the court papers to the parties via mail. However, if the party is represented by a professional attorney, the court's judgments, decisions or orders may be served

electronically via the court internet portal (each attorney who represents the clients before Polish courts should have an account in that court portal).

3.6 Failure to Respond

In the absence of a statement of defence, the court may consider the undisputed facts to be admitted. The defendant's position expressed later may not be taken into account by the court if it is deemed to be late. There are very limited possibilities for submitting letters and applications. Moreover, if the defendant fails to file a statement of defence, the court may issue a default judgment in a closed session.

3.7 Representative or Collective Actions

The Polish law permits group actions, but they are quite limited in scope and therefore rare in practice. The use of group proceedings in pecuniary claims is only allowed if the amount of each group member's claim has been harmonised by equalising the claims of the members of the group or sub-group. Group actions are based on the opt-in principle.

3.8 Requirements for Cost Estimate

There is no requirement in Polish law that clients be provided with an estimate of the potential costs of litigation.

4. Pre-trial Proceedings

4.1 Interim Applications/Motions

Polish law allows for several types of interim applications, including interim injunctions and evidence preservation. Following the grant of an injunction, the court may decide on measures, such as encumbering real property, seizing movable property, or establishing compulsory administration of businesses. If the secured claim is non-pecuniary, the court may secure it in any manner appropriate, including suspending the effects of some legal action or prohibiting certain actions.

4.2 Early Judgment Applications

Polish law does not provide for a form of "early judgment"; however, there are three types of judgments that may be issued before the court hears all the merits of the case.

- The court may give a partial judgment when only part of the claim or some of the claims in the application are capable of being settled.
- The court, finding the claim to be justified in principle, may give a preliminary judgment only on the merits (principle) of the case and continue the proceedings regarding determining the amount of the claim.
- The court may also dismiss a claim as being manifestly unfounded in a closed session without serving the statement of claim on the defendant or hearing the submissions made with the claim.

The court may also issue an order for payment in order for payment procedure or procedure by writ of payment (see **9.1 Awards Available to the Successful Litigant**).

4.3 Dispositive Motions

Polish law provides the creditor with the possibility to file an application to secure a claim. Such security is granted in the form of a court decision and prevents the debtor from disposing of property that could have adverse effects on the creditor and the claims asserted by the creditor or regulate the relationship between the parties in another appropriate way.

Moreover, the claimant may request that the evidence is preserved when there is a fear that the

taking of evidence later will become impracticable or too difficult, or when, for other reasons, there is a need to establish an existing state of affairs.

On the other hand, the defendant may raise some motions/objections that would prevent a hearing, eg, the lack of jurisdiction, the existence of a valid arbitration clause covering the case, or a motion to examine the value of the dispute (which is particularly important when the court fee depends on the amount in dispute). As a rule, such motions and objections must be raised in the statement of defence before the discussion on the merits of the case.

4.4 Requirements for Interested Parties to Join a Lawsuit

A person who is not a claimant or a defendant may join a case. This is possible if such person has a legal interest in a case being settled in favour of one of the parties. The joinder (side intervention) may be filed at any stage of the proceedings before the court of the first or second instance and should indicate the party which the intervener wants to join and the legal interest for participating in the case. The court fee for the joinder is one fifth of the court fee for the statement of claim.

A side intervention can also be triggered by the party who, in the event of an unfavourable outcome for them, would have a claim against a third party, or against whom a third party could bring a claim. In such case, the party may request that the court notifies such third person about the proceedings. In such event, the third party can join the case but is not obliged to do so.

A third party may join the trial against the existing parties (main intervention).

At the request of one of the parties, the court may summon the person named in the request to participate in the case as a defendant or provide notice to a third person on the possibility of participation in the case as a claimant.

Each party can oppose the intervener who wishes to join. In the case of the opposition, the intervener must substantiate their legal interest. If the intervener fails to do so, the court should accept the opposition's motion and the intervener is prohibited from participating in the case.

The intervener is entitled to take any procedural actions as may be admissible at a given stage of the case; however, in some cases, such actions may not run counter to the actions and statements of the party which the intervener has joined.

4.5 Applications for Security for Defendant's Costs

The defendant cannot generally seek an order that the claimant pay a sum of money as a security for the defendant's costs. However, where the claimant is based outside of the EU, the defendant may request the claimant's deposit to secure the costs of the litigation. Such request may be filed in the statement of defence before the discussion on the merits of the case.

4.6 Costs of Interim Applications/ Motions

The court fees for interim applications are different and depend on the type and subject of a motion. The court deals with the costs of interim applications in the judgment closing the main proceedings. As a rule, an unsuccessful party in the main proceedings is encumbered also with the costs of interim applications together with the attorney's fees. However, if the claimant does not initiate main proceedings, the court

may decide on the costs of interim applications in the interim proceedings.

4.7 Application/Motion Timeframe

In principle, the court is not bound by any time limits to hear an interim application. However, an instructional deadline of seven days applies to an interim injunction. Failing to comply with the deadline does not result in negative consequences for the court. There are limited possibilities to expedite the court's consideration of the application for an interim injunction or any other motions.

5. Discovery

5.1 Discovery and Civil Cases

There are no pre-trial discovery procedures in Poland in the formation known in some other jurisdictions. However, Polish law provides two types of procedures similar to the discovery, as set out below.

- The party may request that the court orders the opposite party, a third party, or some administrative bodies to provide documents that are in their possession. If the party fails to provide documents despite an order to do so, the court should assess the significance of such obstruction, eg, the court may find the facts given by the requesting party proven. If the third party fails to provide documents, the court may impose a fine. All parties have access to the documents provided in this procedure.
- In the proceedings regarding damages caused by a breach of competition law, there is a discovery procedure more similar to that known in common law. The party who requests that the court ordered an opposite party or a third party to provide evidence must assure that they will not disclose the evidence and will not use it for any other goal than the proceedings in which the evidence is disclosed. The court may impose a fine on all parties that refuse to discover the evidence (even on the opposite party). The opposite party cannot refuse to discover the evidence if the only reason to do so is the danger of losing the case. These discovery procedures theoretically concern not only documents but also other types of evidence.

In the provisions pertaining to proceedings regarding intellectual property, discovery proceedings are mentioned in a manner identical to that mentioned in the second bullet point.

5.2 Discovery and Third Parties

It is possible to obtain limited discovery from a third party not named as a claimant or defendant. As a general rule, everyone is obliged to produce, if the court so orders, a document in their possession. See **5.1 Discovery and Civil Cases**.

5.3 Discovery in This Jurisdiction

The court may order a party or a third person to provide a document if it considers that the document is evidence of a fact essential to the outcome of the case. Everyone is obliged to provide, if the court so orders, a document in their possession. However, Polish law does not provide any examples of the documents that must be disclosed and it is at the discretion of the court to make this decision.

When the court deems it necessary to review the original of an official copy of a document, it may order that it be delivered at the hearing or reviewed on the spot by the designated judge or by the whole court.

5.4 Alternatives to Discovery Mechanisms

The burden of proving a fact lies with the person who derives legal consequences from that fact. The parties provide evidence to support their claims. Only if the party does not possess the document supporting the claim may it request that the court orders another person to provide (discover) the evidence. See **5.1 Discovery and Civil Cases**.

Moreover, if the document is held in the administrative files, the parties can request that the court summons the administrative body to provide the document or a certified copy of it.

5.5 Legal Privilege

Professional privilege covers the right to refuse to answer a question as a witness. However, a person ordered to provide a document may object to it if such person is entitled to refuse to testify as a witness on the facts covered by a document or if a person holds a document on behalf of a third party who could refuse to testify for the same reasons.

Professional privileges apply only to licensed attorneys-at-law, legal counsels, patent attorneys and tax advisors.

5.6 Rules Disallowing Disclosure of a Document

The holder of the document may be discharged from providing it:

- when the document contains classified information subject to protection; or
- when they could, as a witness, refuse to testify as to the circumstances covered by the document.

However, providing a document may not be refused where the holder of the document or a third party is under an obligation to provide it in respect of at least one of the parties, or where the document is issued in the interest of a party who demands the taking of evidence.

Moreover, the possibility of avoiding the production of evidence is limited in discovery procedures applying in proceedings regarding damages caused by the breach of competition law and in proceedings regarding intellectual property.

6. Injunctive Relief

6.1 Circumstances of Injunctive Relief

Injunctive relief may be claimed by any party or participant in the proceedings if they substantiate:

- the claim to be secured; and
- a legal interest in granting security.

The legal interest in granting injunctive relief exists when the lack of security will prevent or seriously impede the enforcement of the decision made in the case or will otherwise prevent or seriously impede the achievement of the purpose of the proceedings in the case.

The same grounds apply to pecuniary and non-pecuniary claims. The choice of the type of injunction is made by the court taking into account the purpose of these proceedings.

The interim injunction is allowed in most cases; however, it is not allowed to secure pecuniary claims against the state treasury.

In disputes concerning intellectual property rights, the court is obliged to reject the applica-

tion for an interim injunction if it is filed more than six months after the party became aware of the infringement of its exclusive right.

6.2 Arrangements for Obtaining Urgent Injunctive Relief

The courts are bound by a seven-day period to consider the application for an interim injunction. However, this is an instructive deadline and failing to meet it is not considered a breach of procedure. There are no "out-of-hours" judges or similar who would consider the motion for an interim injunction outside of the normal court hours in Poland.

6.3 Availability of Injunctive Relief on an Ex Parte Basis

Injunctive proceedings are conducted ex parte, without notice to the respondent. If, however, the respondent obtains information regarding the motion for an interim injunction against them, they can file a pleading with their position, but the court is not obligated to wait for the respondent's position. In disputes concerning intellectual property rights, the court should hear the obliged person unless it is necessary to immediately issue a ruling on the application.

6.4 Liability for Damages for the Applicant

Polish law provides for the liability of the applicant for the enforcement of the interim injunction. This also applies to injunctions that are not enforceable (eg, the prohibition of taking some action). The prerequisites for liability include:

- proving the damage;
- proving the connection between the execution of the security and the damage;
- one of the following events connected to the obtained security of claim:
  - (a) the dismissal and rejection of the claim or application;
  - (b) the discontinuance of proceedings;
  - (c) the return of the claim or application;
  - (d) the failure to lodge the letter initiating proceedings regarding the secured claims within the prescribed time limit (this applies when the injunctive relief was issued before initiating main proceedings); or
  - (e) the withdrawal of the claim or application.

A claim against the applicant expires if it is not pursued within one year from the day of the claim arising.

6.5 Respondent's Worldwide Assets and Injunctive Relief

As a rule, Polish courts grant injunctive relief against assets located in Poland. With regard to funds in an account held in the EU, it is possible to obtain a European preservation order. Exclusive national jurisdiction covers matters of rights in rem in immovable property and the possession of immovable property.

In principle, injunctive relief may be granted against the respondent's worldwide assets.

6.6 Third Parties and Injunctive Relief

Injunctive relief may not be obtained against third parties.

6.7 Consequences of a Respondent's Non-compliance

The consequences if a respondent does not comply with the terms of an injunction are different and depend on the method of securing a claim.

Injunctions may be enforceable, such as if a bank account is seized and the respondent is then required to comply with the injunction.

In the case of a substitutable action, the court will give the creditor authority to perform the action at the debtor's expense.

In the case of irreplaceable actions, the court may impose a fine on the obligor or order the payment of a specified sum of money to the creditor.

7. Trials and Hearings

7.1 Trial Proceedings

Proceedings before Polish courts do not contain a "pre-trial procedure" or "trial" as known in some common law legal systems. As a rule, in the first part of the case, the parties file preparatory pleadings (a statement of claim, a statement of defence, etc) and then there are hearings in which oral arguments are presented and witness or expert witnesses are examined (which, to some extent, is similar to a trial).

As regards the parties' argumentation (particularly legal argumentation), the court places the greatest emphasis on the parties' pleadings. The court determines the facts based on the evidence presented at the hearing and the documents attached to the preparatory pleadings. Moreover, in some cases, the court may decide that an oral hearing is not necessary and issues a judgment based on written submissions and documents.

7.2 Case Management Hearings

In 2019, a pre-trial hearing was introduced to set the agenda for the trial. This contains rulings on the admission or omission of requests for evidence.

However, the courts often overlook this procedure. Sometimes, judges decide to hold a "management hearing", which is not concluded within the official agenda for the trial, but which concerns decisions about the schedule of the proceedings, admission of the evidence, etc.

7.3 Jury Trials in Civil Cases

There is no jury in the Polish legal system. However, some cases are heard by the court composed of a professional judge and non-professional judges (jurors) elected by a local council for a limited period.

The participation of jurors is limited. They are obligatory in certain cases, mainly concerning family law and labour law, but only in the first instance. During the COVID-19 pandemic, civil cases (including family and labour cases) were heard by a court composed of only one professional judge. On 15 April 2023, the composition with jurors was reinstated. However, non-jury composition will remain until the end of the proceedings in a given instance.

7.4 Rules That Govern Admission of Evidence

The general rule is to present claims and evidence in the statement of claim and the statement of defence. The subsequent presentation of evidence is admissible with the permission of the court.

In the second instance, new evidence may be introduced only in exceptional circumstances when the party was unable to rely on it in the proceedings before the court of first instance.

Stricter preclusion of evidence occurs in commercial proceedings. In both the claimant's statement of claim and the defendant's statement of defence, the claims and evidence must be referenced. If a possibility or a need to refer to evidence arose late, the evidence should be

referred to within 14 days; however, the court may decide to issue another or an additional deadline.

Further, the court should disregard evidence that is not necessary to prove the facts relevant to the case or that is motioned for the sole purpose of extending the proceedings.

7.5 Expert Testimony

The court may admit the evidence of an expert witness opinion at the request of the parties or, exceptionally, ex officio. The court should do so if specialist information is required.

The expert witness is appointed by the court. The parties are entitled to suggest candidates to become an expert witness but these suggestions are not binding on the court. The parties are not allowed to provide a private expert's opinion. Such opinion is considered to be the party's position only.

The expert witness prepares the opinion in writing. The parties are allowed to comment on the opinion and ask additional questions. If this is the case, the expert witnesses prepares an additional opinion in writing and may be heard orally at the hearing. It is also possible to examine the expert witness remotely, but as of March 2024 the parties will have a right to oppose the remote examination. The evidence of an expert witness opinion is subject to the court's evaluation as other evidence. However, in practice, this evidence is of great importance.

7.6 Extent to Which Hearings Are Open to the Public

The openness of hearings is a constitutional principle. Trial decisions of minor importance may be made in a closed session. The openness of the trial may be excluded ex officio or for other reasons, eg, when the public hearing of the case threatens public order. The parties may request that the hearing is conducted in camera if the commercial secrecy of the parties may be disclosed. Only persons of legal age have access to public hearings.

7.7 Level of Intervention by a Judge

The judge leads the hearing. They are the first to question the witnesses and experts and may ask questions out of turn. They may also overrule a question from an attorney or a party and may take the floor when they consider that the question or statement is abusive.

The judge may express a view as to the intended ruling.

The judgments and the decisions may be issued during the hearing or in a closed session. This is at the judge's discretion but, as a rule, if the judge decides to close the trial and issue the judgment in a closed session, the parties should be informed and given the possibility to express their position in writing.

7.8 General Timeframes for Proceedings

There is no legal timeframe for proceedings. In practice, the length of the proceedings depends on the type of case and the area under the jurisdiction of the court concerned. It is estimated that proceedings in two instances in large cities take approximately three to four years, or even longer if the case is complex; in smaller cities, the proceedings take approximately two years.

8. Settlement

8.1 Court Approval

There are in-court and out-of-court settlements in Poland. The former may be declared inadmis-

sible by the court when it is contrary to the law or principles of social co-existence or aims to circumvent the law. However, if such a settlement is approved, it ends the litigation.

Out-of-court settlements are acts of substantive law and do not, themselves, have an effect on the trial. However, in an out-of-court settlement, the claimant may request the withdrawal of the claim and the parties may decide on the costs of proceedings.

8.2 Settlement of Lawsuits and Confidentiality

In-court settlements form part of the court files. The rule of access to them is the same as the general rules regarding access to a case file. This means that it may be available for third parties with the court's permission. On the other hand, in-court settlements are not in the public domain and are not published by the court.

8.3 Enforcement of Settlement Agreements

Court settlements are a title of enforcement. A clause of enforceability must be sought and obtained in order to enforce such a provision. This also applies to settlements executed during official mediation.

On the other hand, an out-of-court settlement is a private contract. If a party does not follow the settlement, the opposite party has to bring an action (statement of claim) to the court and obtain a final and valid judgment to enforce the settlement.

8.4 Setting Aside Settlement Agreements

Polish law strictly limits the possibility of setting aside settlement agreements. Particularly, the legal effects of a settlement agreement cannot be evaded on the grounds that evidence has been found as to the claims to which the settlement agreement relates unless the settlement agreement was concluded in bad faith.

If a settlement agreement was entered into under the influence of a mistake, the avoidance of its legal effects can only be justified when the mistake concerns a factual state that both parties believed was undoubted based on the agreement, and if the parties had known the real state of affairs when the settlement was reached, the dispute or uncertainty would not have arisen.

9. Damages and Judgment

9.1 Awards Available to the Successful Litigant

There are three types of judgments in Poland:

- awarding judgments;
- declaratory judgments; and
- formative judgments.

In addition, there are also orders for payment (*nakaz zapłaty*) that are issued in simplified procedures, in particular, an order for a payment procedure and procedure by writ of payment.

These procedures in the first stage are conducted ex parte and the order of payment is based on the claimant's assertions and written evidence. The defendant may appeal an order of payment to the same court relatively easily. This results in the initiation of regular proceedings.

9.2 Rules Regarding Damages

Damages compensation serves a compensatory purpose. Its amount is determined by different methods. A comparison is made between the condition of the assets after the event causing

the damage and the condition of the assets without the event.

Punitive damages cannot be awarded. An exception exists in copyright proceedings. Right holders whose economic rights have been infringed are entitled to recover damages equal to twice the amount of the relevant remuneration.

In cases of personal injury and of infringement of personal rights, the injured party may be entitled to compensation in the form of a payment or an order to pay a specified sum of money to the NGO. The amount of compensation in such cases is established based on the principles of equity.

Polish courts seem to be rather conservative when it comes to the amount of compensation.

9.3 Pre-judgment and Post-judgment Interest

A party may successfully claim interest from the time when payment became due. This means that the party may claim for the interest that had accrued before the statement of claim was filed. Moreover, the claimant is entitled to capitalise the interest accrued until the date of the statement of claim.

If a Polish court issues a judgment awarding money, it generally awards a specific amount of money "together with the interest calculated from the specific date to the date of payment". As a result, the creditor does not have to file a new statement of claim for the interest accrued after the judgment has been entered. It should be noted that if the bailiff enforces the judgment, the interest is enforced in the actual amount as well.

In the event that the rate of interest for delay was not specified in the contract, statutory interest is accrued for the delay in an amount equal to the sum of the reference rate of the National Bank of Poland (NBP) and 5.5% points.

Interest for late payment in commercial transactions is due in certain categories of business cases. The interest for late payment in commercial transactions is higher than ordinary statutory interest and equal the sum of the NBP reference rate and 10% points.

9.4 Enforcement Mechanisms of a Domestic Judgment

Pursuing enforcement based on a judgment requires an application and an enforceability clause. Judgments are enforced by bailiffs who are state officers.

9.5 Enforcement of a Judgment From a Foreign Country

Judgments rendered in the EU are recognised automatically without the need for any proceedings.

In case of judgments rendered outside the EU, the extension of their effectiveness to Poland is provided by its recognition or declaration of enforceability. In both cases, it is necessary to apply for an enforceability clause to carry out enforcement proceedings.

10. Appeal

10.1 Levels of Appeal or Review to a Litigation

Judgments of the court of first instance may be appealed. Other decisions of the court of first instance may be challenged with a complaint in cases specified by law. The complaint is heard

by the court of first or second instance, depending on the matter of challenged decision.

Poland has a full appeals system; this means that the court of second instance decides the case, it does not only review the first instance verdict. A final decision may be appealed in a cassation appeal to the Supreme Court in cases specified by law.

10.2 Rules Concerning Appeals of Judgments

Two-instance proceedings is a constitutional principle. Therefore, judgments of the courts of first instance may be appealed without any additional authorisation.

There are only statutory requirements to be met, namely:

- a party must request that the court prepares the written justification of the judgment;
- the appeal must be filed within the statutory deadline, ie, two weeks counting from the date of service of the judgment with the written justification (in some complex cases, the deadline is three weeks); and
- the party must pay the court fee.

An appeal is a formal pleading that must meet statutory requirements as to content. It is heard by the court of second instance.

Procedural decisions can be challenged with a complaint in cases specified by law. The requirements that must be met to file a complaint are as follows.

- In most cases, a party must request that the court prepares the written justification of the decision.
- The complaint must be filed within one week counting from the date of service of the decision with the written justification.
- The party must pay the court fee, which is less than the court fee for an appeal.

Whether a complaint is heard by the court of second instance or by another judge in the court of first instance depends on the matter of the challenged decision.

10.3 Procedure for Taking an Appeal

Appeals must be filed with the court which issued the contested judgment within two weeks of service of the reasoned judgment on the applicant. The time limit for the appeal is three weeks if the deadline for preparing the written reasons for the judgment is extended. The deadline for the complaint is one week and cannot be extended.

10.4 Issues Considered by the Appeal Court at an Appeal

In Poland, there is a model of “full appeal”. The court of second instance hears the case, it does not only review the first instance verdict. As a general rule, the court of appeal should call a hearing but, in some cases, the appeal may be heard in camera.

Generally, the parties are not allowed to present new facts or evidence during the proceedings before the court of second instance. However, the court may admit new facts and evidence if a party could not have invoked them in the proceedings before the court of first instance or the need to invoke them arose later. The court of second instance can also admit evidence ex officio.

10.5 Court-Imposed Conditions on Granting an Appeal

The court cannot impose any conditions on granting an appeal.

10.6 Powers of the Appellate Court After an Appeal Hearing

The court of second instance may:

- dismiss the appeal;
- modify the judgment and rule on the merits;
- overturn the contested judgment and refer the case back for further examination; or
- overturn the contested judgment and discontinue the proceedings if the statement of claim is rejected (eg, because of the lack of jurisdiction of Polish courts) or if the claimant withdraws the statement of claim.

In the judgment, the court of appeal should present its view on the case; in particular, it should make its own assessment of the evidence (if, in the appeal, the party alleged the wrongful assertion of evidence or a mistake in establishing the facts). The court of appeal is obliged to make a legal assessment of the case, which may result in a change of the contested judgment if the legal assessment differs from the one made by the court of first instance.

11. Costs

11.1 Responsibility for Paying the Costs of Litigation

The unsuccessful party is obliged to reimburse the opponent, at the latter's request, for the costs necessary to assert their rights and defend themselves.

Costs include:

- court fees;
- expenses related to travelling to court by the party or their attorney;
- the equivalent of the earnings lost due to the party's appearance in court when their appearance is mandatory;
- costs of representation by a professional attorney;
- expenses made during the proceedings by the court, eg, the remuneration due to the expert witness;
- the costs of mediation conducted from the court's initiative; and
- the costs of incidental proceedings, eg, security proceedings.

These costs are included in the pleading known as the list of costs.

The attorney's fees that may be reimbursed are fixed by a legal regulation which means that, even if the actual attorney's remuneration paid by the successful party was higher, it will not be reimbursed in the full amount.

The decision on the reimbursement of costs may be challenged in an appeal or, if the party does not want to file an appeal, in a complaint. The decision regarding the costs of proceedings of the second instance may be challenged in a complaint addressed to the court of second instance (the complaint is heard by the other judges).

11.2 Factors Considered When Awarding Costs

In deciding the costs, the court takes into account the outcome of the case.

Irrespective of the outcome of the case, the court may impose an obligation on a party or an

intervener to reimburse the costs occasioned by their negligent or manifestly wrongful conduct.

11.3 Interest Awarded on Costs

Interest is payable on the sum awarded as the reimbursement of legal costs at the statutory rate for delayed payment from the date the decision awarding them became final until the date of payment. This applies only to cases initiated after 7 November 2019. If the case began before this date, there is no interest on costs. The obligation to pay interest is decided by the court ex officio.

12. Alternative Dispute Resolution (ADR)

12.1 Views of ADR Within the Country

Mediation is promoted as an effective means of resolving disputes. It is the court's responsibility to encourage the parties to resolve their dispute amicably, and to refer them to mediation if necessary. The use of arbitration is increasing.

12.2 ADR Within the Legal System

There is an obligation to provide information in the statement of claim as to whether the parties have attempted mediation or other out-of-court resolution of the dispute.

Although the parties have been referred to mediation by the court, it is a voluntary process. There are no sanctions for unreasonably refusing ADR.

12.3 ADR Institutions

Institutions offering and assisting ADR are well organised.

There are institutional and individual mediators.

13. Arbitration

13.1 Laws Regarding the Conduct of Arbitration

Arbitration in Poland is allowed in a wide scope of matters. As a rule, it is much faster than proceedings before a state court.

Litigation before a state court is not permitted when there is a valid and effective arbitration clause and either the defendant or the participant raises this objection before the dispute on the merits. Such objection must be made in the statement of defence before the discussion on the merits of the case. If so, the court rejects the statement of claim.

An arbitral award or a settlement reached before an arbitral tribunal have the same legal force as a court award or a settlement reached before a court of law once it has been recognised by the court or declared enforceable by the court.

13.2 Subject Matters Not Referred to Arbitration

In general, matters can be submitted to arbitration. Arbitration cannot be used for the following subjects:

- alimony cases; or
- disputes involving non-property rights if they cannot be settled, eg, divorce cases.

In addition, there are specific restrictions on the arbitration of consumer disputes.

13.3 Circumstances to Challenge an Arbitral Award

A party may demand that an arbitration award be set aside where:

- there was no arbitration clause, or the arbitration clause is invalid, ineffective or has expired;
- a party was deprived of the possibility to defend its rights before the arbitration court;
- the award of the arbitration court relates to a dispute not covered by the arbitration clause;
- the requirements as to the composition of the arbitration court or the basic principles of the proceedings before that court have not been observed;
- the judgment was obtained by means of a crime, or the basis for issuing the judgment was a forged or counterfeited document; or
- a final court judgment was issued in the same case between the same parties.

The court may also set aside an arbitral award on the grounds of the public policy clause, inadmissibility of arbitration in the case, and depriving the consumer of the protection granted by law.

13.4 Procedure for Enforcing Domestic and Foreign Arbitration

Awards of a domestic and foreign arbitral tribunal require a declaration of enforceability (enforceability clause). This process is carried out in a simplified procedure. The courts of appeal have jurisdiction at first instance. Their decisions are subject to appeal.

For a foreign arbitral tribunal, the court decides on the recognition or declaration of the enforceability of an award after a hearing.

14. Outlook

14.1 Proposals for Dispute Resolution Reform

Legislators are seeking new solutions to streamline proceedings with varying degrees of success. As a result, the provisions of the Code of Civil Procedure are frequently amended and have little stability.

In 2023, two amendments to the Civil Procedure Code were passed, which inter alia:

- introduced special proceedings regarding disputes between entrepreneurs and consumers;
- changed the basic composition of the appellate court from three judges to one judge;
- introduced stricter rules regarding written pleadings, ie, the obligation to distinguish statements, assertions and motions;
- reinstated the participation of jurors in the jury panels; and
- introduced the possibility of conducting evidence in a remote session.

On 14 March 2024, the provisions regarding a remote hearing will be introduced into the Code of Civil Procedure. Currently, this possibility is provided for in the temporary regulations introduced in connection with the COVID-19 pandemic.

CHAMBERS GLOBAL PRACTICE GUIDES

Chambers Global Practice Guides bring you up-to-date, expert legal commentary on the main practice areas from around the globe. Focusing on the practical legal issues affecting businesses, the guides enable readers to compare legislation and procedure and read trend forecasts from legal experts from across key jurisdictions.

To find out more information about how we select contributors, email Katie.Burrington@chambers.com