

# Kluwer Arbitration Blog

## The Court of Arbitration at the Polish Chamber of Commerce Adopts New Rules

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The Court of Arbitration at the Polish Chamber of Commerce in Warsaw (the **Court**) has just published new arbitration rules (the **Rules**) that will come into force as of 1 January 2015. The Court is the oldest arbitral institution in Poland. It handles around 350-450 cases each year, with around 20-25% of them being international cases.

Before presenting the most notable features of the new Rules, it is useful to outline the Court's organisational structure. The Secretary General oversees on-going arbitral proceedings, with the President of the Court managing the external and internal affairs of the whole Court. The Arbitration Council acts as an appointing authority and supervises other issues concerning arbitrators, such as deciding on motions to dismiss arbitrators, or allowing an incomplete tribunal to conclude proceedings.

In line with the needs of modern disputes, which increasingly often involve multiple parties, the Rules accommodate for situations where more than two parties are to take part in the arbitral proceedings. Any of the parties to arbitration may move to consolidate multiple cases pending before the Court and the Rules provide that consolidation may take place even if the parties in the consolidated cases are not the same. In this situation, all the parties to the cases that are the subject of consolidation must agree to it (§ 9 point 1-2). Consolidation can take place if the disputes are based on the same arbitration clause or, where the claims in the cases are interconnected, even if they are based on different arbitration clauses. The prerequisite for consolidation is that all cases subject to consolidation must be pending before a panel composed of the same arbitrators. With regard to joinder, a third party may join or be joined to arbitral proceedings in capacity of a party in cases where the third party, on the basis of an arbitration clause, could sue either of the parties to the proceedings, or be sued by any of those parties (§ 10 point 1).

The Court has a list of recommended arbitrators, though the parties are generally free to nominate arbitrators who are not listed. Only the presiding arbitrator, or a sole arbitrator, must be chosen from the list of recommended arbitrators. At the request of both party-nominated arbitrators, or both parties themselves, the Arbitration Council may confirm a presiding arbitrator or a sole arbitrator who is not listed (§ 16 point 3). Unlike in some arbitral institutions (e.g. the ICC), arbitrators do not need to be formally confirmed by the Court. In line with common practice, once nominated, all arbitrators must file statements on their independence and impartiality. Arbitrators must also notify the Secretary General in case any circumstances impairing their independence and impartiality arise during the proceedings (§ 15 point 3 and 7).

The Rules provide a novelty with regard to the powers of an incomplete tribunal. If a party-appointed arbitrator mandate expires after the evidentiary proceedings have been completed or if an arbitrator is willingly not taking part in the proceedings, the Arbitration Council may decide that the remaining two arbitrators can continue to arbitrate the case and issue an award (§ 21 point 3).

The Rules provide that, if multiple entities on the claimant's or the respondent's side cannot reach a decision on a joint nomination, the arbitrator for that multiple-entity party will be nominated by the Arbitration Council (§ 19 point 5). However, the other party still has the right to nominate an arbitrator. This solution contrasts with ICC and SCC arbitration rules which, in the wake of the *Dutco* case, provide that in such circumstances none of the parties should have the right to nominate an arbitrator, and the whole arbitral tribunal will be nominated by a relevant body of the arbitral institution.

The Rules vest the arbitral tribunal with the power to rule on interim measures. The tribunal may decide on a party's request for an interim measure only after giving the other party the right to express their view (§ 30 point 1). This means that the arbitral tribunal cannot decide on interim measures *ex parte*. The Rules do not provide for the institution of an emergency arbitrator, which has recently been introduced in many arbitration rules around the world. Nor do the Rules give any grounds for arbitrators to issue an order for the security of costs.

The Rules oblige the arbitral tribunal to prepare a procedural timetable of the proceedings at the outset of the proceedings. The timetable should contain deadlines for party briefs, the production of evidence, and the dates of hearings, as well as a date for the completion of proceedings (§ 31 point 1). In order to plan the timetable, the tribunal may organise a case management conference with the parties and their representatives, before deciding on those issues (§ 31 point 2). The case management conference can be conducted face-to-face, by telephone or video conference.

When it comes to document production, the tribunal is vested with the power to order a party to produce documents or other evidence under its control (§ 33 point 4). In order to shorten and improve the quality of the hearings, the tribunal may rule that witnesses called for by the parties must produce witness statements before they will be heard directly. With consent from all the parties, the tribunal may decide not to hear witnesses at a hearing, and rely only on their witness statements (§ 33 point 8).

During the proceedings, the arbitral tribunal must inform the parties if it is considering ruling the case on a point of law not brought by any of the parties in the case (§ 6 point 2). This provision ensures that the parties and the arbitral tribunal will communicate with regard to any crucial legal issues in the case. It helps to avoid situations where the parties would be taken by surprise by the arbitrators having an outlook on the case that is different to that of the parties.

The arbitral award should be issued within nine months from the day the proceedings were initiated. The proceedings may be initiated by a notice of arbitration or a statement of claim (§ 24). The deadline can only be prolonged by the Secretary General if there are valid grounds, such as complex points of fact or law at dispute (§ 40 point 2).

The Rules amended an important point pertaining to recoverable legal costs. In previous version of the Rules, a cap on the costs of legal representation was introduced, limiting the amount of recoverable costs that could be awarded to the prevailing party. The Rules now provide that "reasonable" costs may be awarded, but place no specific cap, thus potentially allowing a party to

recover full legal costs (§ 51 point 1).

The revision of the Rules was inspired by a recent wave of changes to the rules of the leading global arbitral institutions. It aims to bring the arbitral process conducted on their basis to the best international standards, addressing the demand for reliable, swift and cost-effective arbitration proceedings. The new Rules reflect the maturity and sophistication of the business environment in Poland, which is one of the most stable and steadily-growing economies in the European Union.

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This entry was posted on Friday, December 5th, 2014 at 7:14 am and is filed under [Arbitration Institutions and Rules, Poland](#)

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