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The International Comparative Legal Guide to:

Litigation & Dispute Resolution 2017

10th Edition

A practical cross-border insight into litigation and dispute resolution work

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EDITORIAL

Welcome to the tenth edition of *The International Comparative Legal Guide to: Litigation & Dispute Resolution*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of litigation and dispute resolution.

It is divided into two main sections:

One general chapter. This chapter provides an overview of Cybersecurity, particularly from a UK perspective.

Country question and answer chapters. These provide a broad overview of common issues in litigation and dispute resolution in 41 jurisdictions, with the USA being sub-divided into 10 separate state-specific chapters.

All chapters are written by leading litigation and dispute resolution lawyers and industry specialists, and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor Greg Lascelles of Covington & Burling LLP for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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I. LITIGATION

1 Preliminaries

1.1 What type of legal system has your jurisdiction got? Are there any rules that govern civil procedure in your jurisdiction?

The legal system in Poland is a continental law system (statutory law) whereas the source of legal standards is legal acts enacted by legislative bodies. One of such acts is the Code of Civil Procedure (Polish abbreviation: 'k.p.c.'; English abbreviation 'CCP') which contains provisions regulating the civil procedure.

1.2 How is the civil court system in your jurisdiction structured? What are the various levels of appeal and are there any specialist courts?

The civil courts system in Poland consist of three tiers: the first level comprises District Courts, which, in principle, are courts of first instance; the second level comprises Regional Courts, which are courts of second instance in cases heard in first instance by the District Courts, and courts of first instance in cases enumerated in the provisions of the law; the third level consists of Courts of Appeal, which are courts of second instance in cases heard in first instance by Regional Courts. Judgments of courts of second instance may sometimes be challenged with cassation complaints before the Supreme Court. Some categories of cases are, however, reserved for the competence of specific courts, e.g. the Regional Court in Warsaw is the court competent for competition and consumer protection.

1.3 What are the main stages in civil proceedings in your jurisdiction? What is their underlying timeframe (please include a brief description of any expedited trial procedures)?

Civil proceedings are initiated by claimant's lodging a statement of claims with the court, to which statement of claims the defendant may then respond. In further order a hearing is set, during which the evidence motioned by the parties in their pleadings is heard and examined. Next, having given floor to both parties, the Presiding Judge concludes the hearing, then the court renders a judgment in the case. A party may lodge an appeal with the court of higher instance within two weeks as of having been served the judgment along with the substantiation thereof. Generally, there are no time limitations as regards the duration of civil proceedings. The legislator, however, provided for the so-called separate proceedings, including, among others, proceedings by order for payment, where the court, without the defendant's knowledge, issues an order for payment against him, and where the defendant may subsequently raise objections against such an order, which results in the case being handled in keeping with the ordinary procedure.

1.4 What is your jurisdiction's local judiciary's approach to exclusive jurisdiction clauses?

In Poland, courts are bound by the agreement between parties on the choice of the court competent to hear the case. According to provisions, parties may agree in writing that another court, different from which it would follow from legal standards, shall be competent to settle a dispute. In such a case, this court shall have an exclusive competence in the case. It is also worth emphasising that parties may not select the court in the manner given above if the exclusive competence of the court stems from the provisions of the law.

1.5 What are the costs of civil court proceedings in your jurisdiction? Who bears these costs? Are there any rules on costs budgeting?

Costs of the proceedings are divided into court fees, costs of legal representation, and costs borne by participants of the proceedings. In principle, these costs are charged to the party losing the case. Admittedly, initiating a court action, the claimant enters a fee on the lodged statement of claims, yet it is usually returned thereto by the defendant along with other costs in the event the court recognises the claim in the judgment concluding the case in a given instance. Regardless, the court may summon the party to make an advance payment for the performance of the requested act.

1.6 Are there any particular rules about funding litigation in your jurisdiction? Are contingency fee/conditional fee arrangements permissible?

Generally, there are no specific rules regarding funding litigation in Poland. Hence, based on the freedom of contract, a third party may fund litigation. As for *contingency fee/conditional fee arrangements*, it is worth indicating that such agreements are inadmissible as breaching rules of attorney ethics, unless they constitute an additional fee, i.e. contingency fee may be supplementary to the agreed fee which is due irrespective of the result of litigation.

1.7 Are there any constraints to assigning a claim or cause of action in your jurisdiction? Is it permissible for a non-party to litigation proceedings to finance those proceedings?

In principle, provisions of the substantive law permit the creditor to assign claims they are entitled to onto a third party. Such an assignment, however, must not stand in contradiction with the statute, an agreement between the creditor and the debtor, or nature of the obligation. Moving on to the second of the issues, it is worth stating that the provisions of procedural law do not provide for a situation where parties not participating in the dispute finance the litigation. As was mentioned in question 1.6, a third party may fund litigation.

1.8 Can a party obtain security for/a guarantee over its legal costs?

In principle, the CCP does not stipulate a possibility for the party to obtain a decision on securing the costs of the proceedings. However, there are exceptions in this regard. For example, the court may permit a person unable to present a power of attorney to engage in a procedural act, yet the court may render the aforementioned permission dependent on entering security of the costs. Another example is a situation where, on the defendant's demand, a claimant not residing in the EU is obligated to make a deposit for securing the costs of the proceedings.

2 Before Commencing Proceedings

2.1 Is there any particular formality with which you must comply before you initiate proceedings?

No special formalities on the pre-judicial stage are provided for in Poland. However, the claimant's failure to engage in certain actions at this stage may expose them to the risk of negative consequences. And so, if the claimant did not call the defendant to voluntarily meet the demand, he will be obligated to reimburse the defendant for the costs of proceedings despite having their claim allowed if the defendant recognises the claimant's demand at the first action. Moreover, one of the necessary elements of the statement of claims is the inclusion of information whether parties engaged in an attempt at out-of-court (conciliatory) settlement of the dispute, and if no such attempts were made, what the reasons were for not engaging in this.

2.2 What limitation periods apply to different classes of claim for the bringing of proceedings before your civil courts? How are they calculated? Are time limits treated as a substantive or procedural law issue?

Depending on the object of the case, the right to pursue a claim is limited by the statute of limitations or a final date. These are institutions of the substantive civil law. Exceeding the aforementioned limits does not therefore constitute a basis for termination of the proceedings for procedural reasons, but may lead to an action being dismissed. The aforementioned limits are usually specified in years, which means that they expire along with the lapse of the date which corresponds to the initial day of the period of limitation.

3 Commencing Proceedings

3.1 How are civil proceedings commenced (issued and served) in your jurisdiction? What various means of service are there? What is the deemed date of service? How is service effected outside your jurisdiction? Is there a preferred method of service of foreign proceedings in your jurisdiction?

The civil proceedings commence with the moment a statement of claims along with a copy thereof, which later is sent to the defendant's address, is lodged with court. The court delivers the copy by a mail operator, court employees, bailiff, court delivery service, or via an IT system. The moment of service is the instant when the addressee collected the letter, and where they do not, there is a number of presumptions providing for a fiction of service. In the case of non-EU residents, it must be stated that the court will serve a copy of the statement of claims thereon, simultaneously instructing such a party on the need to establish a proxy for service in Poland under the pain of leaving subsequent letters on the file with the effect of them being successfully served.

3.2 Are any pre-action interim remedies available in your jurisdiction? How do you apply for them? What are the main criteria for obtaining these?

In Poland, it is possible to file a motion for interim remedies in all types of cases. The remedy may adopt various forms depending on whether the action's object is a cash or non-cash claim. Establishing a mortgage on real estate may be indicated as an example of securing cash claims. In the frames of securing non-cash claims, the court is entitled to grant such remedies in the manner that is most adequate in court's opinion. The basis for the granting of interim remedies discussed hereby is a motion for an interim remedy. This motion must present the claim the demanding party is entitled to as well as the legal interest in securing the claim (the need to obtain the interim remedy).

3.3 What are the main elements of the claimant's pleadings?

The statement of claims should comply with the formal requirements applicable to all types of procedural pleadings (designation of the court, parties, etc.). Moreover, the statement of claims should also precisely define the claimant's demand and the legal basis substantiating this demand, as well as those substantiating the competence of the court where the statement of claims is lodged. Furthermore, it is, in principle, required for the statement of claims to determine the value of the object of the litigation. The legislator has also introduced the requirement to include in the statement of claims the information whether prior to resorting to court parties engaged in attempts at out-of-court resolution of the dispute, and, if not, what were the reasons which prevented them from attempting such a solution. In practice, the structure of the statement of claims consists of a *petitum*, where all the demands and motions are invoked next to a substantiation which contains the factual grounds of the claim and legal analysis.

3.4 Can the pleadings be amended? If so, are there any restrictions?

A quantitative or qualitative change of a civil action is possible. The distinction above is relevant from the point of view of limitations concerning the change of the initiated action. This is because, according to CCP, the statement of claims may be amended if it

does not affect the court's competence. The only exception has been provided for in the scope of the quantitative change where it is performed before a district court while the court competent to examine the case is the regional court, then the district court transfers the entire action to the appropriate regional court.

3.5 Can the pleadings be withdrawn? If so, at what stage and are there any consequences?

In Poland, a statement of claims may be withdrawn without the defendant's consent until the commencement of the first hearing. Upon commencement of the first hearing, the statement of claims may also be withdrawn until the moment a final and valid judgment is rendered in the case, yet, in such a case the claimant must obtain the defendant's consent to engage in such an action or renounce the claim pursued thereby. If the statement of claims is successfully withdrawn, the pending proceedings are discontinued whereas, to the defendant's demand, the claimant reimburses the former for the court costs incurred thereby.

4 Defending a Claim

4.1 What are the main elements of a statement of defence? Can the defendant bring counterclaims/ claim or defence of set-off?

A statement of defence should, in the first order, include the defendant's declaration whether they question the action, recognise it in full or in part. Besides, a statement of defence should include all the arguments raised by the defendant, both formal and content-related, as well as evidentiary motions. It is necessary to raise all the arguments and evidentiary motions already in the statement of defence, since considering the principle of concentration of the evidentiary material applicable in the Polish civil procedure, raising arguments and evidentiary motions at a later date may be seen by the court as belated. In the statement of defence, the defendant may bring a counterclaim and also raise defence of set-off.

4.2 What is the time limit within which the statement of defence has to be served?

A statement of defence should be lodged within the time limit set by the court. The court may set this time limit at its own discretion; however, it may not be shorter than two weeks. The defendant may petition the court for prolongation of the time limit set for submitting the statement of defence. Where the time limit set by court is exceeded and the statement of defence is lodged after the time limit set by the court, the statement of defence is rejected.

4.3 Is there a mechanism in your civil justice system whereby a defendant can pass on or share liability by bringing an action against a third party?

In the civil procedure in force in Poland, the institution of an intervention of a third party is a measure of this kind. The said intervention consists in summoning to participate in the case a third party, towards whom the defendant will have a claim in case of losing the action brought forth by the claimant. Such a third party may, but does not have to, join the litigation. If the third party joins the litigation, its task is to support the defendant with the view of having the action dismissed, which in consequence will result in preventing the risk of the third party's liability towards the defendant.

4.4 What happens if the defendant does not defend the claim?

In such a situation the court will issue a default judgment which, importantly, is enforceable effective immediately (it provides the grounds for initiation of the enforcement proceedings). The defendant may, however, lodge an objection against the default judgment within two weeks as of the serving of the default judgment. The aforementioned objection should include all the evidentiary motions and statements (defences). In consequence of hearing the objection, the court may uphold the default judgment or reverse it and dismiss the action.

4.5 Can the defendant dispute the court's jurisdiction?

A defendant may question the court's jurisdiction in the case of formal grounds strictly determined in CCP, whereby the court should take these grounds into consideration *ex officio*. This applies in particular to the grounds of *res iudicata* or *litis pendens*. When the case is not covered by jurisdiction of Polish courts, the defendant may also question the hearing of the case before a Polish court. Furthermore, an arbitration clause excludes the court's jurisdiction to hear a case. However, as for the arbitration clause in order to undermine the court's jurisdiction, prior to engaging in the dispute as to its merits, the defendant must raise an argument of the arbitration agreement.

5 Joinder & Consolidation

5.1 Is there a mechanism in your civil justice system whereby a third party can be joined into ongoing proceedings in appropriate circumstances? If so, what are those circumstances?

When a third party has a claim for a thing or right which is the object of the case pending between other parties, they may lodge an intervention against the parties to the aforementioned case. However, it must occur prior to the rendering of a judgment by the court of first instance examining the case pending between the other parties. If, however, a third party has a legal interest in settlement in the case favouring one of the parties, it may join such a party by lodging a side intervention.

5.2 Does your civil justice system allow for the consolidation of two sets of proceedings in appropriate circumstances? If so, what are those circumstances?

Joining several separate cases pending before the same court is admissible if they are connected or they could have been an object of the same action (in general, two cases may be joined in a single action only if no special proceedings are applicable to any of these claims). Joining of cases lies at the court's discretion. However, a party to civil proceedings may file a motion for the joining of cases.

5.3 Do you have split trials/bifurcation of proceedings?

The Polish civil procedure contains solutions approximate to split trials/bifurcation of proceedings. Namely, the court may issue a preliminary judgment deciding only the principle of the defendant's liability. Such a judgment may be challenged as any other judgment.

When it becomes final and valid, it becomes binding for the court. If the preliminary judgment establishes the defendant's liability, the court proceeds to the second stage of the proceedings in the frames of which it shall only occupy itself with determining the value of defendant's liability. Preliminary judgments are most frequently rendered in actions for payment of damages for tort, where determining the value of all claims raised in the statement of claims requires time-consuming and costly evidentiary proceedings.

6 Duties & Powers of the Courts

6.1 Is there any particular case allocation system before the civil courts in your jurisdiction? How are cases allocated?

The statement of claims shall be filed to the territorially competent District or Regional Court, which depends firstly, on the value of dispute and secondly, on the subject matter of the dispute. The cases filed with the court are allocated in the order they are submitted to each division of the court and assigned to the judges by the president of the court division.

6.2 Do the courts in your jurisdiction have any particular case management powers? What interim applications can the parties make? What are the cost consequences?

Local courts have some case management powers although they are not as well developed as in the common-law system. When the claim is filed with the court, the court may issue orders to prepare the hearing, in particular: (i) summon the parties to appear in person; (ii) summon the witnesses called by the parties or the expert witnesses; and (iii) obligate the parties to file further pre-trial pleadings, determine the order for filing them, and the circumstances to be clarified. The presiding judge manages the case during the court hearings and beyond them.

No specific rights have been granted to the parties regarding the management of the case, although they may petition the court to perform any of the aforementioned actions. The parties may, however, request a security of a claim. The court may award security before instituting proceedings or in the course of proceedings (see question 3.2 above) if the petitioner substantiates his/her claim and legal interest, which exists if the lack of security would prevent or significantly hinder the enforcement of a ruling issued in a given case or otherwise prevent or seriously hinder satisfying the purpose of proceedings in a given case. The parties may also apply to the court to secure the evidence where there is a risk that the taking of evidence may become impossible or excessively difficult, or where it is necessary to determine the current state of affairs for other reasons.

The general rule is that the court awards the costs of security proceedings in the final ruling. Sometimes the obligor is entitled to claim damages caused by the enforcement of security against the obligee, who was awarded the security. This is, for example, the case, in which the obligee did not file the first pleading within the time limit determined by the court or withdrew a complaint or petition, or if his/her complaint or petition was returned or rejected, or if an action or petition was dismissed, or proceedings were terminated.

6.3 What sanctions are the courts in your jurisdiction empowered to impose on a party that disobeys the court's orders or directions?

The possible sanction to be imposed by the courts depends on parties' obligations. One of most severe consequences a party may bear is the disregarding of evidence which is filed by a party too late. The court, notwithstanding the outcome of the case (while the general rule is that costs are borne by the losing party) may also order a party to reimburse any costs caused by its undue or evidently improper conduct.

During the court hearings the participants shall not violate peace and should follow the orders of the court. The court may impose fines for non-compliance with the rules and orders (such as e.g. refusal to submit documents, unjustified denial of the authenticity of a private document, unjustified refusal to give testimony, unjustified non-appearance, etc.).

6.4 Do the courts in your jurisdiction have the power to strike out part of a statement of case or dismiss a case entirely? If so, at what stage and in what circumstances?

In specific cases the court may reject a claim or its part without hearing it, i.e. (i) if a case does not qualify for court legal action, (ii) if a case concerning the same claim between the same persons is already pending in court or if a non-appealable judgment has already been issued in such a case, or (iii) if one of the parties does not have the capacity to be a party to court proceedings.

6.5 Can the civil courts in your jurisdiction enter summary judgment?

A summary judgment is another common-law institution unknown to the Polish legal system; however, the so-called "preliminary judgment" and "partial judgment" show some similarities with the summary judgment.

When a case is filed with the court, the court may issue a partial judgment deciding only on part of a claim or some claims included in a complaint. This means that the case will continue only in relation to the part of claim or claims not included in the partial judgment.

A preliminary judgment is a judgment in which the court, by recognising the principle of a claim to be justified, issues a preliminary judgment as to the principle only, and orders another trial or orders the trial as to the disputed amount of a claim to be adjourned.

6.6 Do the courts in your jurisdiction have any powers to discontinue or stay the proceedings? If so, in what circumstances?

The court may discontinue the proceedings if the claim has been withdrawn or if other factors make it irrelevant or inadmissible to issue a judgment, e.g. the parties have entered into a settlement before the court.

The courts also have the right to stay the proceedings, which may be done (i) *ex officio*, or (ii) upon parties' joint request. In some cases, the court is obliged to stay the proceedings *ex officio* (e.g. in the event of death of a party) and in other cases it is subject to the court's discretion (e.g. if the adjudication of a case depends on the outcome of other pending civil proceedings).

7 Disclosure

7.1 What are the basic rules of disclosure in civil proceedings in your jurisdiction? Is it possible to obtain disclosure pre-action? Are there any classes of documents that do not require disclosure? Are there any special rules concerning the disclosure of electronic documents or acceptable practices for conducting e-disclosure, such as predictive coding?

It must be noted that disclosure as known in common-law systems is unknown to the Polish legal system. However, a party may be obligated to present a document to the court which is in its possession and which constitutes proof of a fact of vital importance for the adjudication of a case, unless that document contains confidential information (defined in the Act on the Protection of Classified Information). Therefore, a party may not refuse to present the document if the loss it would thereby suffer would be the loss of the case.

A pre-action "disclosure" is possible but only under certain conditions. Before filing a clam, a party may petition the court to secure the evidence by the way of ordering the defendant (or third party) to present the document. However, the petition to secure evidence may be filed only where there is a risk that the taking of evidence may become impossible or excessively difficult, or where it is necessary to determine the current state of affairs for other reasons.

There are no special rules concerning the disclosure of electronic documents. E-disclosure is unknown to the Polish civil procedure.

7.2 What are the rules on privilege in civil proceedings in your jurisdiction?

As a rule, no one shall have the right to refuse to testify as a witness. CCP foresees, however, an evidentiary privilege for people who are in a close relationship with the parties (ascendants, descendants and siblings, relatives by affinity in the same line or degree, or persons related to them by adoption) and for those, whose testimony could expose them or their relatives as referred to in the preceding clause to criminal liability, disgrace or direct and severe financial loss, or if their testimony would involve violation of professional secrecy (e.g. attorney-client privilege). A clergyman may refuse to testify as to facts revealed to him in confession. With regards to documents, see also questions 7.1 and 7.3.

7.3 What are the rules in your jurisdiction with respect to disclosure by third parties?

Upon the court's order each person is obliged to present, within a determined time limit and in a determined location, a document which is in their possession and which constitutes proof of a fact of vital importance for the adjudication of a case.

However, anyone may refuse to present the document if it contains confidential information. This duty may be avoided if a 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, for the same reasons, object to the submission of such a document unless the holder of that document or a third party are obliged to do the same at least with respect to one of the parties, or if a document was issued in the interest of the party requesting the taking of evidence.

7.4 What is the court's role in disclosure in civil proceedings in your jurisdiction?

The disclosure of any documents is always made upon the court's order. The parties may file a petition to the court to issue such an order. If a third party refuses just cause to submit a document, the court may fine the said third party.

7.5 Are there any restrictions on the use of documents obtained by disclosure in your jurisdiction?

The documents submitted with the court, upon its order referred to in questions 7.1 and 7.3, may be used only in the pending proceedings.

8 Evidence

8.1 What are the basic rules of evidence in your jurisdiction?

The general rule is that the burden of proving a fact lies with the person who asserts legal consequences arising from the fact, therefore, the parties have both the right and obligation to present the evidence in the course of the proceedings. The parties to and participants in the proceedings have a general obligation to adduce all factual circumstances and evidence without delay as the court has the power to disregard any late evidence unless the party has proven that it has failed to report them in the complaint or to answer to the complaint or further pre-trial pleadings due to no fault of their own; that taking the late allegations and evidence into consideration will not delay the examination of the case, or that there are other exceptional circumstances.

The assessment of the reliability and validity of the evidence presented by the parties lies in the court's discretion following the examination of the evidentiary material. The court shall assess not only the collected material but also a party's refusal to present evidence or a party's interference with the taking of evidence despite the court's decision.

8.2 What types of evidence are admissible, which ones are not? What about expert evidence in particular?

There is no exhaustive list of means of evidence. CCP provides a regulation on these which are most common including: witness testimony; expert witness; inspection; or hearing of the parties but at the same time the methods of taking evidence using the means not listed by the code, shall be determined each time by the court according to the nature of the means. For expert witness also see question 8.4.

8.3 Are there any particular rules regarding the calling of witnesses of fact? The making of witness statements or depositions?

There are specific rules which disable certain types of persons from giving testimony e.g. persons who are incapable of noting or communicating their observations, legal representatives of the respective parties or persons who could be interrogated as parties or joint participants. Apart from this, the general rule is that no one shall have the right to refuse to testify as a witness (for exceptions see question 7.2).

What is important, if a witness refuses to testify without just cause the court may fine them and/or put them under arrest for a period not exceeding one week. Giving false testimony or concealing the truth before the court is a public offence, subject to the penalty of deprivation of liberty for up to three years.

There are also some rules on making witness statements, e.g.: the order in which witnesses are questioned is determined by the presiding judge, the court may assign a translator to assist the questioning of a witness whose knowledge of the Polish language is insufficient. Witnesses whose testimony is contradictory may be confronted.

There are no depositions in the Polish law. Witnesses' oral testimony may not be replaced by a written deposition. The deposition, if provided by the third party, can be assessed by the court as a private document, which only constitutes proof that its signatory has made the statement contained therein and shall not be treated as witness testimony.

8.4 Are there any particular rules regarding instructing expert witnesses, preparing expert reports and giving expert evidence in court? Does the expert owe his/her duties to the client or to the court?

Expert witnesses (one or more) are called by the court in case the special information is required. There is an official list of expert witnesses in each Regional Court with a division into specialisations (e.g. accountancy, construction, IT forensic). The expert witness may give their opinion in writing or by oral testimony. The opinion must include a statement of reasons. The court may also request a relevant scientific or scientific and research institute to give an expert opinion. The expert witness owes their duties solely to the court. They are appointed by the court (not the Parties) and must remain impartial.

A party may also order the expert to prepare a private opinion, which can be presented during the course of the proceedings according to the rules applicable to any other evidentiary measures. Although such a document does not have the evidentiary power of an expert witness opinion, it may sometimes be useful for the party to submit such an opinion as a private document.

9 Judgments & Orders

9.1 What different types of judgments and orders are the civil courts in your jurisdiction empowered to issue and in what circumstances?

A civil court is empowered to issue: (i) a judgment; (ii) an order for payment; (iii) a decision; and (iv) an order. As a rule, the court's final settlement on the merits is rendered in the form of judgment. If so provided for by a specific provision, the court shall settle a case by issuing an order for payment at the written request submitted by the plaintiff in their complaint in simplified proceedings, which are only allowed if the claims sought are proven by the following instruments enclosed thereto: 1) official instrument; 2) bill accepted by the debtor; 3) call for payment and the debtor's written acknowledgment of debt; and 4) request for payment approved by the debtor but returned by the bank unpaid due to the lack of sufficient funds in the bank account. The order of payment is issued *ex parte*, but the defendant may challenge the order of payment and, in such a situation, the case is subject to examination on general rules.

If CCP does not provide for a judgment or order for payment, the court shall issue a decision. Technical decisions of the presiding judge within the course of the proceedings have the form of orders.

9.2 What powers do your local courts have to make rulings on damages/interests/costs of the litigation?

As a rule, both the liability and the amount of damages sought should be proven by the claimant. Interest and the cost of the proceedings shall also only be awarded upon the request of the claimant. For detailed information about rules regarding cost of the litigation please see question 1.5.

9.3 How can a domestic/foreign judgment be recognised and enforced?

Domestic judgments which may be enforced are enforceable after obtaining a writ of execution. Those which may not be enforced shall be effective as from the day of their legal validity.

As for the enforceability of rulings of foreign state courts, the provisions of EU law and international treaties to which Poland is a party shall apply in first order. If the aforementioned regulations do not apply the ruling of foreign courts issued in civil matters are recognised by virtue of law unless obstacles as specified by law exist. Rulings of foreign state courts in civil matters (if they may be a subject to enforcement) become enforceable after their enforcement is confirmed by a Polish court. Enforcement is confirmed, if there are no obstacles for the recognition of the ruling.

9.4 What are the rules of appeal against a judgment of a civil court of your jurisdiction?

A judgment of the court of first instance may be challenged with an appeal filed with the court of second instance within 14 days of receipt of the judgment together with the written substantiation. The appeals from District Courts' judgments are heard by Regional Courts while the appeals from Regional Court's judgments are heard by the Courts of Appeal. The appeal is subject to a court fee equalling 5% of the value of the object of appeal. There is also an extraordinary means of appeal called 'cassation complaint' which may be filed only in specific cases to the Supreme Court.

10 Settlement

10.1 Are there any formal mechanisms in your jurisdiction by which parties are encouraged to settle claims or which facilitate the settlement process?

In every case which may be settled, the courts should strive to reach an amicable settlement, in particular to encourage and advise the parties, at any stage of the proceedings, to undergo mediation. The presiding judge may also summon the parties to participate in an informatory meeting regarding the manners of alternative dispute resolution, in particular mediation.

The parties may also benefit from entering into settlement as in such a case the court shall refund half of the fee paid for the letter instituting the proceedings to a party *ex officio*.

II. ALTERNATIVE DISPUTE RESOLUTION

1 General

1.1 What methods of alternative dispute resolution are available and frequently used in your jurisdiction? Arbitration/Mediation/Expert Determination/Tribunals (or other specialist courts)/Ombudsman? (Please provide a brief overview of each available method.)

The most commonly used ADR methods are mediation and arbitration. Mediation is conducted by a mediator appointed by the parties or the court. Disputes may also be resolved by arbitration tribunal constituted in accordance with the arbitration clause. There also is a special type of mediation, conducted before the Financial Ombudsman who is called to settle disputes between the financial market institutions entities and consumers (where participation of financial market institution is compulsory). Also, as of January 10, 2017 Act on Out of Court Resolution of Consumer Disputes has been introduced to the Polish legal system under which the consumers will have broader access to mediation of disputes against entrepreneurs.

1.2 What are the laws or rules governing the different methods of alternative dispute resolution?

The rules of mediation are governed by CCP. CCP also sets out the rules of arbitration proceedings which apply if the venue of proceedings before an arbitration tribunal is located on the territory of the Republic of Poland. The Republic of Poland is also a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, and the European Convention on International Commercial Arbitration in Geneva in 1961.

1.3 Are there any areas of law in your jurisdiction that cannot use Arbitration/Mediation/Expert Determination/Tribunals/Ombudsman as a means of alternative dispute resolution?

Unless otherwise provided for by specific regulations, the parties may bring disputes involving property rights or disputes involving non-property rights which can be resolved by a court settlement, except maintenance cases, before an arbitration court. However, an arbitration clause which involves disputes within the subject-matter and scope of labour law may only be drawn up after a dispute has arisen and must be made in writing. The same rule applies if the party to the contract is a consumer. In such a case, the arbitration clause shall also state under pain of nullity that the parties know the effects of the arbitration agreement, in particular as to the legal force of an arbitral award or settlement.

1.4 Can local courts provide any assistance to parties that wish to invoke the available methods of alternative dispute resolution? For example, will a court – pre or post the constitution of an arbitral tribunal – issue interim or provisional measures of protection (i.e. holding orders pending the final outcome) in support of arbitration proceedings, will the court force parties to arbitrate when they have so agreed, or will the court order parties to mediate or seek expert determination? Is there anything that is particular to your jurisdiction in this context?

Local courts can provide such assistance and it can take various forms. A party may request a security of its claim from the local court even if the case is to be heard by an arbitration tribunal. Security may be awarded before the proceedings are instigated or in the course of the proceedings. If a valid arbitration clause exists and of the claim is filed with the local court, the court – upon the defendant's motion – may reject the claim so that the case will be heard by arbitration tribunal. A local court may also support the arbitration tribunal in taking evidence or perform another action in which the arbitration tribunal is unable to perform.

As for the mediation if the case is heard by the local court, it may refer the parties to mediation (in some cases even without their permission).

1.5 How binding are the available methods of alternative dispute resolution in nature? For example, are there any rights of appeal from arbitration awards and expert determination decisions, are there any sanctions for refusing to mediate, and do settlement agreements reached at mediation need to be sanctioned by the court? Is there anything that is particular to your jurisdiction in this context?

If the parties have validly agreed to arbitration and the claim is filed with a local court, the defending party may request the court rejects the claim. If the parties have agreed to mediation, the court will refer the parties to mediation before hearing the case.

The power of an arbitration award is equal to court judgment's power (a party may enforce such an award). A party to arbitration may challenge the award before the local court by filing a motion to set aside the award.

As for mediation, the general rule is that settlement reached before the mediator after being validated by the court has the binding effect of a settlement reached before the court. The only exception is that if the special form is required for the validity of specific legal action, the settlement must preserve this form. For instance, if the parties want to transfer the ownership of an immovable with a mediation settlement, then such a settlement will require a form of a notarial deed. This rule does not apply to the court's judgment (which supersedes any special form required).

2 Alternative Dispute Resolution Institutions

2.1 What are the major alternative dispute resolution institutions in your jurisdiction?

The most recognised arbitration courts are the Court of Arbitration at the Polish Chamber of Commerce in Warsaw and Court of Arbitration at the Confederation Lewiatan. As for mediation, there are many mediation centres and each Regional Court also holds a list of permanent mediators.

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From 2002–2005 he cooperated with leading law firms in the country, handling litigation for corporate clients. Vice-Chair of the International Litigation Subcommittee, which is part of the Commercial & Business Litigation Committee, at the American Bar Association.

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