

Questionnaire concerning Dispute Adjudication and other forms of alternative dispute resolution (ADR) concerning commercial disputes

Questions	Answers	Annotations
Who is the author of this questionnaire?	Benedykt Fiutowski	
Law Firm	BUDZOWSKA FIUTOWSKI & PARTNERS	
E-mail	b.fiutowski@bf.com.pl	
Which country/jurisdiction is concerned?	Poland	
Which form of alternative dispute resolution is practised and known in your country?	Mediation, Conciliation, Arbitration	
Which industries commonly use ADR in its broadest sense?	Construction industry, e-commerce	
Is there any legal framework ruling ADR, except arbitration	Article 10 of Polish Civil Procedure Code puts an obligation on courts to pursue a compromising settlement, therefore courts are to persuade parties to conclude a settlement (when agreement is permissible). As to mediation – if parties have concluded a contract of mediation before taking a case to court, a court is to lead parties to mediation if defendant has entered an objection before becoming involved in dispute as to essence of the matter (article 202 ¹ of Polish Civil Procedure Code).	The Polish Civil Procedure Code provides for that cases in which agreement is permissible, a court at any stage of proceeding shall pursue a compromising settlement. In these cases parties may conclude a settlement before a mediator.
Is there any alternative procedure leading to a binding decision given by a third person other than arbitration?	Not provided by law.	
Please explain the system of expert determination if available	Not provided by law.	
Please explain the system of conciliation!	Recourse to the law of resolving a dispute by concluding a settlement before filing a lawsuit. Parties have a possibility to start in front of a court a proceeding of resolving a dispute based on goodwill and clearance of evidence. In conciliation parties may resolve a dispute and reach a settlement themselves. A court does not take an active part in proceeding, however a court	

	<p>judges a permissibility of an agreement. Conciliation proceeding interrupts the term of limitation.</p>	
Can a conciliation settlement be enforced?	<p>Yes. According to article 777 § 1 of Polish Civil Procedure Code settlement reached in conciliation is an enforceable title. Upon a motion of a party a court appends an enforcement clause onto a settlement. Such a settlement constitutes then an executory title and may be enforced according to article 776 of Polish Civil Procedure Code.</p>	<p>When concluding a settlement – its content shall be included in protocol and parties shall sign a settlement. If a settlement is included only in a protocol, parties shall sign a protocol at a court hearing. If full wording of a settlement is included in enclosure to a protocol, parties shall sign the enclosure.</p>
Please explain the system of mediation	<p>A proceeding held with participation of a neutral third party (mediator) whose main goal is to reach a settlement acceptable to both parties, especially a possibility of concluding in front of a mediator a court settlement. However, a mediator has no right to decide a dispute. Mediation proceeding can be brought either on the ground of a contract of mediation or court's decree leading parties to mediation (article 183¹ § 2 of Polish Civil Procedure Code). In both situations court appends an enforcement clause onto a settlement (article 183¹⁴ of Polish Civil Procedure Code). Basic rules are: voluntary, informal proceeding, confidentiality, impartiality and neutrality of mediator.</p>	
Please explain the system of dispute adjudication	Not provided by statutory law.	
Can you give an example for a dispute adjudication		

clause		
Is dispute adjudication used in practise?		
Should the adjudicator apply the applicable law or should he decide ex aequo et bono?		
Do you know the system of an amiable compositeur (“ex aequo et bono”)?		
What is arbitration?		
Is arbitration legally ruled?	Ruled in article 1154 - 1204 of Polish Civil Procedure Code.	
Does an arbitration clause have to be done in writing?	Yes (article 1162 of Polish Civil Procedure Code).	
Have courts upheld arbitration clauses in standard forms and general sales Conditions?	Yes. Taking a case to court does not pose an obstacle to examine a case by arbitration court. When taking a case to court regarding dispute based on arbitration agreement clause, court dismisses a suit or a motion of commencement of non-litigious proceeding if defendant or participant of non-litigious proceeding has raised an objection of arbitration agreement clause before becoming involved in dispute as to essence of the matter (article 1165 § 1 of Polish Civil Procedure Code).	
Are there any rules concerning the applicable law during arbitration?	Unless otherwise provided for by statutory law, parties may agree rules and way of action in front of a court of arbitration (article 1184 § 1 of Polish Civil Procedure Code). Arbitration court may, unless otherwise provided for by parties’ agreement, conduct proceedings in such manner as it deems appropriate. An arbitration court is not bound with rules of proceeding in front of a court (article 1184 § 2 of Polish Civil Procedure Code). An arbitration court decides a dispute after applicable law	

	<p>for a certain legal matter. When parties have authorized a court – dispute is decided in accordance with the legal provisions and principle of justice. However, in every case an arbitration court takes into consideration articles of agreement as well as customs applicable to a matter (article 1194 of Polish Civil Procedure Code).</p>	
<p>Does the arbitration court have competence to decide upon its jurisdiction?</p>	<p>Yes. An arbitration court have competence to decide upon its jurisdiction, including existence, validity or effectiveness of arbitration agreement clause (article 1180 § 1 of Polish Civil Procedure Code).</p>	
<p>Is an arbitral award a binding decision which can be enforced?</p>	<p>Yes. An arbitration award or settlement reached in front of an arbitration court has legal force equal to judgment of a court or agreement reached in front of a court after its acknowledging by court or after ascertaining by court its enforceability article 1212 § 1 of Polish Civil Procedure Code).</p>	
<p>Is the arbitral decision open for appeal?</p>	<p>No. An appeal is impermissible. Parties can lay a complaint of reversal of a judgment of an arbitration court (article 1205 of Polish Civil Procedure Code). According to article 1206 § 1 of Polish Civil Procedure Code party may demand reversing a judgment of an arbitration court by laying a complaint:</p> <ul style="list-style-type: none"> - if there has been no written arbitration agreement clause, it has been null and void, legally ineffective or has lost a force of applicable law; - if a party has not been properly notified as to the appointment of an arbitrator or as to the arbitration proceedings or in any other way a party has been deprived of a possibility of defending its rights before arbitration 	

	<p>court;</p> <ul style="list-style-type: none"> - if arbitration award concerns a dispute not mentioned in the arbitration agreement clause or if it comprises decisions beyond the arbitration agreement; - if the composition of an arbitral panel or arbitration proceeding did not comply with provisions of arbitration or agreement of parties; - arbitration award has been reached as a result of a crime or was based upon forged or altered document; - if between parties in the same case a legal decision has been awarded; - if Polish statutory law is not applicable to subject of dispute; - if a court has ascertained that arbitration award is contrary to basic principles of Polish law system. 	
<p>Which kind of objections can be presented to the state court during the enforcement procedure?</p>	<p>A court refuses recognition or ascertainment of enforcement of a judgment or settlement reached in front of such court if:</p> <ul style="list-style-type: none"> - according to provisions of the law a dispute cannot be brought in arbitration proceeding, - recognition or enforcement of a judgment of an arbitration court or settlement reached in front of such court would be contrary to basic principles of Polish law system (article 1214 § 3 of Polish Civil Procedure Code). 	
<p>Does your country enforce foreign arbitral awards?</p>	<p>Yes, agreement reached in front of a foreign court is an executory title, under the term of reciprocity, if it is enforceable in country of its conclusion and it is not contrary to basic principles of Polish law system. (article 1152 of Polish Civil Procedure); enforceable after appending enforcement clause.</p>	<p>Court judgement in EU countries, settlements concluded in front of such courts or approved by such courts and official documents drawn up in EU countries, sealed with certificate of European Enforcement Order, is an</p>

		executory title and is to be enforced after appending enforcement clause (article 1153 ¹ of Polish Civil Procedure Code).
Please give some short information about the usual fees of conciliators, mediators and adjudicators.	<p>Mediation:</p> <p>In cases of property laws the fee is 1% of the value of the object of litigation no less than about 10 EUR and no more than 250 EUR for the whole mediation proceedings. Mediator has a right to refunding costs of expenses born in mediation proceedings.</p>	