

Alternative Dispute Resolutions – Business Law Department

The Alternative Dispute Resolution ("**ADR**") which refers to any means of settling disputes outside of the courtroom is highly supported by the Polish legal system. The most common ADR includes negotiation, conciliation, mediation, and arbitration.

The greatest advantages of the ADR are the privacy, flexibility (including possible choice of the place, language, and law), and speed of proceeding which arises from the one instance (the arbitration centers declare that the arbitral award shall be issued within 9 months after the commencement of the proceeding).

ADR is an excellent choice for foreign investors and cross-border contracts. It especially allows solving commercial disputes by the nationally neutral court, in a joint language (most often English), based on the law chosen by the parties. The arbitrators appointed to the arbitral tribunal are specialists in the area which is the subject of a dispute. This enables the parties to solve the dispute on a high professional and expert level.

The mediation shall be selected when the parties are still working together and the arisen dispute is the only obstacle in their cooperation. The court-ordered mediation is supported by the reduced court costs. The court will return the entire court fee to the party, if the parties reach a settlement with the mediator before the first hearing. The mediator's remuneration is capped at a maximum of PLN 2,000 for the entire mediation process.

Arbitration is the preferable option when the parties are no longer able to resolve the dispute amicably and are not willing to make concessions.

Poland is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards as of 1958 which provides the recognition of the arbitration agreements and court recognition and enforcement of the foreign and non-domestic arbitral awards.

Poland, as many other countries, has adopted arbitration laws based on the UNCITRAL Model Law on International Commercial Arbitration, which covers all the stages of the arbitral process from the arbitration agreement, the composition and jurisdiction of the arbitral tribunal, the extent of the court intervention to the recognition and enforcement of the arbitral award. Polish arbitration law is stipulated in Part Five of the Polish Code of Civil Procedure and deals with all the above aspects.

Unless a special provision provides otherwise, the parties may submit to the arbitral tribunal for resolution: 1) the disputes over property rights (except for alimony cases); 2) the disputes over non-property rights if they may be the subject of a court settlement.

The arbitration agreement related to the labour law and the consumer disputes shall be concluded only after the dispute has arisen and shall be in writing.

In addition, if the case is already pending before the common court, the parties may still submit the dispute to arbitration, until the case is finally settled by the common court (Article 1161¹ of the Civil Procedure Code). Encouraging the parties to settle their dispute amicably is the purpose of the Article 1161¹ of the Civil Procedure Code. Since the parties are the disposers of the case, the abovementioned provision allows them to submit the dispute already pending before the common court to arbitration court for a settlement. Therefore, the prior absence of the arbitration clause is no longer a problem.

The award of the arbitral tribunal to have legal effects equal to the court judgment shall be recognized or declared enforceable by the court.

The court may refuse to recognize or enforce the arbitral award or settlement only if: 1) the dispute cannot be resolved by arbitration under the law; 2) the recognition or enforcement of the arbitral award reached before the arbitral tribunal would be contrary to the fundamental principles of the Polish legal order (public policy clause); 3) the arbitral award deprives the consumer of the protection granted by the mandatory provisions of applicable law. Therefore, the risk of no recognition of the arbitral award in Poland is strictly limited.

The leading arbitration and mediation institution in Poland includes:

- the Court of Arbitration at the Polish Chamber of Commerce in Warsaw (SAKIG) (the main and the oldest arbitration center in Poland);
- the Court of Arbitration at the Polish Confederation Lewiatan.