KUBAS
KOS
GAŁKOWSKI

LITIGATION IN POLAND

CONTENTS

Foreword

Foreign entrepreneurs are engaging in business relations in Poland and with Polish entities more and more often. Naturally, some of these relations end up in court, due to various reasons. Such disputes cannot always be settled outside Poland and in the court of the place of business of the foreign party. Consequently, the Polish legal system, and in particular the procedural law, should be explained.

Poland is a member of the European Union and various international organizations. It has adopted numerous international and bilateral agreements, in particular those relating to human rights; it is a democratic state of law. Therefore, its legal system does not differ in its basic features from other legal systems of developed states. Nevertheless, each legal system is different in its particularities.

This publication is aimed at allowing foreign parties to become more familiar with Polish court proceedings. It explains the basic institutions of the Polish Act of November 17, 1964 – Code of Civil Procedure ("CCP"). Most of the issues will be presented from two perspectives – of the party pursuing its rights and the party defending its rights.

1

Dispute resolution in Poland – an overview

WHEN ARE POLISH COURTS COMPETENT TO HEAR A CASE?

When planning a litigation with "a Polish factor", a foreign party needs to examine when Polish courts are competent to hear a case, in other words when a case can (and in certain circumstances must) be settled in Poland. The answer to this question is brought by the rules of the so-called "state jurisdiction" prescribed by the CCP.

The most basic rule is that Polish courts hear the case in which the defendant has its place of residence or business in Poland. Consequently, a Polish party, in principle, can be sued in Poland. However, Polish courts will still be competent in some other situations. This is important as the foreign entrepreneur is at risk of legal action in Poland even if they did not conduct business in this country, but, for instance, only contracted with a Polish party.

Even if the defendant does not reside or conduct their business in Poland, the issue should be adjudicated in Poland, in cases pertaining to:

- disputes concerning obligations performed or meant to be performed in Poland,
- disputes concerning non-contractual obligations (e.g. torts) which arose in Poland,
- disputes concerning activities of the entrepreneur's branches and agencies located in Poland,
- disputes over monetary rights in cases in which the defendant has assets in Poland that are of a significantly higher value than the amount in dispute,
- disputes over a property located in Poland,
- labor disputes in which the employee worked in Poland for a foreign entrepreneur.

As mentioned above, Polish courts in some cases have so-called "exclusive jurisdiction". This means that such a case cannot be heard outside of Poland. The two most important examples of such a situation are disputes concerning real estate located in Poland and registry proceedings concerning legal persons or entities with their registered seats in Poland.

However, the CCP recognizes the party's autonomy, to a certain extent. As a result, the parties can conclude so-called "forum-selection agreements" or include such a clause in their main contract, save for cases of exclusive jurisdiction. In such an event, the case will be heard by Polish courts even if they did not have jurisdiction under general rules or – on the contrary – the case will be settled abroad if Polish courts were normally competent.

Please note

In some instances when a party is sued in Poland in a case that should be heard abroad and fails to raise a relevant objection, it is deemed to have accepted the jurisdiction of the Polish courts. Consequently, a defendant can never disregard being sued in Poland, even if it is convinced that the case should be heard elsewhere.

These rules apply also in proceedings for securing claims, non-litigious and enforcement proceedings with certain, relevant exceptions. One should also note that the abovementioned rules are subject to modifications by numerous bilateral and multilateral international agreements. Rules on the jurisdiction of the courts within the European Union are also prescribed by Regulation No. 1215/2012 of December 12, 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I recast).

WHICH LAW IS APPLIED BY THE POLISH COURTS?

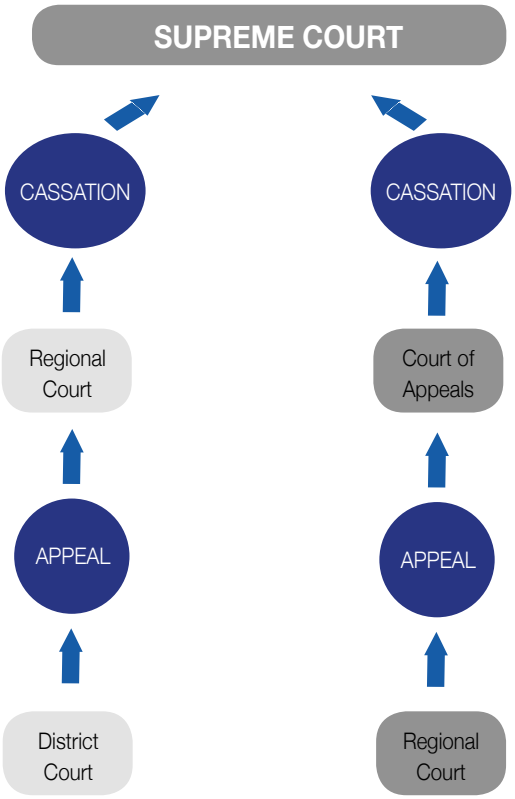
Polish courts apply the procedural law in force in Poland stemming from the CCP or international agreements. However, the application of substantive law is more complicated. The rules answering the question of which substantive law to apply are called conflict-of-law rules. The main sources of these rules are multilateral and bilateral agreements. If there is no such agreement in a given case, the act of February 4, 2011 on Private International Law applies. This act prescribes specific rules for certain kinds of disputes. However, the parties can also choose the applicable law. This is the case with most international con-

tracts. Foreign entrepreneurs suing in Poland should however, very carefully examine which law they need to apply in pursuing their claims or defending against claims of other parties. Legal systems differ in prerequisites and circumstances which need to be demonstrated in order to win a case. Consequently, some laws have more advantages than others in certain situations. This issue needs to be solved at the stage of entering into a contract, as later on it is usually not possible to change the rules.

Moreover, it should be noted that the law applicable to the two important types of disputes, contract and tort disputes, is regulated explicitly by the acts of the European Union, i.e. Regulation No. 593/2008 of June 17, 2008 on the law applicable to contractual obligations (Rome I) and Regulation No. 864/2007 of July 11, 2007 on the law applicable to non-contractual obligations (Rome II).

WHAT IS THE STRUCTURE OF THE POLISH COURT SYSTEM?

According to the Polish Constitution and international agreements adopted by Poland, the court proceedings should be, in principle, two-tiered. A party can therefore appeal from a decision or a judgment of the court. The court of second instance can examine the facts of the case and issue a decision on the merits of the dispute. Furthermore, in some cases a party can also file a cassation to the Supreme Court which is a court of law, not of facts. This means that the Supreme Court does not hear witnesses and examine other evidence, but rules only on the legal arguments presented by the parties. Consequently, this court does not constitute the third tier of the civil proceedings in Poland. It is more of a “special” court, hearing only certain cases in events prescribed by the CCP. For proceedings before the Supreme Court, see pp. 30-34 below.



Basic structure of court proceedings in Poland.

What is more, in contrast to many common law jurisdictions, the Polish court system does not operate through juries. By principle, all cases are heard by one professional judge in the first instance and three judges in the appeal proceedings. Lay judges are present only in certain cases involving labor, family and penal law matters. A lay judge is not a professional judge, but a representative of the society. A person chosen to be a lay judge has the same rights as a professional judge and serves to balance the professional judge's sense of law with the society's sense of equity and fairness.

HAVE THERE BEEN ANY MAJOR CHANGES IN THE PROCEDURAL LAW IN RECENT YEARS?

The Polish procedural law is amended quite often. It is not uncommon for several acts for amending the CCP to be pending at the same time. Some of the changes are minor and are of a more technical nature. Others, however, change the basic principles of the legal system. This is the case with the major amendment that has been in force as of May 3, 2012. Before that date, the CCP prescribed a specific and separate mode of proceedings for commercial entities with very severe formal requirements. After the amendment, this mode was repealed. Since then, severe formal requirements are in force in all types of proceedings. What is more, the CCP is currently based on the so called principle of the discretionary power of the judge. Under this rule, it is the court who decides when and to what extent evidence will be gathered. It might be said that the judge has become a manager of the proceedings. Consequently, all cases should be examined more efficiently now.

IS THERE A NEED TO BE REPRESENTED BY PROFESSIONAL COUNSEL?

In most cases there is no formal requirement for a party to be represented by professional counsel. Proceedings before the Supreme Court are the most important exception. However, as mentioned above and as will be explained in detail below, the Polish civil procedure is formalistic. Written pleadings need to meet certain requirements as to the content. These rigors are even more severe in specific types of pleadings, e.g. appeals.

Consequently, representation by professional counsel is highly recommended. Polish lawyers (attorneys and legal counsels) study for five years, attend a three-year long bar training and pass two state exams before they become qualified. Due to a thorough education they are well-prepared both in terms of procedural and substantive law.

HOW LONG DOES IT TAKE TO OBTAIN A FINAL JUDGMENT OR DECISION?

It is true that the length of the proceedings was a serious drawback of Polish legal system. However, the legislature recently

adopted several changes which have improved the procedure. In the World Bank *Doing Business 2015* report, Poland was mentioned as a top reformer. In the last seven years, it has reduced the time to enforce a contract (from the filing of the statement of claim to obtaining money through compulsory enforcement) by approximately 30%. This trend was confirmed in the World Bank's Doing Business 2014 report, where it was stated that since 2009 Poland has made the most progress toward the frontier in regulatory practice in enforcing contracts.

It is impossible to project how long a certain case will take. The key factors are the type of proceedings, the amount in dispute, and the complexity of the case. Usually, taking the case through two stages of proceedings and forced enforcement of the claim should not take longer than two years.

ASSOCIATED COSTS

Court proceedings are associated with certain costs. Under a general principle, the party losing the case is obligated to reimburse the winning party all the costs it incurred in presenting its case. There are three main types of costs that will be incurred (and can be reimbursed) under the Polish procedural law.

In principle, the party initiating the proceedings needs to pay a court fee. This rule also applies to certain types of special proceedings, e.g. proceedings for securing the claim or enforcement proceedings and to a certain stage of the proceedings, e.g. appeal and proceedings before the Supreme Court. The court fee depends on the type of dispute. In some cases it is fixed. In cases concerning monetary rights it varies from PLN 30 up to PLN 100,000, depending on the amount in dispute.

Furthermore, if some activity of a court, e.g. appointing an expert witness, requires some additional costs, the court will usually ask the party requesting such activities to pay an advance on costs.

Finally, the costs of the proceedings include the costs of representation by professional counsel and their expenses.

Please note

The costs of representation by counsel which can be awarded by the court to the benefit of the winning party have a legal limit, depending on the type of the case and the amount in dispute. The absolute maximum is PLN 43,200, however courts very rarely order the losing party to reimburse the costs of legal representation in such an amount.

What is important, a party can motion for an exemption if it proves that it cannot bear the costs of the proceedings without prejudice or, in the case of a legal person, that it does not have sufficient funds. The exemption can be granted in full or in part. It can also result in representation by a court-assigned counsel.

A THIRD PARTY IN THE COURT

It may happen that you and your opponent will not be the only persons to appear before the court and undertake action in the lawsuit. The Polish rules of civil procedure allow a broad category of third parties to engage in proceedings before the court. There are two main institutions pertaining to the appearance of "third parties" in Polish civil proceedings, i.e. the main intervention and the auxiliary intervention.

The auxiliary intervention pertains to persons for whom the lawsuit between two other people is important due to their private interests. For example, if you had a car accident your insurance company is likely to engage in the lawsuit in order to strengthen your position.

There is also another possible scenario in which you engage in a lawsuit between two other parties, because you have claims pertaining to the subject of that lawsuit. That is called the main intervention.

2

Suing in Polish Courts – three simple steps to prevail in court

STEP ONE
PREPARE FOR THE DISPUTE (GATHER THE EVIDENCE, PREPARE THE ARGUMENTATION, ASSESS THE COSTS)

Unfortunately, conducting business is not always a bed of roses. A prudent businessperson needs to take into account the fact that their business partners can act unlawfully. It may happen from time to time, that as a businessperson, you will find yourself in need of pursuing your rights in court. This may be the result of your counterparty's failure to pay due invoices, someone's unfair market practices or other illegal conduct of other market players.

As we already mentioned, Polish civil procedure has become quite formalized recently. New strict procedural requirements have been implemented to speed up the proceedings and ensure that the justice delivered by Polish courts is swift. Remember: justice delayed is justice denied! There is nothing to be afraid of - provided that you prepare your case before filing a lawsuit.

First, you need to gather the evidence and prepare the argumentation. This is particularly important as the new Polish rules on civil procedure require a potential claimant to present all their evidence and argumentation in the statement of claim itself. If the claimant fails to fulfill that duty, then, usually, any evidence or arguments invoked later will be omitted by the court. It seems quite clear that in these preparations, the assistance of Polish lawyers, proficient in Polish law, is indispensable.

Second, you should assess the cost. Sometimes it will be simply more economically reasonable to try to engage in good faith negotiations with the party in dispute before taking your case to court.

STEP TWO
SECURE YOUR CLAIM

It is not uncommon, that with a litigation looming ahead, the opposing party will attempt to dispose of all of their assets in order to frustrate the future enforcement of a potential court decision issued in your favor. Obviously, there are certain provisions of the Polish law, which allow for the invalidation of any such last-minute "generosity" on the part of your opponent, for example towards their relatives or affiliates. However, it is always better to act preemptively. In court proceedings, such preemptive ac-

tions will take on the form of “securing of claims”. To put it briefly: by securing the claims the court will “freeze” the assets of your counterparty or encumber them to ensure that you will get compensated to the greatest possible degree, once the court delivers its final judgment (see pp. 36-39).

STEP THREE
FILING A LAWSUIT

We are quite certain that as a prudent merchant you will avail yourself of all means to amicably resolve the dispute with your counterparty before filing a lawsuit in court. However, when such means of peaceful resolution fail, it is time to enter the path of litigation.

First, it is prudent to establish which court will be competent to hear your case. Under Polish rules on civil procedure, a court is competent to hear the case if it has subject-matter jurisdiction and is the proper venue for the dispute. In cases with a so-called “international element”, i.e. between parties from different countries, it is also necessary to assess, whether the Polish courts have national jurisdiction (see pp. 8-9 above).

As mentioned above, in commercial disputes between parties based in different Member States of the European Union, the national jurisdiction of the Polish courts is determined according to the provisions of the Regulation No 1215/2012 of December 12, 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I recast).

In contrast, when the dispute concerns at least one party, which is not based in a Member State of the European Union, then, in the absence of any international agreements between Poland and that party’s country, the Polish rules on civil procedure prevail. Thus, the Polish court will establish its national jurisdiction according to the CCP.

It is important to note that (assuming the existence of the national jurisdiction of the Polish courts) if a Polish court finds that it has no subject-matter jurisdiction or that it constitutes an improper venue to hear the matter, it will transfer the case to a competent Polish court. Although that usually does not entail any negative legal effects, it is simply time-saving to properly establish the

competent court from the very beginning. On the contrary, once the Polish courts find that they have no national jurisdiction, they reject the statement of claim (without prejudice for filing it elsewhere, e.g. in another country).

Generally, your statement of claim does not need to be prepared or signed by a lawyer, although there are obvious advantages of such professional legal assistance. In the first brief of the case, you should state your exact claim. Moreover, the Polish law requires the claimant (that will be you, when filing a statement of claim) to include any relevant factual circumstances that substantiate their claims in the statement of claim.

In some matters, a statement of claim must be filed on a special form prepared by the Ministry of Justice.

If a party fails to adhere to any of the formal requirements of the statement of claim, then as a rule, the court summons a party to correct any formal errors. If a party fails to comply with a court order in one week's time, the statement of claim is subject to return by the court. "A return" means that the court will send the statement of claim back to the claimant and will not examine the case at all. Such a statement of claim will have no legal effect. As a result, the consequences of a return may be very unfortu-

Example

Under the Polish law, most claims are subject to a period of limitation (which in commercial transactions amounts to only three years or less). After that period expires, your counterparty may legally refuse to satisfy your claim (saying: "you should have asked earlier!"). We live in a fast changing world and due to your day-to-day activities it is not unlikely that some time will pass before you take the case to court. Fortunately, filing a statement of claim interrupts the period of limitation, meaning the period of limitation starts anew after the case ends. However, if a statement of claim is returned by the court as a result of failure to meet formal requirements, then it does not interrupt the period of limitation.

nate. “A return” means that the court will send the statement of claim back to the claimant and will not examine the case at all. Such a statement of claim will have no legal effect. As a result, the consequences of a return may be very unfortunate.

The statement of claim is also usually subject to a court fee. In a statement of claim you may include certain motions. This may refer for example to:

- motion for securing the claims (see pp. 15-16 above and pp. 36-39 below),
- motion for granting the prospective judgment the power of immediate enforcement – granting of such a power enables you to enforce the judgment even before it becomes binding and final (i.e. before the time for the appeal lapses or the judgment was upheld by the court of appeals),
- motion for conducting the court hearings even in the absence of the claimant – such a motion may for example prevent the court from staying the proceedings if claimant or both parties fail to appear in court,
- motion for summoning witnesses or experts – including such a motion already in the statement of claim may even be required if you do not want the court to omit your motions for witnesses on the grounds that you could have invoked their testimony earlier in the course of the proceedings,
- motion for the request of evidence in possession of other courts, state authorities or third parties – usually it takes time before a court’s request for evidence reaches the relevant institution or person and before it is executed; as a result irrespective of the time bar to rely on the new evidence it is advisable to include such a motion in a statement of claim for the sake of expediting the court proceedings.

WHEN DO YOU HAVE TO SUBMIT EVIDENCE?

Since the introduction of the new rules on the Polish civil pro-

cedure, the question of time relevant for submitting evidence has become one of the most important issues in organizing a lawsuit. The Polish legislature implemented rules aimed at concentrating evidentiary material. This is understandable. It is easy to imagine the opponent's lawyer constantly petitioning for the admission of new evidence only to postpone what is inevitable, i.e. the judgment day. This is why, the World Bank's Doing Business 2013 report provides that: "[…] Poland […] amended the procedural rules applying to commercial cases, mainly to simplify and speed up proceedings and to limit obstructive tactics by the parties to a case."

It is a general rule that it is up to the parties to submit the evidence supporting their claims to the court, although the court may admit some evidence on its own (ex officio). This power is not often exercised by the judges, for the sake of the equal treatment of the parties.

The parties may submit evidence to support their claims until the closing of the proceedings. However, as it has already been said, the Polish courts will generally omit any evidence, which was submitted by a party at a later stage of the proceedings, and which in the opinion of the court could and should have been submitted earlier.

There are three main and quite reasonable exceptions to the above-mentioned rule:

- first, a court will admit late evidence, provided the party makes it probable to the court that it was not at fault in failing to submit the evidence earlier,
- second, a court will admit late evidence, provided the party makes it probable to the court that allowing the new evidence will not prolong the examination of the case,
- third, a court will admit late evidence, provided there are present exceptional circumstances which weigh in favor of allowing that evidence.

In assessing whether there are preconditions for applying those

three exceptions, a Polish judge holds broad discretionary power. Even if at some point the judge does not admit certain evidence, they are free to change that assessment and admit this evidence according to the circumstances. A Polish court also examines the evidence, its credibility and relevance for the given case on a discretionary basis.

HOW ARE THE PROCEEDINGS ORGANIZED?

The proceedings before a Polish court are strictly structured. After the statement of claim has been filed, the court will assess whether it fulfills all the procedural requirements. In the absence of any deficiencies, the statement of claim is served by the court on the defendant. Subsequently, the defendant has time to file the reply to the statement of claim. Then the court, in most cases, schedules a first court hearing, summons witnesses, experts, and files requests for documents.

TESTIFYING IN THE COURT

Generally, the party to the proceedings is not required to testify in court. Parties' testimonies are deemed to be subsidiary evidence. They are only admissible after other means of evidence have been exhausted or if important facts of the case remain unexplained. This is the so-called parties' "evidentiary testimony".

In lieu of a legal entity (for example a corporation), the court questions a person (or persons) authorized to represent this legal entity. This may mean that if you are, for example, a President of the Management Board of a company, you may be requested to testify on behalf of the company.

Contrary to the issue of witnesses' testimonies, when a party fails to appear before the court, the court may not impose a fine on the party. The only sanction that the court is allowed to impose if a party does not appear for the testimony is the judge's discretionary power to assess the consequences of such a failure to appear for determining the facts of the case.

However, a court may recognize any legitimate reason as justifying the party's absence on a discretionary basis. It is important to remember that if you cannot testify due to an illness, your physical condition must be evidenced by a certificate issued by a special court physician.

FILING THE BRIEFS

Under the new rules on Polish civil procedure, a claimant may file a statement of claim, then a defendant may respond with a reply to the statement of claim and generally no more briefs are allowed. Consequently, you can file a brief in the course of the proceedings only when the court explicitly requests you to do so. Of course, you may petition the court to allow you to file a brief. A brief submitted without the court's approval is subject to return. The court will not take into consideration any content, evidence or arguments contained in such a brief and will treat it as if it has never existed. However, it is worth noting that there is no page limit for a submitted brief.

Example

In the course of the proceedings, party A filed a brief to respond to the allegations made by party B during the last court hearing. However, a court did not issue an order requesting party A to file a brief. As a result, the court will return A's brief.

The only exception from the rule stating that a party may submit briefs only when ordered by the court is the submission of a motion for taking of evidence. Such motions may be presented to the court at any time. This does not mean, however, that the court will allow all evidence that you petition for. In accordance with the previously discussed rules, a court generally omits late evidence, provided that no exception applies (for details see pp. 19 above).

SUBMITTING THE EVIDENCE

It was already explained that in Polish civil proceedings, as a rule, the court will omit evidence submitted after filing of the statement of claim if it deems that this evidence could and should have been invoked earlier. We have also already explained three exceptions to this rule (see p. 19 above). Now it is time to describe what are the means of evidence in Polish litigation.

First, you may use documents as evidence. This refers both to private and official documents (i.e. those issued by foreign or

Polish state or local authorities). A private document is proof that a person who signed it made a statement presented therein. Consequently, when you submit a private document signed by your opponent in court and your opponent denies the authenticity of this document, they have to prove their allegation. In such a case, you can relax and watch your opponent struggle to prove that they did not sign an invoice in question. This rule also applies to official documents. However, if your opposing party denies the authenticity of a private document signed by someone else, it is unfortunately up to you to prove the document's authenticity.

There is also a regulation for the discovery of documents under the Polish rules of civil procedure.

The institution of discovery refers to a situation in which upon the motion of one party, or sometimes at its own discretion the court, requests third persons or even another party to present documents in their possession.

Second, you may petition for an expert's opinion to provide evidence for the relevant facts. Contrary to many legal systems, as a rule, there is no such a thing as a party-appointed expert in the Polish court proceedings. The expert appointed by a Polish judge is an expert of the court and has to be independent and impartial as the court itself.

Third, witnesses may serve as source of evidence. In Poland, everyone is legally bound to appear before a court and deliver testimony upon summons. Court may impose a fine on the witness for an unjustified refusal to appear. If the witness still refuses to appear the judge is empowered to order the police to bring the witness to the court.

There are certain legally prescribed circumstances in which a witness may refuse to give testimony or answer a question. The latter refers to case when answering the question would pose a danger of penal liability for the witness or direct and severe financial loss to them. When a witness unjustifiably refuses to give testimony, the court may impose a fine on them or even sentence them to short-time detention.

Fourth, the court may order an inspection. This may involve inspecting a place, a thing or even a person, however in the last

situation the consent of the person to be inspected must be obtained. The inspection may be conducted with or without the participation of the expert witnesses and it may be connected with the testifying of the witnesses.

Finally, the Polish civil procedure allows all other materials which may potentially serve as evidence. This refers to e-mails, photographs, videos, audio recordings, blood samples, etc. The possibilities here are endless. The only limit is your lawyers' ability to convince the court that the evidence speaks in your favor and against your counterparty.

THE COURT MAKES ITS DECISION

After the hearings have been conducted, briefs submitted, witnesses heard and the parties have fully presented their case – in other words, after the parties have fired all their ammunition in their struggle – the court delivers its decision. The judgment may be issued upon the closing of the court hearings and the judge (or judges) is bound to rule on the grounds of the state of affairs current as of the moment of ruling.

WHEN THE CASE ENDS

I WON THE CASE – WHAT NEXT?

When you have your expected judgment in grasp, you are almost at the end of the path of litigation.

Generally, the court's judgments are enforceable after they become final and binding. A judgment is final and binding upon the lapse of the period for appeal (if no appeal was filed, see pp. 28 below).

Each party has the right to ask the court of first instance to present its reasoning in a formal written substantiation of the judgment, however, the winning party does not have to do this. You can pursue the enforcement of the claim on the basis of only the judgment. A motion for such a substantiation can be filed within one week as of the judgment being issued.

A final and binding judgment constitutes the basis for forced enforcement of the claim.

I LOST THE CASE – WHAT NEXT?

If you lost a case, do not lay down your arms, but prepare for another battle. In other words - consider filing the appeal. In the event of losing the case, requesting the formal written substantiation of the judgment is indispensable. Knowing the reasoning of the decision will be necessary to assess the chances of an appeal (see pp. 28-30 below).

3

Being sued before the Polish Courts – how to defend and fight back

HOW TO LEARN ABOUT A PENDING CASE?

The Polish judiciary does not offer a uniform system in which it is possible to examine whether a certain person has been sued. Every particular court keeps a register of pending cases. Consequently, if you, a potential defendant, know the possible venue of the dispute, you can obtain information directly from a specific court.

The defendant can, however, expect a possible dispute from pre-litigation correspondence such as requests for payments, complaints about the quality of the service, set-off notices, etc. It is crucial to collect all such documents and start preparing a defense.

If there was no prior information about an emerging dispute, it is possible that a foreign entrepreneur can learn that they were sued before a Polish court no sooner than from a letter of the court informing about the statement of claim with a court documents attached thereto. In such a case, the time is very tight for the defendant.

GET A LAWYER

Even if you are prepared for the dispute, you still have a limited time to react. In principle, the court orders that a reply to the statement of claim be filed within a period no shorter than 14 days. As mentioned above, the defendant has to present all the evidence in their first pleading. Consequently, the initial phase of

the dispute, as well as a thorough and early case evaluation, are of crucial importance.

HOW MUCH TIME DO I HAVE TO RESPOND TO THE LAWSUIT?

In litigation, when serving the defendant with a statement of claim, the court may obligate them to file a reply to the statement of claim within a certain time limit, not shorter than 14 days. This is the key moment of the dispute. The defendant needs to gather all the evidence and prepare its defense precisely in that time.

This is so since under the CCP, the court shall disregard any belated arguments and evidence unless that party makes probable the fact that it failed to include it in their first pleading without fault or that these arguments and evidence will not prolong the examination of the case or there are other exceptional circumstances.

Consequently, there is little chance that any documents and witnesses found after filing the reply to the statement of claim shall be admitted. This also pertains to motions for appointing expert witness. Case law shows that a surprisingly large number of cases were lost due to the fact that a party did not properly present its case at the very beginning, i.e. it lost on evidentiary grounds. The possibility of admitting evidence by the court's own motion is limited and it cannot constitute a panacea for prior evidentiary errors of the party.

PREPARE FOR THE DISPUTE AND DEFEND

As Albert Einstein once said "You cannot simultaneously prevent and prepare for war". This proverb may be true for military action, but it is fully contrary to the reality of litigation. The pre-litigation negotiations alone are usually intertwined with gathering evidence, preparing arguments, and evaluating chances. A prudent entrepreneur, especially a public company, prone to stock price fluctuations, needs to assess the litigation risks. This process cannot be accomplished without determining the possible outcome of the case.

MEANS OF DEFENSE

Every dispute offers a certain number of possibilities to defend and win the case. These are the most common means of defense that can be applied to most disputes:

FILE AN ANSWER TO THE STATEMENT OF CLAIM

Responding to every argument of the claimant is indispensable. Leaving the court with only one version of the story is a simple way to lose a case that could be won. What is more, the court – taking all the circumstances of the case into account – can treat silence as admitting facts indicated by the opponent.

RAISE CHARGES

Filing a reply to the statement of claim is also the ultimate moment for raising certain charges. After having filed this pleading, the defendant is deemed to have entered into a dispute as to the merits. Consequently, in the reply to the statement of claim, the defendant should, for instance, point to the arbitration agreement and motion for referring the case to arbitration or raise the lack of jurisdiction of the court and the improper venue. The defendant can also set-off its claims with the claims of the other party as well as raise charge of the statute of limitations.

FILE A COUNTERCLAIM

A counterclaim is admissible if the claim is related to the claimant's claim or a set-off is allowed. The last possible moment to file a counterclaim is the reply to the statement of claim or the first hearing. It is up to the defendant to decide between a set-off and a counterclaim. You should note, however, that the counterclaim is subject to a court fee whereas the set-off is not.

HOW ARE THE PROCEEDINGS ORGANIZED?

In principle, after the parties presented their position, no other written pleadings should be filed. A party that wants to supplement its argumentation or evidence needs to ask for the formal consent of the court (see p. 21 above). The court can, however, organize a procedural schedule at the beginning of the proceedings and suggest an order of the hearings and filing pleadings.

"Standard" proceedings should end after the first hearing. This is, however, a very rare occasion and happens only when the case is relatively uncomplicated. When there are witnesses to be heard, usually more than one hearing will take place. In the Polish court system, the hearings are not organized one day after another, but are rather adjourned for a period ranging from a

couple of weeks to a couple of months.

After exhausting all the evidentiary means or in the lack thereof, the court can hear the parties if unexplained facts relevant for adjudicating the case remain. The court usually appoints an expert witness only after these evidentiary activities. After the expert witness has prepared a written opinion, they are, in principle, summoned to answer the questions of the parties. Since the parties are served with the expert opinion in writing, the court usually specifies a time limit for them to raise objections to the opinion.

Having completed the evidentiary proceedings, the court closes the proceedings and asks the parties to present their closing statements. Afterwards, the court takes time to consider the decision and after a short break or after a longer one, lasting up to two weeks, it issues a ruling (see also p. 23 above).

WHEN THE CASE ENDS

I WON THE CASE – WHAT NEXT?

If the court dismissed the claim, you, acting as a defendant, have won. In such a case, the claimant will also be obligated to reimburse the costs of the proceedings you have incurred. If the court also allowed the counterclaim, you do not have to pay anything to your opponent and you yourself gained reimbursement. After presenting its verdict, the court will also shortly present an oral substantiation of the decision.

Each party has the right to ask the court to present its reasoning in a formal written substantiation of the judgment, however, the winning party does not have to do this. A motion for such a substantiation can be filed within one week of the judgment being issued.

I LOST THE CASE – WHAT NEXT?

On the other hand if the court allowed the claim at least in part and dismissed the counterclaim, you, acting as the defendant, have lost the case. Apart from being forced to execute the judgment, you will have to reimburse the claimant the costs of the proceedings. The court will, also in this case, provide a brief oral explanation on the reasons of its decision.

In the event of losing the case requesting the formal written substantiation of the judgment is almost indispensable. Knowing the reasoning of the decision will be necessary to assess the chances of an appeal (see pp. 28-30 below).

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How to appeal from an unfavorable judgment?

HOW TO APPEAL AGAINST AN UNFAVORABLE JUDGMENT?

TAKE THE CASE TO THE COURT OF APPEALS

Even if you lost the proceedings in the first instance, you still have a possibility to appeal against the unfavorable decision and judgment. As mentioned above, the court hearing the appeal is both a court of fact and a court of law. It can take new evidence or simply reevaluate the facts of the case. This means that winning the case in the first instance does not always mean that the case is ultimately won. On the other hand, the one who initially lost the case should not lose hope for a favorable judgment.

COURSE OF THE PROCEEDINGS

The appellant's perspective

After obtaining the written substantiation of the judgment, the losing party has two weeks to file a written appeal. If you have not filed for a written substantiation of a judgment, you may appeal in three weeks counted as of the day on which the court of first instance announced its ruling. The appeal itself is a very formal pleading. Apart from the standard formal requirements, the appellant needs, for instance, to indicate if they are appealing from all or part of the judgment. Furthermore, they also need to point out the mistakes of the court in applying the procedural and substantive law. What is more, the appellant is required to indicate what judgment it is motioning the court of second instance for (setting aside and remitting the case to the first instance, the change of the judgment, etc.). It is very important that you pay an appropriate court fee for the appeal.

Please note

Relying on new evidence in the appellate proceedings is possible only if the party proves that it was not able to present it in the first instance or there was no need to present it earlier.

When the appeal meets all the formal requirements, the court of the first instance serves the appellee with a copy thereof and sends the files of the case along with the appeal to the court of second instance. The court of second instance examines the formal requirements of the appeal again.

Next, the court notifies the parties of the date of the hearing. Usually, it takes only one hearing to hear the case in the second instance, save for cases when there is a need to examine new evidence. During the hearing, one of three judges summarizes the case. Then the parties present their position and make their closing statements. Following this, the judges confer the decision and also present a short substantiation of the decision.

If the court admitted the appeal, it drafts the written substantiation without the need for it to be motioned for. If the appeal was dismissed or the contested judgement was amended, to obtain the substantiation, the appellant needs to file a motion for the court to draw up the written substantiation. Motioning for the substantiation of the judgment passed in the second instance is a formal prerequisite to file a cassation to the Supreme Court by a party to the proceedings.

The appellee's perspective

The appellee in principle learns of the initiation of the appellate proceedings when the court of first instance sends a copy of the appeal. Thay have two weeks from the date of receipt of the appeal to file a reply to the appeal directly to the court of second instance.

It will usually be in your best interest to "defend" the judgment although you are not formally obligated to do so. Thus, in the reply to the appeal and in further oral pleadings, the appellee needs to object to the argumentation of the appellant. They need to prove that all the appellant's allegations are erroneous and the court of the first instance was right both as to the facts and as to the law.

THE COURT MAKES ITS DECISION

I won the case – what next?

The court can issue several types of judgments. For instance, it can dismiss the appeal if it is unfounded. Second, it can admit the appeal, change the judgment and adjudicate the case on the merits. It can also admit the appeal, and remit the case to the court of first instance for rehearing if the evidentiary proceedings need to be conducted in full or the court of first instance failed to examine the case as to its merits. The case is also remitted for rehearing in case of a mistrial, i.e. if the court of first instance made serious procedural errors, for instance, it did not allow the party to present its case.

For the appellant every decision apart from a dismissal of the appeal would be at least a partial success. On the contrary, only the dismissal of the appeal is a total success of the appellee.

I lost the case – what next?

The first important piece of information for the party losing the case in the second instance is that the winning party can execute its claim. The only way to reverse the judgment is to file a cassation to the Supreme Court. This also allows the party to motion for the enforceability of the judgment to be withheld (see p. 32 below).

TAKE THE CASE TO THE SUPREME COURT

Certain cases can be heard by the Supreme Court, which is a court of law, not a court of facts. In principle, a party can file a cassation to the Supreme Court from:

- a final decision rejecting the statement of claim (due to formal reasons) or discontinuing the proceedings,
- a final judgment of the court of second instance on the merits in a case with the amount in dispute greater than PLN 50,000 (as a rule). Certain types of cases are, however, excluded from the jurisdiction of the Supreme Court.

Proceedings before the Supreme Court are very formalistic. A party is obligated by law to be represented by professional counsel.

It is also important that both parties to the dispute can file their own cassation. In that case, both of them are heard during the same proceedings.

Please note

As of 2012, apart from filing a cassation, it is possible to challenge in the Supreme Court the decision of the court of second instance remitting the case for a rehearing to the first instance court. The complaint would be successful if the appellant proves that the court of second instance should have ruled on the merits of the dispute.

COURSE OF THE PROCEEDINGS

The petitioner's perspective

The party who wishes to challenge the judgment of the court of second instance is required to motion for a written substantiation of the judgment. You have two months from the service of the judgment to file the cassation to the Supreme Court.

If the appeal against the judgment of the first instance is a very formal brief, the cassation to the Supreme Court is even more formal. The appellant needs to be very careful in pointing out the mistakes as to the procedural and substantive law. Moreover, the appellant needs to prove that the case deserves the Supreme Court's attention. This is because the Supreme Court is a special court. It does not hear every case, but only those:

- which pertain to an important legal problem,
- the solution of which requires an interpretation of law raising important concerns,
- that pertain to an issue with respect to which the case law is contradictory,
- the nullity of the proceedings exists (the most flagrant violation of procedural rules),
- the cassation is obviously founded.

The cassation is examined thoroughly by the court of second instance. Any serious mistakes as to the necessary elements of the cassation result in rejecting the cassation on formal grounds. If the cassation meets all formal requirements, the court sends a copy to the opposing party and expects a reply (see p. 33 below). After the time limit for the defendant to file a reply passes, the files of the case are transferred to the Supreme Court.

Please note !

After filing the cassation, the claimant can motion for staying the final effect of the judgment of the court of second instance. The motion is granted when the claimant proves that after the enforcement of the judgment they will incur irreparable damage. The court can also make the enforcement of the judgment conditional upon paying a security.

The Supreme Court can also reject the cassation on formal grounds. If no such decision is made, the Court schedules a closed hearing for examining whether the case deserves to be heard by the Supreme Court. The Court can either agree to hear the cassation or refuse to do so. If the Supreme Court refuses to accept the cassation for examination, the proceedings are terminated.

Example

Party A sued party B for tort. Party B argued that the dispute arose out of a contract and it should be examined accordingly. The courts of first and second instance decided that party B is liable for tort. Party B took the case to the Supreme Court. The Court, however, did not accept the cassation for examination because there was no contradictory case law, or any legal problem to be solved, despite the fact that the judgments were objectively wrong.

If the Supreme Court accepts to examine the case, in principle, it rules on it during a closed hearing. The first phase (accepting the examination of the case) is presided over by one judge. The second, substantive part of the proceedings is heard by a panel of three judges. In certain matters and upon the motion of the petitioner, the Court can schedule a hearing during which the parties can present their case. After the hearing, the Supreme Court makes the final decision in the case.

THE OPPOSING PARTY'S PERSPECTIVE

For the defendant, the stage of the case initiated by the cassation to the Supreme Court starts when they receive a copy of the said brief. They now have two weeks to file a reply to the cassation with the court of second instance. The opposing party can present the argumentation that the cassation is unfounded or that it should not be even heard by the Supreme Court. The defendant can also present their case in a hearing if the Supreme Court schedules one.

THE COURT MAKES ITS DECISION

I won the case – what next?

As mentioned above, the Supreme Court does not evaluate the facts. Consequently, if it agrees with the petitioner as to the errors of the court of second instance as to the law, it sets aside the judgment and remits the case for rehearing. It can also set aside the judgment of the court of first instance. In some cases, however, the Supreme Court enjoys the possibility to rule on the

merits of the dispute. When the Supreme Court remits the case, the dispute is not over. The court of second instance is bound by the reasoning of the Supreme Court, however. If the Supreme Court rules on the merits of the case, it can change the decision of second instance, which was unfavorable to the petitioner.

I lost the case – what next?

The Supreme Court dismisses the cassation when it is unfounded or even when the judgment – despite the wrong explanation of the reasoning of the court – is lawful. This means that the case is ultimately lost. The proceedings can be reopened only in cases of the most serious procedural errors (see p. 34-35 below – Reopening of the case).

WHAT ARE OTHER INSTRUMENTS OF CHALLENGING COURT DECISIONS?

COMPLAINT FROM A PROCEDURAL ORDER OR DECISION

Polish courts issue decisions or procedural orders when there is no need to issue a judgment. These are procedural matters, e.g. rejecting a statement of claim (or an appeal), stay of the proceedings, the decision as to the costs of the proceedings.

The complaint is possible only in certain cases of decisions and procedural orders, prescribed in the CCP. The rules on the procedure of complaint proceedings are similar to those applicable in the situation when an appeal is filed from a judgment. The most important difference is that you only have one week to file the complaint. Moreover, in cases of a mistrial and obviously wrong procedural orders, the court of first instance itself can change its decision and rule once again. A new decision may be subject to a complaint on general terms. In proceedings initiated by a complaint, the court, in principle, decides in a closed hearing.

REOPENING OF THE CASE

In certain cases, proceedings that ended with a final decision can be reopened. This is possible when the court has made the gravest mistakes: e.g. a party was not able to present its case, the court ruled on the basis of a forged or falsified document, a crime was committed in order to obtain a judgment, or new evidence was discovered. In addition, the case needs to be reo-

pened when it was decided under law that was subsequently repealed by a decision of the Constitutional Tribunal.

The motion for reopening the case can be filed within three months of the occurrence of the basis for it, e.g. the discovery of new evidence. It cannot be filed after ten years as of the time when the decision was deemed final, save for cases of lack of the possibility to present the case or when the party was not duly represented.

After examining the motion, the court can dismiss it or rule on the merits of the case.

DECLARING A BINDING COURT JUDGMENT UNLAWFUL

A party who incurred damage on the basis of a binding court judgment that is unlawful can file a motion for the judgment to be declared unlawful within two years from the date on which becomes final and binding. However, this means of appeal is not possible from the judgments of the Supreme Court or judgments on which the Supreme Court already ruled (e.g. by dismissing the cassation). The party can raise arguments as to the procedural and substantive law, but not as to the facts of the case.

The Supreme Court which rules on the case, can dismiss the motion or declare the judgment unlawful. If the Supreme Court declares the judgment unlawful, this is the basis for a legal action against the State Treasury for damages incurred due to a judgment having been issued. In exceptional cases (e.g. lack of jurisdiction of Polish courts), the Supreme Court can also set aside the judgment.

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How to secure a claim?

It is not uncommon that debtors curiously tend to become very generous towards their relatives when a litigation looms ahead. Typically, when faced with a risk of paying damages, your opponent will attempt to dispose of their assets. Although there are certain legal mechanisms that allow those disposals to be invalidated, it is better to act preemptively by securing the assets of your opposing party.

The securing of assets is allowed in every civil matter which can be heard by a state court or court of arbitration. It may also take on different forms. Generally the type of securing that you may petition for will depend on the nature of your claim towards another person.

Securing pecuniary claims may, as a rule, take only a few statutory allowed forms, for example:

- attachment of your counterparty's movable property, remuneration, bank account or of their other property rights,
- encumbering of your counterparty's immovable property with a compulsory mortgage,
- establishing a prohibition of disposing or encumbering of your counterparty's immovable property that has no land register or the land register of which was lost or destroyed,
- establishing a compulsory administrator of your counterparty's enterprise or agricultural farm or of part of that enterprise of agricultural farm.

In turn, the securing of non-pecuniary claims may take an unlimited number of forms, as courts exercise broad discretionary power in that matter. For example, a court may regulate the parties' mutual rights and obligations for the duration of the proceedings initiated by a lawsuit.

Example

Party A learns that party B intends to publish press material, which is offensive to party A. Party B has done this before and party A intends to sue party B for compensation for damage to party A's reputation. However, party A may also petition the court for securing its claims, by prohibiting party B from publishing any further press materials for the duration of the future lawsuit.

The party may file a motion for securing claims before filing a statement of claim, in the statement of claim, as well as in course of the already pending proceedings. If you petition for securing the claims before instigating a lawsuit, then having granted the security, the court will circumscribe a time period within which you will be obligated to file a statement of claim. According to the relevant provisions of the CCP, this period cannot amount to more than two weeks' time. Should you fail to file a statement of claim within the court prescribed period, the securing that you obtained becomes null and ineffective by the virtue of law.

Example

Party A wants to sue party B for money. Before filing a statement of claim, party A petitions the court for securing its claims by the attachment of party B's bank account. The court grants party A the securing, which means that party B cannot withdraw money that it has in its bank account. Moreover, the court sets a two-week period for party A to file a statement of claim. However, party A fails to file a statement of claim in that two-week time. As a result, party B can again freely utilize their bank account.

Generally, there are two main preconditions for obtaining the securing of claims. First, you will have to make it plausible to the

court that you indeed have a legitimate claim towards another person. The court needs not to be one hundred percent sure that your claim against your opponent is valid. It suffices that in light of the material presented by you the court deems the existence of your claim to be plausible (or probable to put it in other words). Second, in order to be granted the securing of claims, you must make it plausible to the court that you have a so-called "legal interest" in obtaining the securing of claims. According to the Polish law, a party has a "legal interest" in obtaining the securing of claims if the lack of securing will make it impossible or significantly difficult to enforce a final judgment confirming the party's claims.

THE COURSE OF THE PROCEEDINGS

THE ENTITLED PARTY'S PERSPECTIVE

When you petition for securing a claim, then you are referred to as "the entitled party". As mentioned above, generally, in order to be granted security you will need to file a special motion (which can be included in the statement of claim).

If the court dismissed your motion for securing of claims, you may file a complaint in a week's time counting as of the service of the court's decision.

Once your counterparty learns of the court's decision on securing claims, it may challenge it within a week's time. However, even the filing of a complaint does not withhold the enforcement of the decision. For that reason, it is possible that court will grant you securing under the condition that you provide a security deposit. Such a security deposit serves to satisfy your counterparty's potential claims for damages which may result from the enforcement of the court's decision on securing your claims.

The decision securing the claim can require enforcement. In such a case, the creditor needs to initiate enforcement proceedings (see pp. 41-45).

THE PERSPECTIVE OF THE OBLIGATED PARTY

A person against whom the court issues a decision on the securing of claims is called "the obligated party". The obligated party is generally not served with the court's decision on securing claims. By that, it usually learns of the means of security ordered by the

court not earlier than when the execution of the decision is commenced. For example, you do not learn of the seizure of bank accounts until they are actually seized. The fact that the obligated party does not know anything about the pending proceedings for securing the claim serves to prevent the liquidation of assets.

It does not however mean that as a potential obligated party you are defenseless. This is because, once you learn about the court's decision on the securing of claims, you may file a complaint in a week's time. As mentioned above, although filing a complaint itself does not withhold the enforcement of the court's decision on securing the claims, you may petition the court of appeals to issue an appropriate withholding order.

Even if the court's decision on securing claims stands, you may at any time motion for the decision to be changed or set aside – provided that the reason for granting the securing no longer exists or that the reason for granting the securing has changed. This second situation refers, for example, to cases in which the ordered security measure becomes too burdensome to you and there are other more appropriate means of securing the entitled party's claims.

HOW ARE THE NON-LITIGIOUS PROCEEDINGS DIFFERENT?

All of the above-mentioned information referred to so-called litigious proceedings. Apart from litigious proceedings, the legislature also established non-litigious proceedings, in which certain categories of cases are adjudicated. These proceedings have certain particularities that differ from the general rules of the proceedings. The most important types of non-litigious proceedings from the perspective of an entrepreneur pertain to real estate and registering the company.

THE COURSE OF THE PROCEEDINGS

The non-litigious proceedings begin with a motion, not a statement of claim. The party which initiated the proceedings is called the petitioner. All other parties whose rights might be influenced by the outcome of the proceedings can take part in the proceedings as participants. The court does not issue a judgment, but a

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When is the case examined in non-litigious proceedings?

decision on merits (whereas in litigious proceedings decisions do not rule on merits, only on formal and auxiliary issues, they refer to the course of the proceedings, not to its outcome). However, the participant can still appeal from a decision or even in certain cases file a cassation to the Supreme Court. What is also important, in principle, every participant bears the costs of their participation in the proceedings, also the costs of representation by a lawyer.

MOST IMPORTANT PROCEEDINGS FROM A BUSINESSPERSON'S PERSPECTIVE

REAL ESTATE RELATED MATTERS

The most important real estate related matters are resolved in non-litigious proceedings. Proceedings of this type are applicable, for example in the following cases:

- acquisitive prescription of real estate,
- property management by a court-appointed administrator,
- dissolution of co-ownership,
- establishing a right-of-way,
- land and mortgage register proceedings.

COMPANY RELATED MATTERS

Non-litigious proceedings are also conducted when one wants to establish a company. All changes in the company register (e.g. change of the articles of association etc.) are done in those proceedings as well.

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How to enforce a judgement?

Obtaining a favorable judgment is not the final step to be taken by the creditor to enforce their claim. This is because the creditor cannot enforce the claim on its own. The only way to pursue enforcement is through the state authorities, i.e. the courts and bailiffs. A bailiff is a public officer who carries out enforcement duties in civil cases and performs other duties. They rely on the authority of the State and may ask assistance of law enforcement forces such as the police. Despite the fact that bailiffs are affiliated with certain courts and have their fixed offices, the creditor has the right to select any bailiff, notwithstanding its seat. Bailiffs are also obligated to hold insurance in the scope of professional liability.

THE COURSE OF THE PROCEEDINGS

THE CREDITOR'S PERSPECTIVE

A creditor who possesses a so-called enforcement title can pursue a compulsory enforcement against the debtor. They have to motion the court for appending the enforcement title with an enforcement clause. The court is obligated to hear the motion immediately, but no later than within three days from filing the motion. The enforcement clause is issued in the form of a procedural order. Each party can file a complaint from this procedural order.

EXECUTION TITLE

Under the CCP, the execution title is an enforcement title appended with an enforcement clause. In particular, the following documents can constitute an enforcement title:

- a binding judgment or a judgment being subject to immediate enforcement,
- an arbitral award,
- a settlement before a court,
- a notarial act in which the debtor consents to the enforcement under conditions specified by the law and in the act.

If the debtor is a married person, the case of enforcement is quite complicated. This is because a majority of the debtor's assets usually fall within the scope of the so-called joint estate of the spouses. If the execution title is issued against only one of the spouses (the other was not a debtor, esp. not a party to the contract and was not sued), the creditor cannot freely pursue enforcement from such a joint estate. To do so, the creditor has to present the court with a document proving that the debt arose from an act in law, admittedly of only one of the spouses, but performed under the consent of the other spouse. Even if such a consent was not given or the obligation does not stem from an act in law (e.g. from a tort), the creditor can also pursue enforcement from some other parts of the joint estate, for example the debtor's received salary or profits from intellectual property rights. If the obligation arose out of conducting business, the creditor can also satisfy their claims from the assets comprising a part of the enterprise that belongs to the joint estate.

Example

Party A contracted with party B, who is a natural, married person. Party B failed to perform the contract and was sued by party A. Party A, having obtained a favorable, final and binding judgment, initiated the enforcement proceedings. Party B successfully defends itself by claiming that all of its assets fall within the scope of the joint estate of the spouses, it conducts no business and receives no salary. As there was no consent of the spouse for the contract, party A cannot pursue enforcement from this joint estate.

THE DEBTOR'S PERSPECTIVE

The first time the debtor learns about the enforcement proceedings is usually when the bailiff serves them with a notice of the initiation of the proceedings. The debtor is not informed about the proceedings for appending the enforcement title with the enfotcement clause. They can file a complaint in these proceedings, though. The time limit for the debtor for 'attacking' the decision of the court starts to run on the service of the notice by the bailiff.

Apart from this complaint, there are several other means of defense that you can take in the enforcement proceedings. First, the debtor can motion for staying the proceedings due to the fact that the execution of the enforcement title has been suspended. The stay can be granted also when the debtor appealed from the decision of the court in the enforcement proceedings or filed a complaint from the actions of the bailiff.

Second, if the creditor pursues execution from the salary of the debtor or other similar rights, the debtor can motion the court to set a limit of execution and save some amounts for the debtor's current needs. There are also certain assets which cannot be subject to execution – e.g. personal items, such as clothing and the salary to some extent.

Third, the debtor can prove that they have already satisfied the claim or negotiated a grace period with the creditor.

Fourth and final, one of the main and most efficient means of defense for the debtor is the so-called adverse claim. In principle, the aim of this claim is to render the enforcement clause void.

Initiation of enforcement proceedings

The creditor needs to file the motion with the execution title attached thereto. The motion has to contain the specification of the claim and the desired means of execution (see pp. 43-44). The initiation of proceedings before a bailiff requires the payment of a fee, by principle 15% of the executed amount, but not higher than thirty times the average monthly wage in Poland. If the creditor does not have any information as to the assets of the debtor, they can motion the bailiff to search for these assets. Another way to discover the assets is to file a motion for the disclosure of the assets of the debtor. These are also separate proceedings in which the court can obligate the debtor to submit a list of their assets under oath.

Means of execution

There are several means of execution, depending on the debtor's assets. First, the bailiff can pursue the execution from the movable assets. In such a case, the bailiff seizes the movables and then sells them. In the case of the ineffective attempts to sell the assets, the creditor can take them over. Second, the bailiff can pursue the execution from the debtor's salary and their bank accounts. In such a case, the bailiff seizes the salary / bank

account and asks the employer / the bank to transfer all the sums to the bailiff's bank account. Finally, the bailiff can seize the real estate of the debtor, have it evaluated and sell it at a public auction. There are also other special means of execution, e.g. execution of non-monetary claims, which are governed by specific rules.

Order in which the creditors are satisfied

When the execution is over and the bailiff obtained money from selling/seizing the assets of the debtor, there is a special order in which the creditors are satisfied. The sums obtained in execution are divided between, i.a.:

1. the costs of the execution,
2. alimonies,
3. part of the employees' salaries,
4. claims secured by means of a lien, registered lien or mortgage,
5. other parts of salaries,
6. taxes,
7. other claims.

If the claim against the debtor is a standard one (unsecured monetary claim, not being a salary), it will be satisfied in the last group, with the least priority. This is a very important fact and foreign investors should consider securing their claims (by lien or a mortgage) to increase the probability of satisfying these claims.

THE EUROPEAN ENFORCEMENT ORDER AND THE EUROPEAN ORDER FOR PAYMENT

The Polish procedural law acknowledges the European rules for expediting the enforcement of claims in the EU. First, if the enforcement title meets the prerequisites for constituting a European enforcement order, the creditor can motion the court to issue a special certificate. With this certificate, they can pursue execution in all of the European Union (with the exception of Denmark) without the need of the order to be recognized in

the country of the debtor. This procedure is reserved for uncontested claims.

Another way to make the enforcement easier is to petition for the European order for payment. It serves to pursue execution of European trans-border claims. Not all types of claims are admissible under this procedure, though, e.g. it does not apply to matrimonial and bankruptcy cases. The creditor has to prove that the claim is well-founded. If the court finds that all the conditions for issuing the European order for payment have been satisfied, it issues the order after ex parte proceedings, i.e. without giving the defendant a chance to present their case. However, the debtor can later lodge a statement of opposition. If the creditor wants to enforce the order in Poland, it is relatively easy to do. All they have to acquire is a confirmation from the court.

The rules for these two kinds of proceedings are uniform within the EU. Having obtained the execution title, the creditor can initiate the enforcement proceedings before a bailiff.

Our services

DISPUTE RESOLUTION & ARBITRATION

We represent clients in proceedings before the Supreme Court, the Constitutional Court, courts of first and second instance as well as administrative courts. We also act as counsels for our clients before arbitration courts and cooperate with foreign law firms on trans-border arbitration cases, which enables us to exchange experiences and join forces with our foreign counterparts in the client's best interest.

We prepare each lawsuit with utmost care and it is of fundamental importance to us to develop a long-term lawsuit strategy in consultation with the client that will yield the best results. Nonetheless, a lawsuit spanning many years is not always the best solution and that's why we negotiate and prepare conciliation scenarios for the termination of disputes in cases when circumstances allow it and clients expect it. We find the fight for conciliation on favourable terms just as exciting as a court battle for victory, with the former often entailing significantly lower costs for the client.

REAL ESTATE

By carrying out thorough analyses, we present investors with the right and optimal solutions for them that helps reduce to a minimum, the risk associated with the purchase and sale of real estate properties. We successfully represent our clients in proceedings aimed at the recovery of real estate and other assets unlawfully seized by the State Treasury under the previous regime. We also provide comprehensive support to entrepreneurs in their investment processes, especially related to construction investments.

Our employees are experienced and continually further their knowledge, which enables us to tackle almost any legal issue concerning real estate. Their involvement and passion assure our clients that no case is viewed by us as a lost cause.

BANKING & FINANCE

We support our clients in complicated projects that require expert knowledge. We prepare comprehensive legal documentation for bank products that are aimed at consumers as well as business owners. Our agreement templates and legal solutions find their applications in products worth hundreds of millions of zloty.

We possess extensive experience in dealing with legal issues related to internal bank operations, and particularly bank outsourcing. Our involvement and professionalism in conducting court proceedings is recognized by our clients, as especially reflected in our long-term cooperation with one of the leading banks in Poland.

RESTRUCTURING / INSOLVENCY

We support business owners in negotiations, the preparation of documentation on restructuring agreements, bankruptcy proceedings with their participation (as debtor or creditor) as well as at stages prior to the declaration of bankruptcy – ensuring that our clients take the right steps.

Our team possesses a wealth of experience in the preparation and execution of restructuring processes, which it have gained by effectively advising entrepreneurs in difficult financial situations – usually brought about not through their own fault. This enables us to help our clients fulfil their plans while providing the management with maximum security.

CORPORATE / M&A

We support our business partners in complicated projects that require expert knowledge. We provide advice at all project stages, starting from the conception of the project's legal structure and strategy through to its final implementation. We guarantee comprehensive legal services based on an individual and interdisciplinary approach to tasks carried out within the framework of our business relations with clients.

The high level skills and dedication of our lawyers together with our experience enable us to provide top quality legal services while adhering to the rule of: high quality at a reasonable price.

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