

## **Part Five Arbitration**

### **Chapter I General Provisions**

#### Art. 1154

The provisions of this Part apply if the place of arbitration<sup>1</sup> is in the territory of the Republic of Poland. In cases indicated in this Part they also apply where the place of arbitration is outside the borders of the Republic of Poland or is not determined.

#### Art. 1155

§1 The place of arbitration shall be as agreed by the parties and failing such agreement it shall be determined by the arbitral tribunal<sup>2</sup> having regard to the subject-matter of the proceedings, the circumstances of the case and the convenience for the parties.

§2 If the place of arbitration is not agreed by the parties or determined by the arbitral tribunal the place of arbitration will be deemed to have been in the territory of the Republic of Poland if the final award was issued on that territory.

#### Art. 1156

Polish courts have jurisdiction in cases regulated by this Part if the place of arbitration is in the territory of the Republic of Poland. Polish courts also have jurisdiction where the provisions of this Part provide for court functions in connection with arbitration proceedings taking place outside the borders of the Republic of Poland or when the place of arbitration is not determined.

#### Art. 1157

If a statutory provision (*lex specialis*) does not state otherwise, the parties may submit to arbitration proprietary disputes or non-proprietary disputes that can be subject to court settlement, excluding claims for alimony.

#### Art. 1158

§1 Each time this Part refers to a court, it means the court which would have jurisdiction had the parties not submitted their dispute to arbitration.

§2 The provisions of this Part apply to the arbitral tribunal appointed for a particular dispute as well as to the arbitral tribunal appointed within the framework of an arbitral institution<sup>3</sup>.

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<sup>1</sup> The original text uses the expression “miejsce postępowania przed sądem polubownym”, which means precisely “place of the proceedings before the arbitral tribunal” (for the meaning of the word “sąd polubowny” see Footnote 2). The same expression is used in Articles 1155, 1156, 1165 § 4, 1166 § 2, 1192 § 2, whereas Art. 1185 uses the term “uzgodnione miejsce postępowania”, meaning “agreed place of proceedings” and Art. 1197 § 3 uses the term “miejsce wydania wyroku” meaning “place of making the award.

<sup>2</sup> The original text uses the expression “sąd polubowny”, which may mean both the arbitration court and arbitral tribunal. This translation uses the expression “arbitral tribunal” which is clearer than the original expression.

<sup>3</sup> The original text uses the expression „stały sąd polubowny”. “Sąd polubowny” may mean both an arbitration court (institution) or an arbitral tribunal (see Footnote 2). “Stały sąd polubowny” means a permanent body providing arbitration services. For greater clarity an expression “arbitral institution” is used in this translation.

Art. 1159

§1 In matters regulated by this Part the court may exercise only the functions allowed by statute.

§2 The court's decisions may be appealed only if allowed by statute.

§3 In cases referred to in Art. 1171, 1172, 1177, 1178 and 1179 the court may make its order in camera. Before ruling the court may hear the parties orally and/or by written statements. If required the court may order that written statements be signed and the signatures confirmed by notary public.

Art. 1160

§1 Unless otherwise agreed by the parties, any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address indicated by him.

§2 If the addressee is a business entity registered at the appropriate court or other public register, the communication is deemed to have been received if it arrived at the address indicated in the register, unless the party indicated another address for communications.

§3 If none of the places mentioned in the preceding paragraphs can be determined after making reasonable enquiry, a written communication is deemed to have been delivered if it is sent to the addressees' last-known place of business or habitual residence. In such case the communication is deemed to be delivered on the last day on which the communication could have been collected by the addressee.

§4 The preceding paragraphs do not apply to communications in court proceedings.

## **Chapter II** **Arbitration agreement**

Art. 1161

§1 Submission of the dispute to be resolved by arbitration requires the agreement of the parties, in which the subject-matter of the dispute or a legal relationship from which the dispute may arise or has arisen should be mentioned (arbitration agreement).

§2 The provisions of the arbitration agreement are ineffective if they infringe the principle of equality of the parties, in particular entitling only one of the parties to file a request for arbitration or a statement of claim before a court.

§3 Arbitration agreement may indicate an arbitral institution as having jurisdiction. Unless otherwise agreed by the parties, they are bound by the rules of the arbitral institution in force at the time of conclusion of the arbitration agreement.

Art. 1162

§1 The arbitration agreement shall be in writing.

§2 The requirement for a written arbitration agreement is fulfilled also when the agreement is contained in an exchange of documents or statements made

by means of communication which provide a record of their content.  
A reference in a contract to a document containing an arbitration clause fulfils the form requirement provided that the contract is in writing and the reference is such as to make that clause part of the contract.

Art. 1163

§1 An arbitration agreement contained in the articles of association (statutes) of the commercial company referring to the disputes of a corporate relation binds the company and its shareholders.

§2 Paragraph §1 applies accordingly to arbitration agreements contained in the statute of a cooperative or an association.

Art. 1164

An arbitration agreement concerning employment disputes can be made only after the dispute arises and must be in writing. Art. 1162 §2 does not apply.

Art. 1165

§1 If court proceedings are brought in a matter relating to a dispute which is subject to an arbitration agreement, the court shall reject the statement of claim or application to start proceedings if the respondent or participant of the non-trial proceedings makes a plea that there is an arbitration agreement before submitting his first statement on the substance of the dispute.

§2 Paragraph 1 does not apply if the arbitration agreement is null and void, inoperative, incapable of being performed or has expired and/or if the arbitral tribunal has ruled it does not have jurisdiction.

§3 Bringing an action in the courts does not prevent the arbitral tribunal from proceeding with the case.

§4 The preceding paragraphs also apply when the place of arbitration is outside the borders of the Republic of Poland or has not been determined.

Art. 1166

§1 Submission of a dispute for resolution by arbitration does not exclude the possibility of granting interim measures of protection by the court in respect of claims pursued before the arbitral tribunal.

§2 Paragraph 1 also applies when the place of arbitration is outside the borders of the Republic of Poland or has not been determined.

Art. 1167

The power of attorney to perform a legal act granted by a business entity includes the power to agree to submit disputes arising out of such legal act to arbitration, unless the power of attorney stipulates otherwise.

Art. 1168

§1 If a party nominated in the arbitration agreement to be an arbitrator or presiding arbitrator refuses to act in this function or if he is unable to act for any other reason, the arbitration agreement expires unless agreed otherwise by the parties.

§2. Unless otherwise agreed by the parties, the arbitration agreement will expire if the arbitral tribunal stipulated in the agreement refused to hear the case or was unable to hear the claim for any other reason.

### **Chapter III** **Composition of the arbitral tribunal**

**Art. 1169**

§1 The parties are free to determine the number of arbitrators.

§2 Failing such determination, three arbitrators shall be appointed.

§3 Provisions of an agreement granting one of the parties more rights at the appointment of the arbitral tribunal are ineffective.

**Art. 1170**

§1 An arbitrator may be a natural person of any citizenship<sup>4</sup>, with full capacity to perform legal acts.

§2 A judge cannot be an arbitrator. This does not include retired judges.

**Art. 1171**

§1 The parties are free to agree on a procedure for appointing the arbitrators.

§2 Failing such agreement the arbitrators shall be appointed in the following way:

1. if the case is to be heard by an odd number of arbitrators, each party shall appoint an equal number of arbitrators, and the arbitrators thus appointed shall appoint the presiding arbitrator; if a party fails to appoint an arbitrator or arbitrators within one month of receipt of a request to do so from the other party, or if the arbitrators appointed by the parties fail to appoint the presiding arbitrator within one month of their appointment, the arbitrator or the presiding arbitrator shall be appointed by the court upon request of any of the parties,
2. if the case is to be heard by a sole arbitrator and the parties are unable to agree on the arbitrator within one month of request by one of the parties to jointly appoint an arbitrator, the arbitrator shall be appointed by the court upon request of any of the parties,
3. if the case is to be heard by an even number of arbitrators, each party shall appoint an equal number of arbitrators, and the arbitrators thus appointed shall decide which of them shall be the presiding arbitrator; if a party fails to appoint the arbitrator or arbitrators within one month of receipt of a request to do so from the other party, or if the arbitrators appointed by the parties fail to decide on the presiding arbitrator within one month of their appointment, the arbitrator or the presiding arbitrator shall be appointed by the court upon request of any of the parties.

§3 The party or the parties may appoint a substitute arbitrator in case of death, withdrawal or revocation (termination of his mandate) of the arbitrator appointed by them.

**Art. 1172**

If it is agreed by the parties that an arbitrator or presiding arbitrator is to be appointed by a third person and that person fails to do so within the

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<sup>4</sup> Unlike UNCITRAL Model Law, Polish law uses the word “obywatelstwo” meaning “citizenship” and not the word “narodowość”, meaning “nationality”

time-limit set by the parties or, if the parties did not indicate the time-limit, within one month of receipt of a request to do so, each of the parties may request the court to appoint an arbitrator or presiding arbitrator, unless otherwise agreed by the parties.

Art. 1173

§1 In appointing an arbitrator the court shall have regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator.

§2 In appointing a sole arbitrator or presiding arbitrator in a dispute between the parties having their habitual residence or place of business in different states, the court shall take into account the advisability of appointing a person not connected with any of those states.

Art. 1174

§1 A person appointed as an arbitrator shall immediately disclose to the parties any circumstances likely to give rise to justifiable doubts as to his impartiality or independence.

§2 An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence or if he does not possess the qualifications agreed to by the parties. A party may challenge an arbitrator appointed by it, or in whose appointment it has participated, only for reasons of which it becomes aware after the appointment has been made.

Art. 1175

An arbitrator is free to withdraw from his office at any time. In case withdrawal takes place without an important reason an arbitrator is liable for any damage caused thereby.

Art. 1176

§1 The parties are free to agree on a procedure for challenging an arbitrator.

§2 If, within one month from the date on which the party applied to the arbitral tribunal to challenge an arbitrator according to the procedure agreed by the parties, the arbitrator is not challenged, the challenging party is free within the following two weeks to apply to the court to challenge an arbitrator. Any agreement by the parties to the contrary is ineffective.

§3 Failing the parties' agreement to the contrary, a challenging party shall, within two weeks after the day it became aware of his nomination or from the day it became aware of any circumstance referred to in art. 1174 §2, given written notification of its challenge to all the arbitrators nominated to resolve the dispute and to the other party. The notification shall give details of the circumstances justifying the challenge and shall be sent simultaneously to all the above persons.

§4 If, within two weeks from the day on which the arbitrator was served with notification of his challenge under § 3, that arbitrator does not withdraw or his appointment is not revoked on the basis of the agreement of the other party or parties, the challenging party is free to apply within the following two weeks to the court to challenge the arbitrator.

§5 If an arbitrator withdraws or the parties revoke the appointment of an arbitrator in connection with his challenge, this does not imply acceptance of the validity of the challenge.

§6 An application to the court referred to in §2 and 4 shall not affect the proceedings before the arbitral tribunal unless the arbitral tribunal suspends the proceedings until the challenge is decided by the court.

Art. 1177

§1 The parties are free to agree at any time in writing to revoke the appointment of any of the arbitrators.

§2 At the request of any of the parties the court may revoke the appointment of an arbitrator if it is obvious that the arbitrator is not going to perform his functions within a specified deadline or if he fails to act without undue delay and without a valid reason.

Art. 1178

§1 In case of termination of the arbitrators' mandate a new (substitute) arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator.

§2 If withdrawal or revocation by the parties or the court of a partyappointed arbitrator takes place twice, the other party is free to request the court to appoint a new (substitute) arbitrator for the opposing party. The party is free to file the request within one week after the day it became aware of the new (substitute) arbitrator's withdrawal or revocation.

Art. 1179

§1 An arbitrator is entitled to remuneration for his functions and for reimbursement of expenses incurred in connection with performance of these functions. The parties are jointly and severally liable in this respect.

§2 If the arbitrators and the parties have not agreed on the amount of remuneration and reimbursed expenses, an arbitrator is free to request the court to set his remuneration based on the amount of work and the amount in dispute as well as to set the expenses to be reimbursed.

§3 The court's decision is subject to appeal.

#### **Chapter IV** **Jurisdiction of the arbitral tribunal**

Art. 1180

§1 The arbitral tribunal may rule on its own jurisdiction, including the existence, validity or effectiveness of the arbitration agreement. The fact that the underlying contract in which the arbitration agreement was inserted is null and void or expired, shall not entail ipso iure the invalidity or expiry of the arbitration agreement.

§2 A plea that the arbitral tribunal does not have jurisdiction shall be raised no later than in the response to the statement of claim or within any other deadline agreed by the parties, unless before expiry of such deadline the party did not know or, exercising due diligence, could not know the ground of such plea or such ground came to existence after the expiry of such deadline. In both cases the arbitral tribunal may consider a later plea

if it considers the delay justified. A party is not precluded from raising such a plea by the fact that it has appointed, or participated in the appointment of, an arbitrator. A plea that a matter raised by the other party during the proceedings is outside the scope of the arbitration agreement shall be made as soon as such matter is raised. The arbitral tribunal may admit a later plea if it considers the delay justified.

§3 The arbitral tribunal may rule on a plea referred to in §2 in a separate order<sup>5</sup>. If the arbitral tribunal dismisses the plea in such order, each of the parties may, within two weeks after the day of delivery of this order, request the court to decide. While such a request is pending the arbitral tribunal may continue the proceedings. Art. 1207 applies accordingly to the proceedings before the court. The court's order is subject to appeal.

Art. 1181

§1 Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party which lent credence to its claim, order such interim measures as the arbitral tribunal considers necessary in respect of the subject-matter of the dispute. By ordering such measures the arbitral tribunal may require a party to provide appropriate security in order for the measure to be effective.

§2 At the request of the party the arbitral tribunal may change or overrule the decision taken pursuant to paragraph §1.

§3 The ruling of the arbitral tribunal ordering interim measures is enforceable after attachment of an enforceability clause. Art. 1214 §2 and §3 and Art. 1215 apply accordingly.

Art. 1182

If an order for interim measures by the arbitral tribunal was obviously unjustified, the party for the benefit of which such measure was ordered is liable for damages caused thereby. The claim for damages may be pursued in the pending proceedings before the arbitral tribunal.

## **Chapter V** **Conduct of arbitral proceedings**

Art. 1183

In the arbitral proceedings the parties shall be treated equally. Each of the parties has the right to be heard and to present its case.

Art. 1184

§1 Subject to these statutory provisions, the parties are free to agree on the procedure of the arbitration.

§2 Failing such agreement, the arbitral tribunal may, subject to provisions of the law, conduct the proceedings in such manner as it considers appropriate. The arbitral tribunal is not bound by provisions relating to court proceedings.

Art. 1185

Unless otherwise agreed by the parties, the arbitral tribunal may, whatever

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<sup>5</sup> The original text uses the word „postanowienie” which is not equal with “award”.

the agreed place of arbitration<sup>6</sup>, meet at any place it considers appropriate for its deliberations or for taking evidence.

Art. 1186

Unless otherwise agreed by the parties, the arbitration proceedings commence on the date on which the request to resolve the case in the proceedings in arbitration (request for arbitration) is received by the respondent. The request for arbitration shall contain a detailed description of the parties and of the subject-matter of the dispute and shall refer to the arbitration agreement pursuant to which the proceedings shall be conducted and shall indicate the arbitrator, if such indication is an obligation of the party making the request for arbitration.

Art. 1187

§1 The parties are free to agree on the language or languages in which the proceedings will be conducted. Failing such agreement, the arbitral tribunal shall determine the language or languages of the proceedings. Agreement of the parties or determination by the arbitral tribunal shall, unless specified otherwise, apply to any written statements by the parties, any hearing and to any awards or other communications by the arbitral tribunal.

§2 The arbitral tribunal may order that any document shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

Art. 1188

§1 Within the period of time agreed by the parties or, unless otherwise agreed by the parties, within the period of time determined by the arbitral tribunal, the claimant shall file a statement of claim and the respondent may file a response to the statement of claim. The parties may submit with their statements of claim and with the response any documents they consider to be relevant.

§2 Unless otherwise agreed by the parties, the statement of claim or the response to it may be amended or supplemented during the course of the arbitration proceedings, unless the arbitral tribunal refuses to allow such amendment or supplement having regard to the delay in making it.

§3 Paragraphs § 1 and 2 apply also to a counterclaim.

Art. 1189

§ 1 Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold an oral hearing for the parties to present their arguments or supporting evidence or whether the proceedings will be conducted on the basis of documents and other materials and without a hearing. If the parties did not agree that the proceedings will be conducted without an oral hearing, the arbitral tribunal is obliged to hear the case at an oral hearing if one of the parties so requests.

§ 2 The parties should be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal held for the purposes of taking evidence.

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<sup>6</sup> The original text uses the expression „ustalone miejsce postępowania”, meaning “the agreed place of the proceedings”



§ 3 All written communications by one party to the arbitral tribunal shall be copied and delivered to the other party. Any experts' reports or evidentiary document on which the arbitral tribunal may rely in making its decision shall be delivered to both parties.

Art. 1190

§ 1 If the claimant fails to communicate his statement of claim in accordance with Art. 1188, the arbitral tribunal shall terminate the proceedings.

§ 2 If the respondent fails to communicate his response to the statement of claim in accordance with Art. 1188 the arbitral tribunal shall continue with the proceedings. Failure to communicate the response to the statement of claim shall not be treated as an admission of the facts contained in the statement of claim.

§ 3 If any party fails to appear at a hearing or to produce documents which it was obliged to produce, the arbitral tribunal may continue the proceedings and make its award on the evidence before it.

§ 4 Unless otherwise agreed by the parties, paragraphs § 1-3 of this article do not apply if the party justifies its lack of action or non-appearance.

Art. 1191

§ 1 The arbitral tribunal may hear witnesses, admit documentary evidence, make inspections as well as admit any other necessary evidence, but it cannot use coercive measures.

§ 2 Unless otherwise agreed by the parties, the arbitral tribunal may also:

- 1) appoint one or more experts to seek their opinion,
- 2) require a party to give the expert any relevant information or to produce, or provide access to, documents or other property for his inspection.

§ 3 Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to request clarification.

Art. 1192

§ 1 The arbitral tribunal may request the district court in which the evidence or action is to be taken to take evidence or other action which the arbitral tribunal cannot take. The parties and the arbitrators may participate in the evidence proceedings before the district court and have the right to put questions.

§ 2. § 1 also applies where the place of arbitration is not in the Republic of Poland or has not been indicated.

Art. 1193

If any provision of this Part from which the parties may derogate, or any of the rules of proceedings agreed upon by the parties, have not been complied with, the party who knew of such non-compliance cannot object to such non-compliance before the arbitral tribunal or in a claim to set aside the award, if that party did not object to such non-compliance promptly or within a time-limit provided for by the provisions of this Part or agreed upon by the parties.

**Chapter VI**  
**Making of Award and Termination of Proceedings**

Art. 1194

§ 1 The arbitral tribunal shall decide the dispute in accordance with the law applicable to the transaction and, if expressly so authorised by the parties, on the basis of general rules of law or rules of equity.

§ 2 In all cases the arbitral tribunal shall take into consideration the provisions of the contract and the usages applicable to the transaction.

Art. 1195

§ 1 In arbitral proceedings before more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. Questions of procedure may be decided by a presiding arbitrator, if so authorised by the parties or all members of the arbitral tribunal.

§ 2 The arbitrator who voted against the position of the majority may indicate on the award, next to his signature, that he is of a dissenting opinion.

§ 3 The reasons for the dissenting opinion shall be prepared within two weeks after the reasons for the award have been prepared and shall be attached to the file.

§ 4 If the required majority or unanimity cannot be reached to decide about the subject-matter of the dispute or part of it, the arbitral agreement expires in this respect.

Art. 1196

§ 1 If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings. The terms of the settlement should be recorded and signed by the parties.

§ 2 At the request of the parties the arbitral tribunal may record the settlement in the form of an award. An award shall comply with requirements set out in Art. 1197 and state that it is an award. Such award has the same effect as any other arbitral award.

Art. 1197

§ 1 The award shall be made in writing and shall be signed by the arbitrators. In arbitral proceedings with three or more arbitrators, the signatures of the majority of arbitrators shall suffice, provided that the reason for any omitted signature is stated.

§ 2 The award shall state the reasons upon which it is based.

§ 3 The award shall refer to the arbitration agreement pursuant to which the award was made, the parties and the arbitrators as well as the date and place where it was made. If the award is signed in different countries by each of the arbitrators and the parties did not indicate the place of making the award, such place shall be designated by the arbitral tribunal.

§ 4 The award shall be delivered to the parties.

Art. 1198

Except for cases referred to in Art. 1190 § 1 and Art. 1196 § 1, the arbitral tribunal shall issue an order for the termination of the proceedings when:

- 1) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute;
- 2) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

Art. 1199

Without prejudice to the obligations referred to in Art. 1200-1203 and 1204 § 1, the obligations of the arbitrators expire after the award or an order for termination of the proceedings or other order discontinuing the proceedings is made.

Art. 1200

§ 1 Within two weeks of receipt of the award, unless another period of time has been agreed upon by the parties:

- 1) a party, upon notice to the other party, may request the arbitral tribunal to correct in the award any inaccuracies, clerical or typographical errors, errors in computation or any other obvious errors;
- 2) a party, upon notice to the other party, may request the arbitral tribunal to clarify doubts as to the text of the award.

§ 2 If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within two weeks of receipt of the request. The interpretation shall form part of the award.

Art. 1201

Within one month after the award is made, the arbitral tribunal may on its own initiative correct clerical or typographical errors, errors in computation or other evident errors. The arbitral tribunal shall inform the parties of the corrections.

Art. 1202

Unless the parties have agreed otherwise, each of them may, upon notice to the other, request the arbitral tribunal within one month of receipt of the award, to make an additional award as to claims presented in the proceedings but omitted from the award. After hearing the request the arbitral tribunal shall make the additional award within two months of the request.

Art. 1203

§ 1 The arbitral tribunal may, if necessary, extend the period of time for filing the request for correction, interpretation or additional award.

§ 2 Art. 1195 and 1197 apply to the correction, interpretation of the award and to an additional award.

Art. 1204

§ 1 The files of the case, together with the original award, shall be placed with the court.

§ 2 The arbitral institution may store the files at its own archives and shall make the files available to the court or to other authorised bodies at their request.

§ 3 If the proceedings are resumed by the arbitral tribunal, the arbitral tribunal is entitled to inspect the stored files.

## **Chapter VII** **Applications to set aside the award**

Art. 1205

§ 1 An award made in the Republic of Poland can be set aside only in proceedings started pursuant to an application to set aside the award made in accordance with the following provisions.

§ 2 If it is agreed by the parties that the proceedings before the arbitral tribunal shall take place in stages § 1 of this article applies to the final award deciding the claims of the parties.

Art. 1206

§ 1 By way of an application a party may apply for the award to be set aside if:

- 1) there was no arbitration agreement, the agreement is not valid, ineffective or has expired under the law applicable to it;
- 2) the party was not given proper notice of the appointment of an arbitrator, of the arbitral proceedings or was otherwise unable to present its case before the arbitral tribunal;
- 3) the award deals with a dispute not contemplated by or beyond the scope of the arbitration agreement, provided that, if the decisions on matters submitted arbitration can be separated from those not so submitted or falling beyond the scope of the arbitration agreement, then only that part of the award which relates to the matters not submitted or falling beyond the submission may be set aside; the fact that a matter is beyond the scope of the arbitration agreement cannot constitute a ground for setting aside the award if a party who participated in the proceedings did not object to those claims being heard;
- 4) the composition of the arbitral tribunal or the fundamental rules of arbitral procedure were not in accordance with the agreement of the parties or with a provision of law;
- 5) the award was obtained by way of a crime or on the basis of a forged or falsified document,
- 6) a final judgment has already been made in the same case between the same parties.

§ 2. The award shall also be set aside if the court finds that:

- 1) the dispute was not capable of settlement by arbitration under the law;
- 2) the award is contrary to the public policy rules in the Republic of Poland (public order clause).

Art. 1207

§ 1 Art. 187 applies to applications to set aside the award.

§ 2 Proceedings to set aside the award shall be conducted pursuant to Book one Part one, unless the following provisions state otherwise.

Art. 1208

§ 1 Any application to set aside the award shall be made within three months of delivery of the award or, if the party applied for an additional award or for the correction or interpretation of the award, within three months of the delivery by the court deciding such application.

§ 2 If the application to set aside the award is based on the ground referred to in Art. 1206 § 1 point 5 or 6, the time limit for filing the application starts on a day in which the party discovered that ground. However, the party cannot apply to set aside the award more than five years after delivery of the award.

§3. A cassation appeal shall lie against the judgment issued in the proceeding to set aside an arbitral award. Renewal of a proceeding completed with a legally final judgment on setting aside of an arbitral award, or declaration of the unlawfulness of a legally final judgment on this matter, may also be sought.

Art. 1209

§ 1 The court to whom the request to set aside an award is made may, if so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the proceedings to eliminate the grounds for setting aside.

§ 2 In the resumed proceedings the arbitral tribunal takes the actions directed by the court. Art. 1202 applies accordingly. The parties are not entitled to a separate application to set aside an award so made. Objections against the actions of the arbitral tribunal and against the award are resolved by the court after resuming the proceedings.

Art. 1210

The court, at a session in camera, may suspend enforcement of the award; it may make the suspension conditional upon providing security. The decision of the court may be appealed.

Art. 1211

Unless otherwise agreed by the parties, the setting aside of the award does not cause the arbitration agreement to expire.

## **Chapter VIII**

### **Recognition and enforcement of an arbitral award and a settlement reached before it**

Art. 1212

§ 1. An arbitral award or a settlement reached before the arbitral tribunal<sup>7</sup> are, after being recognised or enforced by the court, equally binding as the judgement or settlement reached before the court.

§ 2. An arbitral award or settlement reached before the arbitral tribunal, irrespective of the country in which it was made, shall be recognised

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<sup>7</sup> The original text refers to settlement as regulated in Art. 1196 § 1. The notion of award on agreed terms as regulated in art. 1196 § 2 is incorporated into the expression "award"

or enforced subject to provisions of this Chapter.

Art. 1213

The court shall make an order for recognition or enforcement of an arbitral award or settlement reached before the arbitral tribunal at the request of a party. The party is obliged to attach to the request the original or a certified copy of the award or the settlement reached before the arbitral tribunal as well as the original or duly certified copy of the arbitration agreement. If the arbitral award or settlement or arbitration agreement are not made in the Polish language, the party shall supply a duly certified translation into Polish.

Art. 1214

§ 1 The court shall rule in camera on the recognition of arbitral awards or settlement reached before the arbitral tribunal which are not capable of being enforced. This ruling can be appealed.

§ 2 The court shall decide on enforcement of arbitral awards or settlement reached before the arbitral tribunal which are capable of being enforced by attaching an enforcement clause.

§ 3 Recognition or enforcement of an arbitral award or the settlement shall be refused by the court if:

- 1) the dispute was not capable of submission to arbitration under the law;
- 2) the recognition or enforcement of the arbitral award or settlement reached before the arbitral tribunal would be contrary to fundamental public policy rules of the Republic of Poland (the public order clause).

Art. 1215

§ 1 The court shall decide on recognition or enforcement of a foreign arbitral award or settlement after the hearing.

§ 2 Regardless of the grounds referred to in Art. 1214, the court, on request of a party, shall refuse recognition or enforcement of the foreign arbitral award or settlement reached before the arbitral tribunal, if a party furnishes proof that:

- 1) there was no arbitration agreement, the agreement is not valid, ineffective or has expired under the law applicable to it,
- 2) it was not given proper notice of the appointment of an arbitrator, of the arbitral proceedings or was otherwise unable to present its case before the arbitral tribunal,
- 3) the award deals with a dispute not contemplated by or falling beyond the scope of the arbitration agreement, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted or falling beyond the scope of such submission, the court may refuse recognition and enforcement only of those parts of the award which contains decisions on matters not contemplated by or falling beyond the scope of the arbitration agreement.
- 4) composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or the law of the country in which the arbitration took place;
- 5) the award has not yet become binding on the parties or has been set

aside or suspended by a court of the country in which, or under the law of which, that award was made.

§3. An order of the court of second instance on recognition or enforcement of an arbitral award issued abroad and/or a settlement made before an arbitral tribunal abroad shall be subject to cassation appeal; there shall also be a right to demand that proceedings concluded with a final order on recognition or enforcement of an arbitral award be resumed or that a final order in this respect be declared inconsistent with the law.

Art. 1216

§ 1 If an application to set aside has been made in accordance with Chapter VII, the court with which the application for recognition or enforcement of such award was filed may adjourn the proceedings. That court may also, if so requested by the party requesting recognition or enforcement of the award, order the other party to provide appropriate security.

§ 2 § 1 also applies if the application to set aside a foreign award was made in the country in which or under the law of which the award was made.

§ 3 § 1 and 2 also apply to settlements reached before the arbitral tribunal.

Art. 1217

In proceedings for recognition or enforcement of an award made in the Republic of Poland or a settlement reached before the arbitral tribunal made in the Republic of Poland, the court does not examine circumstances referred to in Art. 1214 § 3 if the application for setting aside was finally dismissed.