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Enforcement of Judgments 2022

Poland: Law & Practice

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Law and Practice

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1. IDENTIFYING ASSETS IN THE JURISDICTION

1.1 Options to Identify Another Party's Asset Position

It is possible to identify some assets in publicly available registers, eg, the commercial or pledge registers. These registers enable research using basic information, eg, the name of the pledgor or the company.

The commercial register is publicly available online and contains information, inter alia, on the ownership of shares. For public companies, the share ownership is generally not disclosed. The same relates to shareholders of limited liability companies having shares of less than 5% in the share capital. However, the registered paper files, including information regarding share ownership, are publicly accessible in court. The data in the commercial register may not necessarily be up-to-date as the entries regarding the ownership of shares are not required as a legal condition of the sale and should be registered only after the transaction.

The pledge register is not available online, but excerpts from that register may be easily obtained in commercial courts in the biggest cities in Poland for a small fee of PLN10-20 (EUR2-4) per entry, depending on the requested scope of information.

The ship register is kept by the Sea Chambers (*Izby Morskie*) and accessible at the request of interested parties who may request to get excerpts from the register for a fee of PLN5 per page (EUR1). The register includes information regarding, inter alia, the ship's owner and data regarding sea mortgages.

The land and mortgage register is publicly available online. However, this register only allows one to search for real estate using land and

mortgage register numbers, not by the names of potential debtors. This protects personal data; however, it makes difficult to use the register's search engine for investigative purposes. In addition, the land and mortgage register numbers are not publicly or legally disclosed. It is possible to obtain a particular number of the land and mortgage register for a specified plot of land, which requires the interested party to file a separate application to a local district authority (*Starostwo Powiatowe* or *powiat*) specifying one's legal interest in obtaining this data. The legal interest may be related to having a due receivable against the assumed owner of the plot. However, no official search engines are available for private persons to check whether a particular person owns real estate or, indeed, which real estate.

Private persons may not access other registers, eg, CEPIK (the Central Registry of Drivers and Vehicles) that lists owners of motor vehicles.

All mentioned registers are available to court bailiffs. Court bailiffs are state-appointed enforcers working on their own but affiliated to, and to some extent, supervised by the district courts. Unlike private persons, court bailiffs are authorised to search using a debtor's name and identification number (the PESEL number for natural persons, the KRS number for companies entered into the commercial register, etc). Court bailiffs are not allowed to search these registers unless currently conducting enforcement proceedings based on enforcement deeds or decisions on interim measures. Creditors who have not yet obtained such deeds are barred from requesting court bailiffs to search for a debtor's assets on their behalf.

Creditors may also check whether debtors have applied for bankruptcy or to open any restructuring proceedings by asking insolvency courts territorially competent for the debtor's seat of

the main enterprise. Court files related to bankruptcy proceedings kept in insolvency courts may be reviewed upon the judge commissioner's consent and after specifying one's interest in getting access to them. A central all-Poland online bankruptcy register was introduced, but so far, it is not yet fully functional.

No freezing orders or assets disclosure orders are available in Poland.

2. DOMESTIC JUDGMENTS

2.1 Types of Domestic Judgments

Court rulings in Poland include judgments resolving the merits of the cases and decisions either usually pertaining to formal issues or interim reliefs intended to protect the creditor's interests only until the final judgments are issued.

The judgments fall into one of the three informal categories:

- award judgments;
- declaratory judgments; and
- formative judgments.

In addition, one can distinguish between orders for payment (*nakaz zapłaty*) and judgments (*wyrok*). Orders for payment are issued in two similar simplified procedures:

- an order for payment procedure; and
- a procedure by writ of payment.

They differ slightly, but their common feature is that courts issue orders for payment only in cases where the claimant seeks financial claims or other fungible assets. Courts issue orders for payment in ex parte proceedings only based on the claimant's assertions and written evidence. In the order for payment procedure, the courts

may issue orders for payment if claims are substantiated by:

- an official instrument;
- bills accepted by the debtors;
- a call for payment acknowledged by the debtor in writing;
- or by a promissory note or cheque.

In the latter two cases, orders for payment become automatically enforceable after two weeks of delivery to the debtors. Debtors can lodge appeals against orders for payment within a specified date, which is two weeks if the debtor's seat is located in Poland, one month if the debtor's location is in another EU member state, and three months for other locations. Effectively lodging an appeal turns the case into a regular trial in which a judgment is finally issued. Failing to lodge an appeal results in the order of payment being deemed equivalent to a final judgment.

Judgments are issued in regular trials. If the defendant fails to submit a statement of defence, the court may issue a default judgment against which a defendant may lodge a motion to set it aside.

Decisions on interim reliefs (injunctions) are issued ex parte based on prima facie evidence substantiating the claim and the claimant's legal interests. Decisions on the injunction in cases for payment allow claimants to ask court bailiffs to initiate enforcement of the injunction by seizing the debtor's assets. Injunctions are not intended to satisfy debts, so any sums collected from the debtor are not transferred to the creditor but paid to a deposit account in the Ministry of Finance.

2.2 Enforcement of Domestic Judgments

All enforceable orders for payments, default judgments or final judgments allow the creditor to initiate enforcement proceedings for which generally court bailiffs are competent. Enforcement may be directed against all of the debtor's assets unless otherwise determined in the judgment (eg, in cases against third-party non-debtors whose real estates are encumbered with a mortgage, the liability is limited to mortgage sum,, and enforcement may only be directed against the encumbered real estate). The available options include seizing:

- real estates;
- enterprises (eg, whole factories);
- money (in cash and bank accounts);
- tangible assets (single machinery, vehicles, artworks, etc);
- salaries;
- transferable rights (shares in companies, bonds, patent rights, trademark rights, etc); or
- receivables against third parties.

In the case of the debtor's insolvency, creditors may consider filing to declare a debtor's insolvency. If insolvency is declared, the debtor's bankruptcy estate is managed in a strictly regulated procedure by a bankruptcy receiver appointed by the insolvency court, acting under the supervision of the court-appointed judge-commissioner.

In the case of non-pecuniary obligations, different rules of enforcement apply. Any person could perform (even not being a debtor) with the same effect as the original debtor and without compromising the economic significance of the action and its value, the court may, at the creditor's request, order the debtor to act within a determined time limit. Failing this, the court may authorise the creditor to act at the debtor's expense (unless the judgment already provides

that effect). At the creditor's request, the court may also provide the creditor with the money necessary to act. The court's decision may be appealed.

In contrast, in non-substitutable actions, which cannot be performed by persons other than the original debtor and whose performance depends solely on their will, the court may, at the creditor's request, determine an additional time limit for the debtor to act. If the debtor fails to act within the determined time limit, the court may fine the debtor and determine a new time limit to act, including a more severe fine. The creditor may request that the court orders the debtor, instead of paying a fine to the state budget, to pay a specific amount of money (informally called an *astreinte*) to the creditor for each day of delay in the performance of an action. The amount of *astreinte* can be determined by the court according to the circumstances.

Enforcement of the obligation to refrain from an action takes place in a similar way to that indicated above. The debtors' failure to comply with their obligations may result in the imposition of a fine or if the court deems it appropriate, a debtor's obligation to pay the creditor an adequate sum of money.

2.3 Costs and Time Taken to Enforce Domestic Judgments

Debtors generally bear all costs of enforcement. Typical costs of enforcement conducted by a court bailiff (ie, not in insolvency) include fees paid by the court bailiff for obtaining information from registers and costs of correspondence, which tend not to exceed PLN1,000 (EUR215) per debtor. Other optional but significantly higher costs may include those related to remunerating valuation experts appointed by bailiffs if selling real estate or some tangible assets; costs of sworn translations in cases where deliveries abroad have to be made, etc. These costs may

typically range from PLN3,000 (EUR650) up to tens of thousands of zloty (eg, PLN30,000/EUR6,500) for some valuations). Despite these costs being generally put on the debtors, creditors must pay some costs in advance. Usual advance payments at the beginning of the enforcement do not exceed several hundred zloty, but they will be significantly higher in the case of expert opinions.

Court bailiff's fees for enforcement should be covered from sums collected from the debtor. Such fees do not decrease the creditor's due claim but are on top of the total amounts collected. In strictly limited cases, bailiffs are entitled to claim fees from creditors.

Enforcement proceedings vary in duration from a couple of weeks in the simplest cases when the debtor has sufficient money in its bank accounts to even a couple of years in the most extreme cases when the debtor appeals each bailiff's action and if an appraisal of the debtor's assets has to be made. Usually, the sale of an enterprise, real estate or shares take the longest due to their multi-step procedures in which debtors may challenge practically every step. In such cases, bailiffs also have to conduct public tenders, whereas the duration of the procedure depends on the demand and interest of potential buyers.

2.4 Post-judgment Procedures for Determining Defendants' Assets

Once the claimant obtains an enforcement deed, eg, a final order of payment, a final or immediately enforceable default judgment, or a final or immediately enforceable judgment, they may apply to the court bailiff to start enforcement. As explained in **1.1 Options to Identify Another Party's Asset Position**, court bailiffs are entitled to search for debtor's assets in all registers. In addition, a court bailiff may also inspect the debtor's premises and directly seize tangible

assets or cash. Other sources of knowledge include publicly available registers that can be used by creditors in parallel to the court bailiff's own investigation.

The court bailiff may also demand that the debtor provides a list of assets. The debtor provides this list under pain of criminal liability for making a false declaration.

There are no separate court procedures to determine what assets the defendant holds or where they are located. However, in the case of a debtor's insolvency, the bankruptcy receiver takes over the management of the entire bankruptcy estate and the debtor is legally bound to hand over all its assets to the bankruptcy receiver under pain of criminal liability.

2.5 Challenging Enforcement of Domestic Judgments

In the case of an immediately enforceable default or regular but non-final judgments, as well as in the case of orders for payment, debtors have the right to file common legal challenging measures, eg, appeals. In the case of final second instance judgments, no regular challenging measures are available, and debtors may use only extraordinary measures, eg:

- a cassation appeal to the Supreme Court; or
- a motion to reopen the proceedings.

These extraordinary measures may be lodged under separate, strict conditions. Another special so-called extraordinary appeal may also be lodged by a limited number of public authorities, including the Ombudsman and the Attorney General, so the debtor has no direct right to demand that this measure be used.

In the cases of cassation appeals and motions to reopen the proceedings, the appellants may demand the court suspend enforcement if they

substantiate risking irreparable damage. The court may refuse the suspension of the enforcement if the creditor establishes proper security.

2.6 Unenforceable Domestic Judgments

Some judgments are not enforceable by definition because they do not award a claim but purely determine the existence or non-existence of a legal relationship or law (declaratory judgments). Another type of unenforceable judgment is a formative judgment which effects an actual change in the parties' situation (eg, judgments changing the scope of the parties' contractual obligations in *rebus sic stantibus* cases, ie, cases in which, due to an extraordinary and initially unpredictable change of circumstances lead to debtors risking excessive difficulties or a glaring loss in performing their obligations, the debtors demand that the court determines the manner of the obligation's performance, the amount of the obligation, or even rules on the termination of the contract). In both cases, the final judgments do not need to be enforced formally because they effect the operation of law.

2.7 Register of Domestic Judgments

There is no public register of judgments. Civil, administrative, and criminal courts publish selected judgments (mostly those of higher instances) only for academic and case-law development purposes, but such publicly available judgments are anonymised.

3. FOREIGN JUDGMENTS

3.1 Legal Issues Concerning Enforcement of Foreign Judgments

The enforcement of foreign judgments in Poland may be divided into procedures envisaged in EU law referring to recognising and enforcing judgments in civil and commercial matters and pro-

cedures relating to judgments issued by a court of a non-EU jurisdiction.

Due to Poland's EU membership, Poland is subject to all EU regulations concerning the recognition and enforcement of judgments in civil and commercial matters.

In none of the *exequatur* procedures are Polish courts entitled to review foreign judgments as to their substance, although, to some narrow extent, such control is *de facto* made by applying the public order clause.

As far as the enforceability of foreign court judgments is concerned, one can distinguish between:

- judgments issued in an EU member state if one of the following regulations applies:
 - (a) Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters - for judgments covered by this regulation, a judgment given in a member state enforceable in that member state is enforceable in the other member states without any declaration of enforceability being required;
 - (b) Regulation (EC) No 805/2004 creating a European Enforcement Order for uncontested claims - for judgments covered by this regulation, a judgment which has been certified as a European Enforcement Order in the member state of origin is recognised and enforced in other member states without the need for a declaration of enforceability and with no possibility to oppose its recognition;
 - (c) Regulation (EC) No 1896/2006 creating a European order for a payment procedure - a European order for payment enforceable in the member state of origin is recognised and enforced in other member

states without the need for a declaration of enforceability and with no possibility to oppose its recognition; or

- (d) Regulation (EC) No 861/2007 establishing a European Small Claims Procedure - a judgment given in a member state in that procedure is recognised and enforced in another member state without the need for a declaration of enforceability and with no possibility to oppose its recognition; and
- judgments issued in a non-EU country (including also the UK) and subject to any international agreements.

Poland is a party to many international agreements on the recognition and enforcement of judgments. Most of these international agreements specify similar requirements to enforce judgments:

- the court that issued the judgment must have jurisdiction under the law of the place where the judgment is to be enforced;
- the party must not have been deprived of an opportunity to defend its rights;
- the judgment has not already been finally judged by a court in the country where enforcement is sought;
- the applicable law has been applied; and
- the judgment is not contrary to the public policy of the state in which enforcement is sought.

However, there are a few exceptions. For example, the Polish-Russian agreement of 1996 on legal aid and legal relationships in civil and criminal matters does not mention a public policy clause. It is disputable whether a Polish court could refuse to recognise a judgment issued in Russia due to its contrariness to the fundamental principles of Polish law despite the lack of such explicit provision in the agreement, but

there are at least some constitutional arguments to claim so.

Judgments issued in Switzerland, Norway, or Iceland in civil and commercial matters are special cases regulated by the Lugano Convention, which provides for automatic recognition of judgments, but also requires them to be declared enforceable to become writs of execution. In the first instance proceedings to declare enforcement, the debtor is not entitled to submit any stance on the merits, and the first instance decision of the Regional Court is appealable to the Court of Appeals.

In the case of judgments issued by a court in a non-EU state and not subject to any international agreements, the Polish Code of Civil Procedure (CCP) provides a procedure whereby foreign court judgments in civil matters, which may be enforced by execution, become writs of execution when their enforcement is confirmed by a Polish court (see **3.2 Variations in Approach to Enforcement of Foreign Judgments**).

3.2 Variations in Approach to Enforcement of Foreign Judgments

Polish law differentiates between recognition and enforcement (declaration of enforceability) of foreign judgments in civil and commercial cases. The difference is based on whether the judgment can be enforced by means of execution provided in the CCP or whether it is non-enforceable by its nature due to its automatic or declaratory legal effects. The judgments, which are non-enforceable by their nature, cause legal effects without requiring any enforcement.

For instance, judgments awarding payment can be enforced against the debtor, and they need to be declared enforceable by Polish courts to allow the creditor to initiate enforcement. On the other hand, eg, foreign judgments dissolving a

legal person do not need to be enforced, and they are subject to recognition in Poland.

One can also distinguish between two major types of enforceable judgments depending on whether they pertain to pecuniary or non-pecuniary claims.

Any judgments awarding payment, both domestic and foreign, may be enforced by executing pecuniary claims. Such enforcement is conducted mostly by court bailiffs (see **2.2 Enforcement of Domestic Judgments**).

However, some judgments order the performance of certain non-pecuniary obligations entailing actions other than the payment of money or abstaining from particular actions (eg, judgments ordering the discontinuation of unfair trading practices or the removal of the effects of unfair trading practices, as envisaged by Article 18.1 points 1 and 2 of the Polish Act on Fair Trading). Such judgments may be enforced in procedures related to the enforcement of non-pecuniary obligations (see **2.2 Enforcement of Domestic Judgments**).

3.3 Categories of Foreign Judgments Not Enforced

General Statutory Rules

Unless international treaties provide otherwise, the rules provided in the CCP apply to the recognition and enforcement of foreign judgments in civil and commercial cases issued in non-EU countries. The following rules do not apply to recognising or enforcing any judgments issued in administrative, tax, or criminal cases.

According to the statutory rules, under Article 1150 of the CCP, foreign judgments capable of being enforced become enforcement titles after they are declared enforceable by a Polish court. Such declaration is possible if the foreign judgment is enforceable in the country of origin and

if the negative conditions listed in Articles 1146.1 and 2 of the CCP do not occur.

The negative conditions under which a foreign judgment will not be declared enforceable in Poland are the following:

- the foreign judgment is not final in the country of origin;
- the foreign judgment was issued in a case which falls under the exclusive jurisdiction of Polish courts;
- a defendant who did not defend on the merits of the case was not duly served an initial pleading in due time to enable them to defend themselves;
- a party was deprived of the possibility to defend themselves during proceedings;
- a case involving the same claim between the same parties had been brought before a court in Poland before it was brought before a court in a foreign state;
- the judgment is contrary to a previous non-appealable judgment of a Polish court or a previous non-appealable judgment of a foreign state recognised in Poland, issued in a case involving the same claim between the same parties; and
- recognition would be contrary to the basic principles of the Polish legal order.

If a foreign judgment is enforceable in the country of origin but it is not final (non-appealable) in that country, it should not be declared enforceable in Poland, excluding, eg, default and immediately enforceable judgments, unless it becomes final in its country of origin.

The exclusive jurisdiction of Polish courts is exceptional and includes:

- matrimonial cases and cases involving property in marriage when both spouses are Pol-

- ish citizens and have their place of residence or usual stay in Poland;
- cases between parents and children if all parties are Polish citizens and have their place of residence or usual stay in Poland;
- cases relating to immovable property rights and the possession of immovable property located in Poland, as well as cases arising from a lease, rental or similar relationship, except cases involving rent and other charges related to using or benefitting from such immovable property;
- cases involving the dissolution of a legal entity or other entity with its registered office in Poland, as well as cases to set aside or invalidate the resolutions of corporate bodies of such entities; and
- cases relating to enforcement conducted or to be conducted in Poland and cases involving opposition to enforcement to be conducted in Poland.

The exclusive jurisdiction of the Polish courts also applies in some non-contentious court cases where no trial takes place. Such matters include, inter alia, some family law-related issues, cases relating to immovable property rights or the possession of immovable property located in Poland or cases within the subject matter and scope of register proceedings concerning a register maintained in Poland.

Recognition and Enforcement of EU Judgments

In the case of foreign judgments in civil or commercial cases issued in EU member states, the rules under Regulation No 1215/2012 apply except for judgments explicitly excluded from its scope under Article 1.

In some of the cases excluded from the scope of Regulation No 1215/2012, other EU legal provisions apply. This relates, eg, to bankruptcy matters under Regulation No 2015/848. European

Enforcement Orders and European orders for payment are subject to separate Regulations (see **3.1 Legal Issues Concerning Enforcement of Foreign Judgments**).

Poland does not take part in enhanced co-operation in the area of jurisdiction, applicable law, or the recognition and enforcement of decisions on the property regimes of international couples, covering both matters of matrimonial property regimes and the property consequences of registered partnerships, as authorised by Council Decision (EU) 2016/954. Therefore, the provisions implementing enhanced co-operation in that area do not apply in Poland.

In cases of any judgments issued in EU member states which do not fall within the scope of any EU regulations, their recognition and enforcement are subject to the statutory rules of the CCP.

Specific International Treaty Provisions

Some international agreements between Poland and other countries relating to the recognition and enforcement of foreign judgments in civil and commercial cases include specific conditions for such recognition and enforcement. However, these rules boil down to the principles that were provided in the CCP (except, eg, for the Polish-Russian agreement – see **3.1 Legal Issues Concerning Enforcement of Foreign Judgments**). Some international agreements between Poland and other countries also provide that Poland may recognise and enforce judgments issued in the other contracting state if, inter alia, the court issuing the judgments applied proper law according to the Polish rules of private international law (and vice versa). Such a provision may be found, eg, in agreements with Belarus, Ukraine and Mongolia. In a number of other agreements (eg, with Russia, Turkey), the requirement does not apply if the applied law does not significantly differ from the proper law.

3.4 Process of Enforcing Foreign Judgments

General Statutory Rules

Recognition

Foreign judgments capable of enforcement are automatically recognised in the Polish legal system unless the negative conditions for recognition, stipulated in Article 1146 of the CCP, occur. A similar principle is also specified in Article 36 et seq of Regulation No 1215/2012 for foreign judgments given in EU member states (see below in Recognition and enforcement of certain EU judgments).

Under Article 1147 of the CCP, a person claiming recognition of a foreign judgment must present the official copy, a document certifying that the judgment is final in the country of origin unless its finality is evident from its content and a sworn translation of both documents into Polish.

A party opposing the recognition of a foreign judgment and the party deriving rights from that judgment may also petition the court to determine whether a foreign judgment is or is not recognised. In practice, this principle generally sets a burden of opposing the automatic recognition of a foreign judgment upon a person against whom the recognition is claimed. The final ruling of the Polish court determining recognition will be binding upon the parties and all Polish authorities.

The procedure to determine the recognition of a foreign judgment is initiated with the interested party's petition to which the documents mentioned in Article 1147 of the CCP should be attached (see above). Both petitions have to be lodged at the Regional Court (*Sąd Okręgowy*), which would be the venue for a case adjudicated by a foreign state court or, if there is no such basis, by the Regional Court in Warsaw.

Next, the court should deliver a copy of the petition to the opposing party, who may present its stance within two weeks. The court may rule in an in-camera session. However, the court may decide to conduct a formal hearing with the participation of the parties or their attorneys. The ruling of the court is appealable (see **3.6 Challenging Enforcement of Foreign Judgments**).

Declaration of enforceability

The enforcement of foreign judgments comprises two steps: court proceedings regarding the declaration of enforceability and proper enforcement generally conducted by court bailiffs (see **2.2 Enforcement of Domestic Judgments**).

Unlike in the case of recognition, a declaration of enforceability requires a prior court procedure to be finalised. A creditor's petition to declare the enforceability of the foreign judgment should be submitted to a Regional Court. The applicant should provide the court with the documents mentioned in Article 1147 of the CCP (see above) plus the document confirming that the ruling is enforceable in the country of origin (unless its enforceability is evident from its content or from the law of the country of origin).

The further procedure is similar to that provided for determining recognition or non-recognition of judgments (see above in Recognition).

Once the decision on declaration of enforceability (decision on issuing enforcement clause) has become final, execution may start. The first instance decision also constitutes a security title similar to an injunction decision (see **2.1 Types of Domestic Judgments**).

Recognition and Enforcement of Certain EU Judgments

Judgments and European orders for payment, all subject to EU regulations, are writs of execution in Poland. A creditor may initiate enforce-

ment based on documents provided in the regulations (with sworn translations attached). The mentioned judgments are also automatically recognised.

3.5 Costs and Time Taken to Enforce Foreign Judgments

Petitions to determine the recognition or non-recognition as well as for the declaration of enforceability of foreign judgments are subject to a court fee of PLN300 (EUR65) payable in advance upon filing a petition and irrespective of the amount of claim adjudicated by the foreign judgment. The court fee should also be reimbursed by the opponent in the case of a final ruling acknowledging the petition.

The lump-up costs of legal representation fixed in a decree of the Minister of Justice also have to be reimbursed. These fixed costs currently amount to PLN480 (EUR100) and may be theoretically increased by the court maximally by a factor of six under additional conditions, eg, a claim's large value or a particularly significant effort of the party's counsel to win the case. However, in practice, attorneys' fees are rarely increased. Like in all other cases, losing parties are obliged to reimburse the mentioned lump-up sums determined in ministerial decrees. These rarely, if ever, cover legal counsels' actual fees.

Additional necessary costs include sworn translators' fees for preparing official translations of the judgments and mandatory certificates of enforceability and finality. The translators' fees are fixed in a decree and depend on the language involved and the volume of a translated document. Parties will also have to pay stamp duties to use powers of attorney in the amount of PLN17 (EUR4) per attorney. We do not mention any locally regulated stamp duties for obtaining official documents from the countries where the judgments were issued. All the necessary and

documented costs should be reimbursed by the losing party.

The time necessary to obtain final rulings on the recognition or declaration of enforcement of foreign judgments varies largely depending on many factors. Usually, the procedure takes up to one year in the first instance but, in the case of complicated deliveries abroad, an engaged defence of the opponent, or the case being handled by most busy courts, the procedure may be largely delayed up to even a couple of years in extreme cases.

3.6 Challenging Enforcement of Foreign Judgments

General Statutory Rules

A court ruling on the declaration of enforceability of a foreign judgment is subject to complaint (*zażalenie*) to the Court of Appeals, and the ruling of the Court of Appeals may be further appealed by a cassation appeal (*skarga kasacyjna*) to the Supreme Court of Poland.

A complaint to the upper court may be filed, via the court of first instance, within one week from the delivery of the first instance ruling with a written justification. The complaint may be based on any allegations related to the wrong application or interpretation of law or any errors in a procedure that might have impacted the ruling.

A cassation appeal is an extraordinary remedy admitted by the Supreme Court only in one of four events, ie, if:

- a major legal issue is involved;
- it is necessary to interpret legal provisions causing major doubts or discrepancies in case law;
- the proceedings were invalid; or
- the cassation appeal is evidently justified.

A cassation appeal may also be based on a narrow scope of allegations, not including wrong factual determinations. It must be lodged within two months from the delivery of the second instance ruling with a written justification.

It is also possible to lodge a petition to reopen proceedings regarding the declaration of enforceability of a foreign judgment in the events listed in Articles 401, 401¹, and 403 of the CCP. These events mainly entail situations of invalidity of the court proceedings due to:

- the ruling is made by an unauthorised person or a judge who should have been excluded by operation of law from hearing the case if a party was unable to request the exclusion of that judge before the judgment became non-appealable; or
- deprivation of the party's right of defence.

The reopening of the proceedings can be requested in rare events of the Constitutional Tribunal declaring non-compliance with the Constitution or ratified international agreement of a legal provision based on which the ruling was made. Reopening may also be requested because the ruling was founded on a falsified or modified document or if obtained illegally.

Challenging the Enforcement of Judgments Subject to EU Regulations

First instance rulings of Polish courts on the refusal to recognise or refusing the enforcement of judgments given in the EU member states, as provided for in EU Regulations (eg, in Articles 45-51 of Regulation No 1215/2012), may be challenged by complaint to the Courts of Appeals and the second instance rulings may be later challenged by cassation appeal to the Supreme Court. A petition to reopen proceedings is also admissible. All rules regarding complaints, cassation appeals, and petitions to

reopen the proceedings as mentioned above in General Statutory Rules apply accordingly.

4. ARBITRAL AWARDS

4.1 Legal Issues Concerning Enforcement of Arbitral Awards

Introductory Remarks

Polish law makes a principal differentiation between domestic and foreign arbitral awards, ie, arbitral awards issued in Poland (in arbitration proceedings where any place in Poland was determined as a place of arbitration or in arbitration proceedings conducted under the rules of any permanent arbitral tribunal in Poland, eg, the Court of Arbitration of the Polish Chamber of Commerce in Warsaw) and arbitral awards issued abroad. Whether arbitration is domestic does not depend in any way on the applicable rules of arbitration, so arbitration conducted under ICC, VIAC, LCIA, SCC, UNCITRAL, etc, or ad hoc arbitration may also be domestic in the above meaning if only the place of arbitration was located anywhere in Poland.

Domestic Arbitral Awards

Rules concerning the enforcement of domestic arbitral awards are set forth in CCP, mainly in Articles 1212-14. An arbitral award has the same legal effects as a court judgment upon its recognition or declaration of enforceability by a court. Arbitral awards are merely recognised if they are not enforceable. Enforceable arbitral awards obtain the same legal effects as court judgments, in particular, allow the creditor to launch execution upon their declaration of enforceability by the court.

Foreign Arbitral Awards

Enforcement of foreign arbitral awards in Poland is mainly governed by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention). Poland was one

of the initial signatories of the New York Convention and ratified it in October 1961. Specific procedural rules supplementing the provisions of the New York Convention are also set forth in the CCP, eg, in Article 1215.

By signing the New York Convention, Poland made a reservation, as allowed by Article I para. 3 of the Convention, which limited the application of the New York Convention in Poland only to commercial matters defined under Polish law and also narrowed its scope of application only to foreign arbitral awards issued in any contracting states of the New York Convention. Therefore, only the rules set forth in the CCP would apply to enforce any foreign arbitral awards falling outside that scope. However, in practice, the New York Convention's conditions for enforcement and those stipulated in the CCP are similar.

4.2 Variations in Approach to Enforcement of Arbitral Awards

Arbitral awards may significantly vary in formulation in comparison to court judgments. Polish law is also assumed to be arbitration-friendly, and the case law has confirmed the rule prohibiting *révision au fond* and repeated that unless the exceptional conditions for refusal of enforcement occur, the courts should safeguard the enforcement of arbitral awards even if they do not exactly conform to the typical judgments known in domestic litigation.

4.3 Categories of Arbitral Awards Not Enforced

Arbitral Awards will not be enforced if they are:

- capable of being enforced but whose enforceability was refused under Article IV or V of the New York Convention or under Articles 1214-15 of the CCP, and
- not capable of being enforced by execution.

The refusal to recognise and enforce foreign Arbitral Awards should occur if the applicant fails to provide the court with the documents mentioned in Article IV of the New York Convention or if any of the conditions for refusal listed in Article V occur.

In the case of domestic arbitral awards, the conditions for refusing to recognise or declare enforcement are set in Article 1214 of the CCP (ie, if the dispute cannot be adjudicated by an arbitral tribunal or if recognition of the arbitral award would be contrary to the basic principles of the legal order of Poland). The broader list from Article 1215 of the CCP does not apply to domestic arbitral awards. This list includes situations where:

- there was no arbitration clause, an arbitration clause was void, invalid or has expired according to relevant law;
- the party was not duly notified of the appointment of an arbitrator or proceedings before an arbitral tribunal or was otherwise deprived of the possibility to defend his rights before an arbitral tribunal;
- the award concerns a dispute not covered by an arbitration clause or falls beyond the subject matter and scope of that clause;
- the composition of an arbitral tribunal or proceedings before an arbitral tribunal were not in accordance with the parties' agreement or, if there was no such agreement, with the law of the state where arbitration was conducted; and
- an award is not yet binding on the parties or has been set aside, or its enforcement postponed by a court of the state in which or according to whose laws the award was issued.

Unlike foreign arbitral awards, domestic arbitral awards may be set aside pursuant to Article 1206 of the CCP. The compliance of the domes-

tic arbitral award with major procedural requirements should be examined in the setting-aside procedure initiated by a party opposing the recognition or declaration of enforcement rather than in the recognition or declaration of enforcement procedure initiated by a winning party.

For foreign arbitral awards, the grounds for refusal of enforcement are listed in Article V of the New York Convention, and for those awards which do not fall within the scope of the New York Convention, these grounds also include those listed in Article 1205 of the CCP.

Arbitral awards not capable of enforcement may be recognised in Poland. Upon final recognition, such Awards obtain a legal force equal to a court judgment. Awards not capable of enforcement include all those whose effects are automatic (upon prior recognition only) and happen by virtue of law.

4.4 Process of Enforcing Arbitral Awards

Common Rules for Domestic and Foreign Arbitral Awards

The recognition or declaration of enforcement of arbitral awards require a party's petition with the original or a copy of the award certified by an arbitral tribunal as well as the original or an officially certified copy of an arbitration clause. All attached documents in languages other than Polish must also be translated by a sworn translator.

The recognition and declaration of enforcement are adjudicated by the Courts of Appeals. The petition is subject to a court fee in a fixed amount of PLN300 (EUR65) irrespective of the value of the claim and paid upon filing the petition.

Once the competent Court of Appeals examines whether the formal requirements of the petition are fulfilled, it should deliver its copy to the

opposite party, who can lodge its position in the case within two weeks.

Further procedures slightly differ depending on whether domestic or foreign arbitral awards are concerned.

Domestic Arbitral Awards

The court adjudicated the recognition or enforceability of a domestic arbitral award by issuing a decision during an in-camera sitting. Such a decision is appealable by a complaint to a different panel. The complaint should be lodged within a non-extendable deadline of one week from the delivery of the first instance decision with its written justification. A second decision of the Court of Appeals made upon the complaint is final, and it is not further appealable by a cassation appeal to the Supreme Court.

Foreign Arbitral Awards

In the case of foreign arbitral awards, the two main differences when compared to domestic awards are that:

- the Court of Appeals adjudicates the case after conducting a hearing; and
- a decision of the Court of Appeals is not appealable by complaint and is automatically final; however, a party may lodge a cassation appeal to the Supreme Court upon meeting the usual requirements.

The only difference between this cassation appeal and a cassation appeal in other civil cases is that it is admissible in recognition and enforceability cases, irrespective of the value of the claim (no condition of *ratione valoris*). However, the appellant should still prove the conditions for the Supreme Court to admit the cassation appeal exists in that case.

The Supreme Court would first decide in camera on the admissibility of the cassation appeal,

and its decision shall be final. In practice, the Supreme Court tends to admit cassation appeals related to recognising or enforcing foreign arbitral awards, but this is not a common practice.

4.5 Costs and Time Taken to Enforce Arbitral Awards

Basic costs include a single fee of PLN300 (EUR65), stamp duty fees for powers of attorney used (PLN17/EUR4 per each power of attorney), and translation costs (see **3.5 Costs and Time Take to Enforce Foreign Judgments**). In the case of an arbitration clause included in the acts of association of a Polish company, these fees in Poland can reach PLN20 (EUR5) per every ten pages of a document copied from the original company registration files kept in the register courts or notarial fees to authenticate a document (PLN6/EUR1.20 plus VAT per page). All the mentioned costs are reimbursable by the opposing party if the recognition or declaration of enforcement is granted.

In addition to the mentioned costs, a losing party should reimburse the opponent party its costs of legal representation (which is fixed at the level of PLN120/EUR25 only, an amount that may theoretically be increased by a factor of six).

The time needed to receive a court's decision may vary depending on the court involved and whether the opposite party undertakes engaged defensive methods. The main obstacle for the case may be conducting a parallel case to set aside the award, in which case the Court of Appeals may postpone its decision until the final resolution of the latter case. Usually, the time needed to recognise a foreign arbitral award may take approximately 1½ years, and in the simplest domestic cases where no hearing is required, approximately a couple of months. In the most complex issue, especially when the public policy clause is raised for defence, it may take up to

a couple of years. Proceedings in the Supreme Court may take another 2-2½ years.

4.6 Challenging Enforcement of Arbitral Awards

Domestic Arbitral Awards

Apart from the legal measures available regarding the decisions of the Courts of Appeals concerning the recognition or declaration of the enforcement of domestic or foreign arbitral awards, domestic arbitral awards may also be set aside by Polish courts.

The CCP specifies conditions under which an arbitral award may be set aside. The court by itself can only analyse the following grounds:

- the dispute cannot be settled by an arbitration court – the scope of which is very limited;
- the arbitral award is contrary to the basic principles of the legal order of Poland; or
- the arbitral award deprives consumers of the protection they are afforded by the mandatory provisions of applicable law.

At the party's request, the court should also set aside a domestic arbitral award if:

- there was no arbitration clause, or an arbitration clause was void, invalid, or has expired according to relevant law;
- a party was not duly notified of the appointment of an arbitrator or proceedings before an arbitral tribunal or otherwise deprived of the possibility to defend their rights;
- an arbitral award concerns a dispute which is not covered by an arbitration clause or falls beyond the subject matter and scope of that clause; the fact that an award falls beyond the subject matter and scope of an arbitration clause may not be a basis to set that award aside if a party who attended proceedings did not raise allegations against the hearing of

- claims falling beyond the subject matter and scope of the arbitration clause;
- requirements concerning the composition of an arbitral tribunal or the basic principles of proceedings before that tribunal, as provided for by the CCP or determined by the parties, were not met;
- an award was achieved by means of an offence or based on a false or falsified document; or
- a non-appealable court judgment has been issued in the same case between the same parties.

In the procedure concerning the setting aside of the arbitral award, the court should not examine the merits of the case adjudicated by the arbitral tribunal but, except for the prohibition of a *révision au fond*, the court might need to partly check the compliance of the results of the award with the basic principles of the Polish legal order and the court might also need to examine the evidence relevant to assessing the case.

A motion has to be filed with a court within two months from the date of the service of the award or, if a party petitioned to have the award supplemented, corrected or interpreted within two months from the date of the service of a relevant ruling by the arbitration court. The notable exception to this rule is when the motion to set aside the arbitration award is based on the following:

- a judgment was achieved by means of an offence or based on a false or falsified document; or
- a non-appealable court judgment has been issued in the same case between the same parties.

In such cases, the time limit to file a motion commences on the day a party became aware of that basis (but it may not exceed five years from the service of the award).

A cassation appeal may be lodged against a judgment issued in proceedings following a motion to set aside an arbitral award. It is also possible to request a resumption of proceedings and declare the related final judgment unlawful.

The setting-aside proceedings may also be stayed in the event of the remission of the award to the arbitral tribunal (eg, in the cases envisaged by Article 36.5 of the ICC Arbitration Rules). The parties are not entitled to file a separate petition to set aside the award issued in the remission procedure, and the compliance of the arbitral tribunal with the terms of remission is examined after the setting-aside procedure is resumed.

The court may also suspend the enforcement of an arbitral award, although the court may make the suspension conditional upon the provision of security. A complaint against the decision of the court may be filed with another panel of that court.

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