THE INTERNATIONAL ARBITRATION REVIEW

NINTH EDITION

Editor
James H Carter

THE LAWREVIEWS

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PREFACE

International arbitration is a fast-moving express train, with new awards and court decisions of significance somewhere in the world rushing past every week. Legislatures, too, constantly tinker with or entirely revamp arbitration statutes in one jurisdiction or another.

The international arbitration community has created a number of electronic and other publications that follow these developments regularly, requiring many more hours of reading from lawyers than was the case a few years ago.

Scholarly arbitration literature follows behind, at a more leisurely pace. However, there is a niche to be filled by an analytical review of what has occurred in each of the important arbitration jurisdictions during the past year, capturing recent developments but putting them in the context of the jurisdiction's legal arbitration structure and selecting the most important matters for comment. This volume, to which leading arbitration practitioners around the world have made valuable contributions, seeks to fill that space.

The arbitration world often debates whether relevant distinctions should be drawn between general international commercial arbitration and international investment arbitration, the procedures and subjects of which are similar but not identical. This volume seeks to provide current information on both of these precincts of international arbitration, treating important investor–state dispute developments in each jurisdiction as a separate but closely related topic.

I thank all of the contributors for their fine work in compiling this volume.

James H Carter
Wilmer Cutler Pickering Hale and Dorr LLP
New York
June 2018

Chapter 34

POLAND

Michał Jochemczak and Tomasz Sychowicz[1]

I INTRODUCTION

Over the past 28 years, Poland has made substantial progress in developing into a pro-arbitration jurisdiction by, *inter alia*, enacting arbitration-friendly legislation and developing case law that is generally pro-arbitration and pro-enforcement. Ten years ago, large and complex disputes involving Polish elements were ordinarily arbitrated at foreign seats such as London, Paris, Geneva or Vienna, while Polish lawyers typically played a somewhat limited role. However, it is less and less surprising to see Warsaw as the seat of even high-value cases, with Polish lawyers acting as lead or co-counsel on the record, or sitting as arbitrators. While Poland cannot yet be put on an equal footing with arbitration-friendly jurisdictions such as Switzerland, France or England, its position will continue to improve, and arbitration's end-users – entrepreneurs doing business in Poland – will only benefit from this, as will their lawyers. The past two years have seen important developments that confirm that Poland is heading in the right direction arbitration-wise.

Below we provide a brief overview of Polish arbitration law, discuss its 2015 amendments, and provide an overview of the main arbitral institutions in Poland and recent developments concerning arbitration case law.

i Poland's main arbitration institutions

One feature of the Polish arbitration landscape is its multiple arbitral institutions, including specialised courts of arbitration for the banking sector, natural gas industry and even the cotton trade.[2] The two main arbitral institutions are the Court of Arbitration at the Polish Chamber of Commerce (SA KIG)[3] and the Court of Arbitration at the Polish Confederation Lewiatan (Lewiatan).[4] Both courts have adopted rules of arbitration that follow the modern trends of international arbitration.

ii Overview of Poland's arbitration law

Polish arbitration law is primarily regulated in Part V of the Code of Civil Procedure (CCP)[5], while certain provisions can be found in other legal acts. The current regulation was

1 Michał Jochemczak is a partner and Tomasz Sychowicz is a senior associate at Dentons. The information in this chapter is accurate as of July 2017.

2 For a list of Polish arbitral institutions, see arbitration-poland.com/important-links.

3 More details regarding the SA KIG can be found at www.sakig.pl.

4 More details regarding the Lewiatan can be found at www.sadarbitrazowy.org.pl.

5 Code of Civil Procedure, Act of 17 November 1964, Official Journal 1964, No. 43, Item 296 with further amendments; Part V was by the Act of 28 July 2005, Official Journal No. 178, Item 1778 with further

introduced in 2005 and is based on the 1985 version of the UNCITRAL Model Law on International Commercial Arbitration. The 2006 amendments of the Model Law have not been implemented yet. The arbitration law underwent some important, arbitration-friendly modifications in 2015, some of which are discussed further below.

Poland is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention). Hence, in the vast majority of cases the recognition and enforcement of foreign arbitral awards will be made on the basis of the New York Convention. Poland is also a party to the European Convention on International Commercial Arbitration of 1961. However, it is not a party to the ICSID Convention. In addition, Poland has signed and ratified bilateral investment treaties (BITs) with approximately 60 countries, and is also a party to the Energy Charter Treaty.

Polish arbitration law does not distinguish between international and domestic arbitration. Consequently, Part V of the CCP applies to all arbitrations having their seat in Poland, including institutional and *ad hoc* arbitrations. However, Polish arbitration law treats the recognition and enforcement of foreign arbitral awards slightly differently from local awards: for example, by generally subjecting the former to the possibility of a challenge from the Supreme Court. Furthermore, some provisions of Polish arbitration law are applicable to arbitrations that have their seat outside Poland.

A large majority of the provisions of Polish arbitration law are of a non-mandatory nature, allowing the parties to depart from the regulations envisaged in the CCP (e.g., with respect to the conduct of proceedings).

Regarding arbitrability, Polish law permits very broad categories of disputes to be referred to arbitration, including civil, commercial, family (save for alimony cases), labour and social security disputes. The basic rule in this respect provides that all disputes that are suitable for a settlement before a state court (i.e., all cases where the subject of the dispute concerns rights and obligations that are freely disposable by the parties or by one of them) are arbitrable. While the rule seems to be straightforward, it has given rise to divergent views as to whether a dispute concerning the validity of a legal act (e.g., a contract) can be referred to arbitration. These controversies have now been settled by the Polish courts, and, importantly, in a pro-arbitration fashion. A controversy continues to exist, however, with respect to the arbitrability of corporate disputes over the invalidity or revocation of a shareholders' resolution in joint-stock or limited liability companies. The main view is that such disputes are arbitrable, although it will likely require some diligence in drafting an arbitration agreement, as well as in the course of arbitral proceedings, to ensure that the award is binding on all the shareholders and the company (while not subject to the risk of annulment itself). While this position is well-reasoned and advocated by some of the leading scholars,[6] it remains to be seen whether it will be endorsed by the Polish Supreme Court.

Prior to the 2005 amendment of the CCP, there had been contradictory case law rulings concerning the question of entering into an arbitration agreement by proxy, which happens very often in practice. Polish courts usually considered that a general power of attorney to represent a principal was insufficient, and that a more specific authorisation in this respect

amendments. An unofficial English translation of Part V of the CCP can be found at www.sadarbitrazowy.org.pl/repository/Part-V-of-the-Polish-Code-of-Civil-Procedure-Arbitration.pdf.

6 See in particular A W Wiśniewski, 'System of Commercial Law', Commercial Arbitration, Volume 8, edited by A Szumański, second edition 2015.

was required.[7] This was an unsatisfactory conclusion for practitioners. Today, Article 1167 of the CCP provides that a power of attorney given by an entrepreneur to a proxy to enter into a transaction encompasses the power to execute an arbitration agreement concerning disputes that may arise from that transaction.

Until recently, a peculiar feature of Polish arbitration law were its provisions concerning the effects of bankruptcy on an arbitration agreement. Here, the arbitral agreement was to lose its effect and, as a result, all pending arbitral proceedings were to be discontinued (Articles 142 and 147 of the Polish Bankruptcy and Restructuring Act). Fortunately, these regulations were abolished by the 2015 amendments, as discussed further below.

Pursuant to Article 1159 Section 1 of the CCP, Polish courts may intervene in arbitral proceedings only in limited instances and when the law explicitly so provides. The practice of the Polish courts shows that this principle is observed. An illustration of this can be found in a recent decision of the Court of Appeals in Krakow declining an anti-arbitration injunction on the grounds that the CCP does not envisage such an intervention of state courts in arbitral proceedings.[8]

As indicated above, Poland is a party to the New York and Geneva Conventions. To the extent the New York Convention does not apply, the CCP establishes a framework for the recognition and enforcement of foreign arbitral awards that mirrors that of the Convention. Recognition and enforcement are facilitated even more with respect to domestic awards. Here, Polish courts examine only whether a dispute is arbitrable under Polish law, and whether the recognition or enforcement of an award would be contrary to Polish public policy. The Supreme Court emphasises that this procedure is incidental, and that its function is to ensure fast and effective enforcement of an award.[9]

Importantly, Polish courts consistently demonstrate a pro-enforcement approach, so they refuse to enforce or annul arbitral awards only very rarely. It is worth noting that the public policy ground in particular is construed very narrowly. For example, even when it was established that a case turned on an arbitral tribunal's erroneous interpretation of the statutory provisions on the statute of limitation, which are of a mandatory nature, this was not considered a breach of public policy.[10] On the other hand, an arbitral award ordering punitive damages was held to run foul of public policy.[11]

That said, the Polish procedure made the enforcement process unnecessarily lengthy, even when the resisting party's claims had little merit. This was mostly because annulment proceedings and the enforcement of foreign arbitral awards were subject to the standard procedure with two instances, followed by extraordinary recourse to the Supreme Court,[12] coupled with the general lengthiness of Polish court proceedings, in particular before the

7 See Supreme Court resolution dated 8 March 2002, III CZP 8/02; see also the Supreme Court decision dated 25 August 2004, IV CSK 144/04.

8 See Krakow Court of Appeals judgment dated 22 November 2016, I ACz 1997/1.

9 See Supreme Court decision dated 20 May 2011, IV CZ 18/11.

10 See Supreme Court judgment dated 15 May 2014, II CSK 557/13 and Supreme Court judgment dated 16 May 1997, I CKN 205/97.

11 See Warsaw Court of Appeals decision dated 26 January 2012, I ACz 2059/11; see also Supreme Court decision dated 11 October 2013, I CSK 697/12 – while the case concerned a foreign judgment, not an arbitral award, the interpretation of the public order clause is also relevant for the latter.

12 Generally, court proceedings in Poland comprise two instances, but when the value in dispute exceeds 50,000 zlotys, and a gross violation of material or procedural law, or both, is in question, a party may file a cassation appeal to the Supreme Court.

first instance courts. The end result was that enforcement proceedings could prove to be more time-consuming than an arbitration itself. In addition, a losing party is required to reimburse the legal costs of the winning party only within the statutory limits, which means only marginal amounts. This effectively created an incentive for award-debtors to derail enforcement proceedings so as to postpone enforcement and to force a creditor to agree on some concessions. The procedural deficiencies of enforcement process were largely dealt with in the amendments to the Polish arbitration law adopted in 2015, as discussed below.

II THE YEAR IN REVIEW

i 2015 amendments

In 2015, Parliament enacted a number of important amendments to the Polish arbitration law, which entered into force on 1 January 2016.

First, a set of changes concerning post-arbitration proceedings was promulgated, which included the following:

a applications for setting aside and the recognition and enforcement of arbitral awards are now to be adjudicated by the competent courts of appeal (within their territorial jurisdiction);

b appeals against Court of Appeals decisions on recognition or enforcement of arbitral awards are to be adjudicated by different panels of the same courts. Cassations to the Supreme Court remain possible only with respect to foreign arbitral awards;

c Court of Appeals judgments in relation to setting aside applications are subject to a cassation appeal to the Supreme Court;

d the time period for the commencement of setting aside proceedings has been cut to two months;

e setting aside applications must now meet the requirements for an appeal, and not for a statement of claim, as was the case under the old regulations; and

f within two weeks after receiving an application for recognition or enforcement of an award, the opposite party may submit its position to the court.

These changes aim at reducing the length of recognition and enforcement proceedings, and also to ensure even more stable and consistent jurisprudence concerning arbitration. Indeed, experience shows that appeal court judges are less prone to arrive at 'surprising' outcomes or to accept procedural tricks that can derail the proceedings. Our recent experience may serve as a case in point in a case that concerned the enforcement of a foreign arbitral award against three respondents. Two of the respondents were special purpose vehicles (SPVs) controlled by the third respondent (an individual). Shortly after the closing submission by the applicant, the respondents informed the court of first instance that the third respondent had just resigned from his position as the sole board member of the second respondent (one of the SPVs). This led the court to suspend the proceedings on the grounds that one of the respondents had no management board, notwithstanding the fact that it was clear on the record that the sole purpose of the resignation was to derail the enforcement of the award.

The court of first instance declined to analyse the relevant facts surrounding the resignation, holding that even if it had been carried out in bad faith, it was an 'internal affair' of the company that in no circumstances could be examined. This view was rejected by the Court of Appeals in Warsaw, which held that the resignation was effectuated with a

view to derail the enforcement process, and as such must be considered as carried out in bad faith and so invalid under Polish law.[13] On this basis, the decision on the suspension of the enforcement proceedings was cancelled.

Secondly, the peculiar and heavily criticised provisions of the Polish Bankruptcy and Restructuring Act whereby, upon a declaration of bankruptcy, whether encompassing liquidation of a debtor's assets or an arrangement with creditors, an arbitration agreement 'shall lose its effects', were repealed. Under the new regulations, Articles 147[14] and 147a,[15] an arbitration agreement continues to be binding after bankruptcy proceedings are declared. Although a receiver may rescind an arbitration agreement, this is possible only when:

a pursuing a claim in arbitration would impede the liquidation of the bankruptcy estate, in particular if the latter does not consist of assets that would fund the costs of commencing and continuing arbitral proceedings;

b a consent of the judge commissioner authorising the rescission is issued; and

c no arbitral proceedings were commenced as of the date of declaration of bankruptcy.

As regards pending arbitrations, these have been put on the same footing as pending court or administrative proceedings. This means that pending arbitral proceedings will be suspended, and a receiver will be called to act in the proceedings and to replace the bankrupt entity. In instances when the latter acted as a respondent party, the proceedings will be suspended pending resolution of a creditor's claims in the course of bankruptcy proceedings. Therefore, arbitral proceedings can be resumed only if a creditor's claim is not entered into a schedule of claims.

Thirdly, new Article 1174 Section 1 of the CCP states that an arbitrator 'shall provide a written statement on his or her impartiality and independence, together with disclosing all circumstances that could have raised any doubts in this respect'. This provision merely transposed into the Polish arbitration law 'statements of independence and impartiality', which are commonplace in international arbitration and are also required by arbitral institutions in Poland.

The 2015 amendments have rightly been welcomed by the Polish arbitration community.

13 See Court of Appeals in Warsaw decision dated 27 March 2017, VI ACz 358/17, unpublished.

14 Article 147: '[t]he provisions of Article 174 Section 1 items 4 and 5 and Article 180 Section 1 item 5 of the Code of Civil Proceedings as well as Article 144 and Article 145 shall apply respectively to arbitration proceedings.'

15 Article 147a:

Section 1 If arbitration proceedings have not been initiated as at the date of the declaration of bankruptcy, the receiver, with the approval of a judge commissioner, may rescind an arbitration agreement if pursuing a claim in arbitration will hinder liquidation of bankruptcy assets, in particular if the bankruptcy assets are insufficient to cover the costs of instigation and conducting of arbitration proceedings.

Section 2 Upon a written request of the other party, a receiver shall, within thirty days, provide a written declaration as to whether he is rescinding the arbitration agreement. Failure to provide such declaration within this deadline is deemed tantamount to the rescission of the arbitration agreement.

Section 3 The other party may rescind the arbitration agreement if the receiver, even though he had not rescinded the arbitration agreement, refuses to participate in covering the costs of arbitration.

Section 4 Upon its rescission, an arbitration agreement shall be voided of effect.

ii Recent developments at SA KIG

SA KIG is the oldest arbitral institution in Poland, and the largest in terms of caseload. Its new Arbitration Rules (SA KIG Rules) entered into force on 1 January 2015,[16] replacing the previous version of the Rules adopted in 2007. A summary of the most important innovations is presented below.[17]

A feature of many arbitral institutions in Central and Eastern Europe is the list system, whereby parties' choice for the selection of arbitrators is limited to candidates present on a list of arbitrators, which is drawn up by an arbitral institution. The new SA KIG Rules have not fully abandoned this system, but provide for its significant relaxation. While under the old SA KIG Rules a presiding arbitrator and a sole arbitrator were to be selected from the SA KIG's list in all cases without exception, the new regulation allows a person from outside the list to be appointed on the joint request of the parties and upon consent of the SA KIG's Arbitral Council (which is to take into account the specifics of the dispute and the qualifications of the candidate). The list system does not apply to party-appointed arbitrators, who may be selected from outside the list. In their case, the list of arbitrators serves merely as a roster 'of recommended arbitrators' (Section 16).

The SA KIG Rules also include new provisions concerning multiparty arbitration. As regards the appointment of an arbitral tribunal in multiparty scenarios, the Rules provide that, absent a joint appointment by multiple claimants or respondents, the arbitrator for this party will be appointed by the SA KIG's Arbitral Council. This does not affect the right of the other party to appoint 'its' arbitrator (Section 19(5)). Consolidation is generally possible when parties to the proceedings and arbitral tribunals are the same in all the proceedings to be consolidated, and the disputes arise from the same arbitration agreement, or are related to them even though they arise from different arbitration agreements (Section 9(1)). Furthermore, the consolidation of arbitral proceedings may also take place when the parties to the proceedings are not the same provided that the arbitral tribunals are the same, the disputes arise from the same arbitration agreements or are related to them, even though they arise from different arbitration agreements, and all the parties agree to such consolidation (Section 9.2).

It is also worth mentioning that the new rule envisaged in Section 6(2), whereby an adjudication of the dispute cannot be made on the basis of a legal theory that was not invoked by any of the parties unless the parties are so notified and are provided with opportunity to present their positions on the new legal theory. This solution strikes a proper balance between adjudicating the correct award and ensuring the parties have justified interests; the right to present their respective cases is thereby respected. It therefore addresses the risk that the award could be set aside or refused recognition or enforcement on the ground that a party was deprived of this right and surprised by the arbitrators' reasoning that underlies the award.

Further amendments concern the organisation of proceedings and include, *inter alia*, an arbitral tribunal's obligation to prepare, in consultation with the parties, a detailed procedural timetable of the proceedings (Section 31). Time limits of nine months starting

16 The full text of the SA KIG Rules may be found at www.sakig.pl/en/arbitration/rules, accessed on 19 April 2017.

17 For a full analysis of the new SA KIG Arbitration Rules see the commentary to the Rules: M Łaszczuk, A Szumański (editors); Regulamin Arbitrażowy Sądu Arbitrażowego przy KIG; Komentarz, CH Beck 2017 (in Polish).

from the commencement of proceedings, and 30 days after closing the hearing, were also set for arbitral tribunals to issue final awards (Section 40 Section 2), which is one of a few amendments aimed at expediting arbitral proceedings.

iii Recent developments at the Lewiatan

Despite its establishment just over 10 years ago in 2005, the Lewiatan Court of Arbitration is the second-largest arbitral institution in Poland. Its current Rules of Arbitration (Lewiatan Rules) have been in force since 2012. The Lewiatan Rules mirror the modern arbitration rules of the leading arbitral institutions. Among other things, they provide for emergency arbitrators and expedited proceedings for smaller cases (an opt-out mechanism for proceedings with an amount in dispute lower than 50,000 zlotys; there is also an opt-in mechanism for bigger cases).[18]

The most recent amendment to the Lewiatan Rules concerns the introduction in 2015 of second instance proceedings.[19] This solution is very rare in arbitral institutions. Moreover, it is at odds with one of the important characteristics and advantages of arbitration, which is the one step dispute resolution mechanism, with all the benefits regarding time frames and costs. However, some Polish arbitration users have been concerned with the finality of awards, which cannot be reviewed on the merits by Polish courts, and have expressed their preference to have an appellate mechanism introduced. The Lewiatan Rules have responded to these concerns, but importantly did so on an opt-in basis. Therefore, the appellate mechanism is available only in cases where the arbitration clause expressly so provides (Section 1 of Appendix V to the Lewiatan Rules). Evidentiary proceedings should be of very limited scope (Section 8), and the new tribunal is to adjudicate only the appeal charges. It remains to be seen how popular this solution will become among parties opting for arbitration at the Lewiatan.

iv Recent case law developments

Autonomous meaning of ' agreement in writing' under the New York Convention

On 23 January 2015, the Polish Supreme Court issued a judgment concerning the autonomous construction of the New York Convention, in particular its expression 'agreement in writing'.[20] This question arose in a case where the court of first instance decided to enforce an arbitration award despite the fact that the claimant submitted an uncertified copy of the arbitration agreement. On appeal, the Court of Appeals declined to enforce the arbitration award on the grounds that an uncertified copy of arbitration agreement does not fulfil the requirement set in Article IV of the New York Convention. This decision was challenged to the Supreme Court, which held that a proper interpretation of Article IV of the New York Convention should take into account the provision of Article II Section 2 of the Convention, which determines what may be regarded as an 'agreement in writing' in the case of arbitration agreements. In this respect, the jurisprudence of the Supreme Court as well as Polish doctrine are consistent in considering that an 'agreement in writing' under the New York Convention

18 A comprehensive analysis of the Lewiatan Rules can be found in B Gessel-Kalinowska vel Kalisz (editor); Postępowanie przed sądem polubownym. Komentarz do Regulaminu Sądu Arbitrażowego przy Konfederacji Lewiatan; Wolters Kluwer 2016 (in Polish).

19 Full text of the Appeal Proceedings may be found at www.sadarbitrazowy.org.pl/en/podstrony/rules-of-the-court-of-arbitration.html; accessed on 19 April 2017.

20 See Supreme Court judgment dated 23 January 2015, V CSK 672/13.

has an autonomous meaning that is more liberal than the one under Polish law. On this basis, the Supreme Court decided that the claimant did meet the requirement of submitting the original of the arbitration agreement in writing. It went a step further in holding that Article IV of the Convention does not require an applicant to present an arbitration agreement, but only to prove its existence. Here, the Court relied on its previous judgment to the effect that a defendant who did not challenge the existence of an arbitration agreement before an arbitration tribunal cannot raise such a defence in enforcement proceedings before the Polish courts, as this would be against the principle of venire contra factum proprium.

Arbitrability of disputes concerning the exclusion of a member of a limited liability company

Another interesting case involved an application for the exclusion of a member of a limited liability company by a Polish court.[21] The implicated shareholder objected to the court's jurisdiction due to a valid and binding arbitration agreement contained in the company's articles of association, and requested the court to reject the claim on this basis. The court of first instance agreed with the defendant and rejected the claim. The claimant appealed this decision, arguing that such dispute lacked arbitrability (on the grounds that only disputes that are capable of being resolved by court-approved settlement may be referred to arbitration, and that a dispute concerning the exclusion of a shareholder is not capable of such resolution). The Court of Appeals rejected technical arguments advanced by the other side, and held that arbitrability depends on whether the parties can freely dispose their rights and obligations in respect of the legal relation that gives rise to the dispute. This straightforward reasoning led the Court of Appeals to uphold the judgment of the court of first instance and, in consequence, reject the claim in its entirety without looking at its substance.

Arbitration agreements may be conditional or limited in time

The final decision we would mention considered an arbitration clause that required an arbitral tribunal to issue its award within two weeks from the commencement of the arbitration proceedings.[22] The arbitration tribunal did not meet this deadline, issuing its award later than prescribed in the arbitration agreement. When the claimant initiated enforcement proceedings, the defendant alleged that the arbitration agreement expired upon the lapse of the two-week period for the award to be issued. In consequence, the defendant argued, at the time the award was issued there was no longer a binding arbitration agreement between the parties. The Court of Appeals somewhat surprisingly agreed that the arbitration agreement had expired, and that this prevents state courts from enforcing the arbitration award that was issued on the basis of this, now expired, arbitration agreement. The Court considered that parties drafting arbitration agreements are free to decide what situations, other than those listed in the CCP, could also result in the expiry of an arbitration agreement. This means that under Polish law, arbitration agreements may be conditional or limited in time. The Court of Appeals emphasised in this context that this was, on its interpretation, what the parties had agreed. In the circumstances of the case, this meant that the arbitrators could not change the two-week period for issuing the award specified in the arbitration agreement without the parties' consent.

21 See Krakow Court of Appeals judgment dated 15 December 2016, V ACz 1309/16.

22 See Warsaw Court of Appeals judgment dated 18 June 2015, I ACa 1822/14.

v Investor–state disputes

Poland is a party to approximately 60 bilateral investment treaties (BITs), as well as to the Energy Charter Treaty. During the past two decades, it has seen a number of claims filed against it by foreign investors. In 2015, the government informed that 11 arbitration proceedings were pending with Poland as the respondent state and with a total claim value of around €2 billion. Poland has a relatively good track record in investment cases, having prevailed in most of the arbitrations it has been involved in. This notwithstanding, in February 2016 a high official of the Ministry of Treasury of Poland expressed an opinion that BITs concluded by Poland should be terminated, as they yield little benefit for the Polish companies investing abroad while exposing Poland to numerous claims. These concerns led the government to form, on 5 January 2017, a special interdepartmental committee tasked with assessing the legal effects of the BITs currently binding Poland. The committee's aim is to prepare recommendations for the Prime Minister concerning appropriate courses of action in respect of BITs. This may result in the termination of at least some of the BITs Poland is party to (especially the intra-EU BITs, as per the recommendations of the European Commission). Among other grounds for the potential termination of the BITs, the government referred to their potential clashes with EU law and public concerns regarding the ISDS provisions in them, but also to the high legal costs connected with arbitration proceedings under BITs (around €1 million per case), which are difficult to recover even where a case is won by the state.

To date, the committee has not issued any reports or recommendations, and it remains to be seen what conclusions it will reach. However, the risk that BITs between Poland and other developed countries (in particular EU Member States) will be terminated is substantial.

Appendix 1

ABOUT THE AUTHORS

MICHAŁ JOCHEMCZAK

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Michał Jochemczak, partner in Dentons' Warsaw office, heads the Warsaw office arbitration practice group and is a core member of the dispute resolution practice group.

He specialises in complex arbitration and litigation. He has represented clients in arbitration under the leading institutional rules (ICC, VIAC, LCIA) and in *ad hoc* domestic and international arbitration. Michał is recommended for arbitration by a number of independent directories based on client and peer feedback, including *Chambers Global*, *Chambers Europe*, *The Legal 500*, *Who's Who Legal Arbitration* (*Global Arbitration Review*), *Best Lawyers* and Euromoney's *Guide to the World's leading International Commercial Arbitration Lawyers*.

Michał has acted as counsel in numerous international joint-venture, M&A, real estate, construction, corporate, energy and financial services disputes. He advises clients on international civil law and has significant experience in the fields of jurisdiction, enforcement of judgments and conflict of laws.

Michał is an active arbitrator: He received his first appointment in international arbitration under the ICC Rules at the age of 30. Michał was also one of the core members of the *ad hoc* committee drafting the new Rules of Arbitration of the Lewiatan Arbitration Court (the second-largest arbitration court in Poland).

TOMASZ SYCHOWICZ

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Tomasz Sychowicz, senior associate in Dentons' Warsaw office, is a member of the dispute resolution practice group and the arbitration practice group.

He represents clients in civil law and commercial disputes before arbitration courts (UNCITRAL, ICC, SAKiG, SA Lewiatan) and common courts of law.

Tomasz has mostly been involved in construction-related disputes (concerning, *inter alia*, investment projects implemented based on the FIDIC conditions of contract) and cases concerning protection of foreign investments referred to investment arbitration (ICSID and SCC, among others). His interests focus on commercial and investment arbitration.

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