Key Considerations When Arbitrating in Central and Eastern Europe - The Polish Example

Maciej Jamka
Wojciech Sadowski

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Agenda

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   - Arbitral Award
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I. General Information regarding CEE
General Information regarding CEE

- **CEE Central and Eastern Europe** is a term describing former communist states in Europe, after the collapse of the Iron Curtain in 1989/90.

- This term covers: Poland, the Czech Republic, Slovakia, Hungary, Lithuania, Latvia, Estonia, Slovenia, Croatia, Serbia, Bosnia and Herzegovina, Montenegro, Macedonia, Albania, Romania, Bulgaria. Sometimes Russia, Moldova, Ukraine and Belarus are added to the pool.

- Liberation of Central and Eastern Europe some twenty years ago was not only one of the most important democratic events in history, but also an unprecedented economic success story. Over the past two decades, the EU member states in Central and Eastern Europe set themselves on a breathtaking path of strong economic growth that was intensified with EU accession and the current integration in the Schengen area and Eurozone (Slovakia adopted the euro in 2009).

- The CEE region probably represents the greatest opportunity for business people since the end of World War II.

General Information regarding CEE

- After an economic boom of 15 years in Central Eastern Europe, during which the countries in the region enjoyed growth levels twice as high as in Western Europe, they were affected by the global economic downturn that occurred in mid-2008. Several states in the CEE were struck hard as many of these countries were in a state of rapid development fuelled by foreign capital when the crisis hit.

- Nevertheless, fundamental conditions for growth remain strong in CEE, especially in the reform-oriented countries that introduced business friendly politics and low tax rates in the run-up to their EU accession. In effect, the two largest economies, Poland and the Czech Republic but also Slovakia handled the crisis surprisingly well.

- The strength of the economic system of the CEE region persists. This will give the CEE countries a strong competitive advantage when the global economy starts growing again and the global competition for jobs intensifies.

- Selected reasons why the ECC region attracts Western companies:
  - low labor costs (the average salary is about the lowest in the industrial world),
  - well educated people, sophisticated infrastructure,
  - governments eager to establish lasting business connections with the West

At the same time, home-grown firms are attracting global attention.

Source: http://www.weastra.com/
CEE’s Two Biggest Economies

Republic of Poland

Area: 312 679 km²
Population: 38.1 Mil.
Urbanization: 61%
Literacy: 99.8%
GDP: 469,158 billion EUR (2008 est.)
Average salary: 696.82 EUR (2008 est.)
Membership: OECD member since 1996, joined NATO in 1999 and the EU in 2004

Legal system: based on a mixture of Continental (Napoleonic) civil law and German law theory; currently significant input of Anglo-Saxon law … to be noted in business

Other: One of the only EU countries which looks to weather the global economic crisis without major GDP losses. From 2004 to 2008, Polish GDP grew by a remarkable annual rate of 5.34% on average.

Czech Republic

Area: 78 868 km²
Population: 10.9 Mil.
Urbanization: 73%
Literacy: 99%
GDP: 152,787 billion EUR (2008 est.)
Average salary: 780 EUR (2008 est.)
Membership: OECD member since 1995, joined NATO in 1999 and the EU in 2004

Legal system: civil law system based on Austro-Hungarian codes; legal code modified to bring it in line with the EU obligations and to expunge Marxist-Leninist legal theory

Other: combines an outstanding level of general education with strong science and engineering disciplines. According to a 2005 OECD study, the country ranked 1st among European countries in terms of the share of population that achieved at least higher secondary education.

Source: http://www.weastra.com/; CIA The World Factbook
CEE’s Two Biggest Economies

Source: http://www.weastra.com/
II. Arbitration Environment in the ECC
## National Legislation

<table>
<thead>
<tr>
<th>Country</th>
<th>Governing arbitration law</th>
<th>Based on UNCITRAL Model Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belarus</td>
<td>• 1999 Arbitration Law</td>
<td>yes</td>
</tr>
<tr>
<td>Bosnia and Herzegovina</td>
<td>• 2003 Civil Procedure Act of the Federation of Bosnia and Herzegovina; Articles 434-453</td>
<td>no</td>
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<tr>
<td></td>
<td>• 2003 Civil Procedure Act of the Republic of Srpska; Articles 434-453</td>
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<tr>
<td></td>
<td>• 2003 Civil Procedure Act of the Brčko District; Articles 380-399 THE ABOVE ACTS CONTAIN THE SAME PROVISIONS GOVERNING ARBITRATION</td>
<td></td>
</tr>
<tr>
<td>Bulgaria</td>
<td>• 1988 International Commercial Arbitration Act;</td>
<td>yes</td>
</tr>
<tr>
<td></td>
<td>• 2007 Civil Procedure Code, 2005 Private International Law Code</td>
<td></td>
</tr>
<tr>
<td>Croatia</td>
<td>• 2001 Arbitration Act</td>
<td>yes</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>• 1994 Arbitration Act;</td>
<td>no</td>
</tr>
<tr>
<td></td>
<td>• 1963 Civil Procedure Code (amended by the Arbitration Act)</td>
<td></td>
</tr>
<tr>
<td>Estonia</td>
<td>• 2005 Civil Procedure Code</td>
<td>yes</td>
</tr>
<tr>
<td>Hungary</td>
<td>• 1994 Act LXXI of on Arbitration</td>
<td>yes</td>
</tr>
<tr>
<td>Lithuania</td>
<td>• 1996 Law on Commercial Arbitration;</td>
<td>yes</td>
</tr>
<tr>
<td></td>
<td>• 2002 Code of Civil Procedure</td>
<td></td>
</tr>
<tr>
<td>Poland</td>
<td>• 1964 Code of Civil Procedure; (5th part; Articles 1154-1217)</td>
<td>yes</td>
</tr>
</tbody>
</table>
# National Legislation

<table>
<thead>
<tr>
<th>Country</th>
<th>Governing law</th>
<th>Based/not based on UNCITRAL Model Law</th>
</tr>
</thead>
</table>
| Romania   | • 1865 Civil Procedure Code, fourth book, Articles 340-371 (in 1993 substantially amended);  
• Chapter XII of Law No. 105/1992 on the Settlement of Private International Law Relations                                                 | yes                                    |
• 2002 Federal Law On Arbitration Tribunals in the Russian Federation (domestic arbitration)                                                | yes                                    |
| Serbia    | • 2006 Arbitration Act                                                                                                                                                                                      | yes                                    |
| Slovakia  | • 2002 Arbitration Act (amended in 2006);  
• 1963 Civil Procedure Code                                                                                                                                                                                | yes                                    |
| Slovenia  | • 2008 Arbitration Act                                                                                                                                                                                      | yes                                    |
| Ukraine   | • 1994 Law of Ukraine on International Commercial Arbitration (the ICA Law) (legal basis for international arbitration);  
• 2004 Law of Ukraine on Courts of Arbitration (domestic arbitration);  
• 2004 Civil Procedure Code of Ukraine;  
• 1991 Commercial Procedure Code                                                                                                                  | yes                                    |
<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td></td>
<td>Reciprocity Reservation</td>
<td>Commercial Dispute Reservation</td>
<td>Other reservations</td>
</tr>
<tr>
<td>Belarus</td>
<td>yes</td>
<td></td>
<td>With regard to awards made in the territory of non-contracting States, this State will apply the Convention only to the extent to which those States grant reciprocal treatment.</td>
</tr>
<tr>
<td>Bosnia and Herzegovina</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>yes</td>
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<td></td>
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<tr>
<td>Croatia</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
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<tr>
<td>Czech Republic</td>
<td>yes</td>
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<td></td>
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<tr>
<td>Estonia</td>
<td>yes</td>
<td></td>
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</tr>
<tr>
<td>Hungary</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
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<tr>
<td>Lithuania</td>
<td>yes</td>
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<tr>
<td></td>
<td>Reciprocity Reservation</td>
<td>Commercial Dispute Reservation</td>
<td>Other reservations</td>
</tr>
<tr>
<td>Poland</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td>Romania</td>
<td>yes</td>
<td>yes</td>
<td></td>
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<tr>
<td></td>
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<td></td>
<td>With regard to awards made in the territory of non-contracting States, this State will apply the Convention only to the extent to which those States grant reciprocal treatment.</td>
</tr>
<tr>
<td>Russia</td>
<td>yes</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>With regard to awards made in the territory of non-contracting States, this State will apply the Convention only to the extent to which those States grant reciprocal treatment.</td>
</tr>
<tr>
<td>Serbia</td>
<td>yes</td>
<td>yes</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>This State will apply the Convention only to those arbitral awards which were adopted after the Convention came into force.</td>
</tr>
<tr>
<td>Slovakia</td>
<td>yes</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>This State will not apply the Convention to differences where the subject matter of the proceedings is immovable property situated in the State, or a right in or to such property.</td>
</tr>
<tr>
<td>Slovenia</td>
<td>yes</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>With regard to awards made in the territory of non-contracting States, this State will apply the Convention only to the extent to which those States grant reciprocal treatment.</td>
</tr>
<tr>
<td>Ukraine</td>
<td>yes</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>With regard to awards made in the territory of non-contracting States, this State will apply the Convention only to the extent to which those States grant reciprocal treatment.</td>
</tr>
</tbody>
</table>
## Permanent Arbitration Courts

<table>
<thead>
<tr>
<th>Country</th>
<th>Description</th>
<th>Website/Link</th>
</tr>
</thead>
<tbody>
<tr>
<td>BELARUS</td>
<td>International Arbitration Court at the Belarusian Chamber of Commerce and Industry; <a href="http://www.cci.by">www.cci.by</a></td>
<td></td>
</tr>
<tr>
<td>BULGARIA</td>
<td>Arbitration Court at the Bulgarian Chamber of Commerce and Industry (the AC at CCI); <a href="http://www.bcci.bg/bulgarian/arbitration/bg">www.bcci.bg/bulgarian/arbitration/bg</a>; Arbitration Court at the Bulgarian Industrial Association (the AC at IA)</td>
<td>AC at CCI published rules that can be used by parties in <em>ad hoc</em> arbitration proceedings</td>
</tr>
<tr>
<td>CROATIA</td>
<td>Permanent Arbitration Court at the Croatian Chamber of Economy; <a href="http://www.hgk.hr">www.hgk.hr</a></td>
<td>Rules of the Permanent Arbitration Court at the Croatian Chamber of Economy (the Zagreb rules)</td>
</tr>
<tr>
<td>CZECH REPUBLIC</td>
<td>Arbitration Court Attached to the Economic Chamber of the Czech Republic and the Agricultural Chamber of the Czech Republic (the Arbitration Court); <a href="http://www.arbcourt.cz">www.arbcourt.cz</a>; Arbitration Court attached to the Prague Stock Exchange; <a href="http://www.pse.cz">www.pse.cz</a>; Arbitration Court attached to the Czech-Moravian Commodity Exchange in Kladno; <a href="http://www.rozchodcisoud.cz">www.rozchodcisoud.cz</a></td>
<td>Arbitration Court adopted two sets of Rules: one concerning international arbitration, the other concerning internal arbitration</td>
</tr>
<tr>
<td>ESTONIA</td>
<td>Arbitration Court Of The Estonian Chamber Of Commerce And Industry; <a href="http://www.kada.ee">www.kada.ee</a></td>
<td></td>
</tr>
<tr>
<td>HUNGARY</td>
<td>The Arbitration Court of the Hungarian Chamber of Commerce; <a href="http://www.mkik.hu/index.php">http://www.mkik.hu/index.php</a>; Permanent Court of Arbitration of the Money and Capital Markets</td>
<td></td>
</tr>
<tr>
<td>LATVIA</td>
<td>Arbitration Court of the Latvian Chamber of Commerce and Industry; <a href="http://www.chamber.lv">www.chamber.lv</a>; Riga International Arbitration Court</td>
<td></td>
</tr>
<tr>
<td>LITHUANIA</td>
<td>Vilnius Court of Commercial Arbitration; <a href="http://www.arbitrazas.lt">www.arbitrazas.lt</a></td>
<td></td>
</tr>
</tbody>
</table>
## Permanent Arbitration Courts

<table>
<thead>
<tr>
<th>Country</th>
<th>List of Permanent Arbitration Courts</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>POLAND</td>
<td>• The Permanent Arbitration Court at the National Chamber of Commerce; <a href="http://www.sakig.pl">www.sakig.pl</a></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Arbitration Court at the Union of Polish Banks; <a href="http://www.zbp.pl/site.php?s=MDAwMTg3">http://www.zbp.pl/site.php?s=MDAwMTg3</a></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Arbitration at the Polish Confederation of Private Employers Lewiatan</td>
<td>In general, the rules governing the proceedings issued by the respective institutions follow the rules set out in the UNCITRAL Model Law</td>
</tr>
<tr>
<td>ROMANIA</td>
<td>• Court of International Commercial Arbitration of the Chamber of Commerce and Industry of Romania; <a href="http://arbitration.ccir.ro/ingleza/index.htm">http://arbitration.ccir.ro/ingleza/index.htm</a></td>
<td></td>
</tr>
<tr>
<td>RUSSIA</td>
<td>• International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation (the ICAC); <a href="http://www.tpprf-mkac.ru">www.tpprf-mkac.ru</a></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Arbitration Court at the St. Petersburg Chamber of Commerce and Industry; <a href="http://www.spbcci.ru">www.spbcci.ru</a></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Maritime Arbitration Commission at the Chamber of Commerce and Industry of the Russian Federation (the MAC);</td>
<td>Arbitration Rules of the ICAC (the ICAC Rules) remain the most frequently used institutional arbitration rules, based on the UNCITRAL Arbitration Rules</td>
</tr>
<tr>
<td>SERBIA</td>
<td>• Foreign Trade Court of Arbitration at the Serbian Chamber of Commerce (FCA); <a href="http://www.pks.rs/ForeignTradeCourtofArbitration/tabid/2634/language/en-US/Default.aspx">http://www.pks.rs/ForeignTradeCourtofArbitration/tabid/2634/language/en-US/Default.aspx</a></td>
<td>Rules of FCA provide for both conciliation and arbitration; the parties may stipulate the applicability of the UNCITRAL Arbitration Rules</td>
</tr>
<tr>
<td>SLOVAKIA</td>
<td>• Arbitration Court of the Slovak Chamber of Commerce and Industry; <a href="http://www.sopk.sk">www.sopk.sk</a></td>
<td></td>
</tr>
<tr>
<td>SLOVENIA</td>
<td>• Permanent Court of Arbitration attached to the Chamber of Commerce and Industry of Slovenia; <a href="http://www.sloarbitration.org">www.sloarbitration.org</a></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Arbitration Court of the Triglav Insurance Company</td>
<td>Rules regulating the arbitration procedure at the Permanent Court of Arbitration attached to the Chamber of Commerce and Industry</td>
</tr>
<tr>
<td></td>
<td>• Arbitration Court of the Ljubljana Stock Exchange</td>
<td></td>
</tr>
<tr>
<td>UKRAINE</td>
<td>• International Commercial Arbitration Court (the ICAC) at the Ukrainian Chamber of Commerce and Industry; <a href="http://www.ucci.org.ua">www.ucci.org.ua</a></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Maritime Arbitration Commission (the MAC)</td>
<td></td>
</tr>
</tbody>
</table>
III. Arbitration in Poland and Other CEE Countries
Arbitration Agreement – Substantive Requirements

1. **Poland**
   - The arbitration agreement should refer to arbitration of a specific dispute or future disputes resulting from or related to an existing legal relationship (general, catch-all referrals excluded); (art. 1161 §1 PCCP)
   - The arbitration agreement should provide for final and binding determination by arbitrator(s); vague wording providing for e.g. further litigation before state courts could be challenged as being non-arbitration clauses (judgment of CoA Warsaw April 21, 2009; VI ACa 1421/08)
   - The arbitration agreement should respect the principle of equality of parties, otherwise being ineffective (e.g. arbitration agreements entitling only one party to bring an action before the arbitration court agreed upon in the arbitration agreement or before state courts (art. 1161 §1 PCCP); or providing more procedural rights to one party

2. **Hungary**
   - The agreement should refer to the commercial disputes related to the business of one of the parties
Arbitration in Multi-Tier DR Clauses

- Proliferation of Clauses Providing for Multi-Tier Dispute Resolution Mechanisms
  - Usually does not affect validity of arbitration agreements, except for certain ‘pathological’ clauses
  - Specific problems arising from applying dispute resolution clauses in construction disputes under FIDIC Rules:
    - Failure to submit the dispute to Engineer/DAB results in dismissal of case in arbitration
    - Dismissal with or without prejudice – contradictory case-law
    - Strict approach to assessment of identity of claims
      (Warsaw Circuit Court, judgment of October 27, 2009; XXV C 1332/08)
Arbitration in Consumer Disputes

- Arbitration clause in a contract with a consumer may be considered an abusive clause
  - Annex; item (g) of the EU Directive 93/13/CE
  - Art. 385³ item 23 of Polish Civil Code
- Ineffective towards the consumer if not specifically negotiated
- Burden of proof of specific negotiations falls on the professional

Case law:
- Court of Justice of the EU
  - C-168/05 *Mostaza Claro*
  - C-40/08 *Asturcom Telecomunicaciones SL*
- Polish Supreme Court
  - Order of February 22, 2007; IV CSK 200/06
Form Requirements

- Agreement in writing
  - single document (e.g. contract)
  - documents or statements exchanged between the parties by means of remote communication that allows its content to be preserved (art. 1162 § 2 PCCP)

  "the entering of a website containing a general contract term directed to an unascertained group of readers and the confirmation online of the willingness by a person to conclude a contract do not constitute a declaration whose content could be preserved. In particular, the factual confirmation as opposed to a standard electronic signature (...) does not provide grounds for identification or reconstruction of the declaration`s content. This requirement would, however, be met by a declaration sent by e-mail that makes it possible to identify the sender"

  Polish Supreme Court order of February 22, 2007; IV CSK 200/06

- signature not required, except in labour disputes (art. 1164 PCCP)
Arbitration Agreement by Proxy

- Until October 2005 specific authorization required for entering into arbitration agreement

- From October 2005, authorization to enter into a contract on behalf of a business entity extends to arbitration clauses:
  - arbitration clauses pre-dating 2005
  - contracts signed on behalf of non-business entities
Arbitration Agreement by Reference

- Arbitration agreement by reference effective if
  - the reference is contained in the contract in writing
  - reference is made to a document incorporating an arbitration clause (e.g. general terms of the contract)
  - by terms of the reference the other document is incorporated into the contract (art. 1162 § 2 PCCP)

- Reference to Arbitration Rules
  - Poland
    subject agreement to the contrary, a reference to arbitration rules of a permanent arbitration court in an arbitration agreement, is the reference to such rules as they were binding as on the date of the arbitration agreement (art. 1161 § 3 PCCP)
  - Czech Republic
    subject agreement to the contrary, a reference to arbitration rules of a permanent arbitration court in an arbitration agreement, is the reference to such rules as they were binding as on the date of the commencement of arbitration proceedings
Arbitration Agreement and Non-Signatories

1. Poland

- The arbitration agreement is not personal between the parties and is related to the legal relationship covered thereby
- Persons acquiring the relevant rights and obligations of signatories by way of singular or general succession are bound by the arbitration agreement even if not signatories to the original arbitration agreement (Polish Supreme Court order of March 1, 2000; I CKN 845/99)
  - Arbitration agreement in a conditional SPA ineffective against a third party exercising its right of first refusal (CoA Warsaw, judgment of December 15, 2009; I ACa 486/09)
- Arbitration agreement contained in the by-laws of a LLC or PLC or an association is effective against members/shareholders and the company/association

2. Czech Republic

- The arbitration clause is binding on the parties’ legal successors, unless not expressly excluded in the arbitration clause (sec. 2 (5) of Czech Arbitration Act)
Arbitrability

- Most CEE jurisdictions recognize the arbitrability of disputes concerning rights or interests which may be capable of being settled before state courts and/or can be freely disposed of by the parties.
- Disputes involving public interest (e.g. bankruptcy-related) or personal rights and status naturally excluded.
- Possible "grey areas" and invitation for tactics involving invocation of public interest arguments to challenge the arbitrability of a dispute.
- Notable cases of non-arbitrability:
  - Poland
    - alimony matters (art. 1157 CCP)
    - validity and effectiveness of decisions of corporate bodies (Supreme Court res. of May 7, 2009; III CZP 13/09)
  - Czech Republic
    - enforcement of court decision
  - Slovakia
    - disputes relating to the enforcement of court decisions
    - disputes regarding the creation, transfer or extinction of title and other rights concerning real property
  - Bulgaria
    - disputes concerning collective labour agreements
  - Ukraine
    - corporate disputes (recommendations of the Commercial High Court)
Arbitrators

"Arbitration is only as good as the arbitrators”

Eligibility of arbitrators
- Poland: any person with full legal capacity, except for a state court judge exercising his judicial functions may be appointed as arbitrator
- Slovakia: the potential arbitrator has to have a clean criminal record
- Russia: where a dispute is to be heard by a sole arbitrator, he or she is required to have a higher degree in law; should a dispute be heard by a panel, the chairman must have a higher degree in law
- Croatia: an active Croatian judge can be appointed arbitrator, but only as a chairman of the tribunal or as a sole arbitrator
- Pursuant to Section 12 of the Hungarian Act LXXI on Arbitration an arbitrator must be at least 24 years of age

Number of arbitrators, method of their appointment
- In general, the parties are free to decide on the number of arbitrators and the method of their appointment
- often there is a requirement that the number of arbitrators is uneven – Slovakia, Czech Republic, Russia, Hungary
- If the parties fail to specify the number of arbitrators, the arbitral tribunal will usually consist of three arbitrators (e.g. Poland - art. 1169§ 2 of CCP, Hungary – Section 13 (2) of the Act LXII on Arbitration, Bulgaria – art. 11 and 12 of the International Commercial Arbitration Act)
- If the parties fail to appoint the arbitrators, the court shall appoint the arbitrators

Soft-law codes of ethical conduct for arbitrators were adopted, although not universally applied.
Rules of the Permanent Arbitration Court at the National Chamber of Commerce – arbitrator/attorney incopmatibilis
Arbitrators – Conflicts of Interests

- Full disclosure is the exception rather than the norm; many arbitrators unaware of international standards, vast differences in background, consciousness and approach of active arbitrators. Lack of uniformity is a hurdle to effective challenging of arbitrators.

- Duty of disclosure - a person appointed as arbitrator should immediately disclose to the parties any circumstances that could raise doubts as to his/her impartiality and/or independence (Poland, Slovakia – Section 9 of the Slovakian Arbitration Act, Section 8 of the Czech Arbitration Act, art. 12 of Ukrainian Law on International Commercial Arbitration, art. 12 (1) of Russian Law on International Commercial Arbitration, art. 12 of the Croatian Arbitration Act). This duty applies during the proceedings.

- In many states an arbitrator may be removed only if:
  - there are justified doubts as to his impartiality or independence, or
  - he does not have the qualifications specified in the arbitration agreement (e.g. art. 1174 § 2 of Polish CCP, art. 11 of Ukrainian Law on International Commercial Arbitration, art. 12 (2) of Russian Law on International Commercial Arbitration, art. 14 of Bulgarian International Commercial Arbitration Act).
Confidentiality

1. Poland
   - There are no provisions regarding confidentiality of arbitral proceedings. The parties are free to regulate the issue in the arbitration agreement.
   - The rules of some arbitral institutions provide for confidentiality (§ 12 of Arbitration Rules of the Court of Arbitration) and for the possibility of publication of arbitral awards with due regard to party autonomy and anonymity of such a publication (§ 49 of Arbitration Rules of the Court of Arbitration).

2. Czech Republic
   - An important principle of arbitral proceedings is the principle of confidentiality. The public is excluded from the proceedings. This guarantees that sensitive information is not disclosed to the public.
   - Judgments must be given in camera or handed over to the parties in writing.
   - Furthermore, arbitrators are obliged not to breach confidentiality with regard to information they have acquired as arbitrators (Sec. 6 of the Arbitration Act).
   - In proceedings on the enforcement of arbitral awards (the recognition phase is not distinguished), the parties' pleadings or other documents are not publicly available. Sec. 44 of the CCP stipulates one exception: the president of the court is entitled to allow a third party access if it proves a qualified legal interest justifying such access.
Arbitral proceedings

- Flexibility warranted by skeleton regulations in arbitration laws, mostly based on UNCITRAL Model Law and applicable arbitration rules

- Quality and conduct of arbitral proceedings depending primarily on qualifications and skills of arbitrators in a dispute in question

- Two approaches – litigation-like arbitration or reception of international standards

<table>
<thead>
<tr>
<th><strong>Litigation-like approach</strong></th>
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<td>Arbitrators’ controlled proceedings</td>
<td>Flexibility and parties’ controlled arbitration</td>
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<td>No arbitration calendar: unsolicited, spontaneous and last-moment filings accepted</td>
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<td>No written witness statements – witnesses examined and cross-examined ‘live’ at the hearing</td>
<td>Written witness statements &amp; party appointed experts</td>
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<td>Many short hearings dedicated to isolated issues or groups of issues instead of a multi-day single hearing</td>
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Taking of Evidence

- Poland
  - each party is responsible for arranging availability of witnesses
  - limited acceptance of witness preparation
  - very broad notion of evidence
  - relaxed approach to admission of evidence – no ‘fruit-of-the-poisoned-tree’ theory
  - very limited discovery, but gaining more and more popularity
  - opinions of party-appointed experts admissible as evidence, non-existing standards regarding impartiality and independence of experts
  - assistance of state courts in taking of evidence for arbitration proceedings possible but exceptional
    - Application of the 1965 Hague Evidence Convention
Interim Measures

1. Poland
   - State courts as well as arbitral tribunals are competent to order interim measures in support of arbitral proceedings.
   - Enforcement of the measure taken by an arbitral tribunal is possible only after obtaining leave for enforcement from a competent state court.
   - The requesting party is liable for damages if the measure ordered by the arbitral tribunal was unjustified.

2. Croatia
   - The power to order interim measures is vested in state courts as well as arbitration courts. According to Zagreb Rules 2002, an arbitral tribunal can order ex parte interim measures.

3. Lithuania
   - Upon request of one party, the arbitral tribunal may order the other party to pay a security deposit (Art. 20 of Lithuanian Arbitration Act). This is the only measure which an arbitral tribunal may take.
Interim Measures

4. Czech Republic

- Interim measures can only be ordered by state courts and only if the enforcement of an arbitral award would otherwise be jeopardized.

- A state court can order a party to take the following interim measures:
  - deposit certain funds or items in the safe custody of the court
  - abstain from disposing of certain items or rights
  - perform any act, abstain from or tolerate certain acts

5. Hungary

- A party requesting interim measures in aid of arbitration must prove the inception, quantity and expiry of its claim by a public deed or by a private deed with full probative force (Sec. 37(2) of the Arbitration Act)
Arbitral Award

1. Poland

- Award is equivalent to a court judgment. Generally, the arbitral tribunal “can only do what a state court could have done”

- The claims and counter-claims should be precisely specified. Polish standards have been influenced by German legal culture

- No time limits for making an arbitral award under PCCP, but parties are free to introduce such conditions. Arbitration rules provide a recommended time limit for the issuance of the award within one month, counted from the date of closing of the case (§ 42 sec. 1 of the Rules of the Court of Arbitration at PCC)

- Possibility to have an award on agreed terms. An amicable settlement reached between the parties leads to termination of the proceedings. The terms should be recorded and confirmed by parties’ signatures. Such settlement may be recognized and enforced subject to the same requirements as applicable to an arbitral award, Art. 1196 § 1 of PCCP. Upon request of one party, the settlement may take the form of an award

- No official registration of the award is required to make it legally effective. However, the award will have the same effect as a state court judgment once confirmed by the state court (summary review - Art. 1212 of PCCP)
Arbitral Award

2. Croatia
   - Arbitral tribunal should make its decision when the issues are "ready for the decision-making"
   - Possibility of an award of agreed terms (Art. 29 (1) and (3))

3. Czech Republic
   - Arbitrators should encourage the parties to agree on an amicable settlement of the dispute (sec. 24 of Arbitration Law). At the request of the parties, the settlement can be incorporated into an arbitral award
   - In ad hoc arbitration the arbitrators should deliver the award to a district court within 30 days after its announcement. In institutional arbitration, it is necessary to archive the arbitral award for 20 years (sec. 29 of Arbitration Act)
   - Sect. 28 of the Arbitration Act stipulates that arbitral awards become final and effective on the date they are served on the parties to the dispute. After the award is served, it is stamped with the “legal force clause”
   - The award does not require any special proceedings on recognition or proceedings authorizing enforcement of the award
Arbitral Award

4. Hungary

- Time-limit in arbitration rules for making of an award. According to Art. 10 of the Budapest Rules, the proceedings shall be completed, whenever possible, within six months of the formation of the arbitral tribunal.

- Award on agreed terms. If the parties request the arbitrators to make an award containing their settlement, the tribunal includes the settlement in the form of an award on the agreed terms. They can, however, refuse to do so, if they consider the settlement contrary to the law (Sec. 39(2) of Hungarian Arbitration Law).

- According to Art. 41(1) of the Budapest Rules, the Arbitration Court's award and its reasoning shall be delivered in writing to the parties no later than within thirty days of the close of the oral hearings.

5. Lithuania

- According to Arbitration Rules of the VCCA, the arbitral tribunal must resolve the dispute by rendering an arbitral award not later than six months after the file is transmitted to the arbitral tribunal.
Fees and Costs of Arbitral Proceedings

1. Poland

- Claimant usually obliged to disburse the entire advance on costs
- Under the Arbitration Rules of the Court of Arbitration at the National Chamber of Commerce, a defense based on a purported set-off implies payment of advance on costs
- Principle of ‘the loser pays’ prevails with respect to costs

- An arbitral tribunal may be restricted in its jurisdiction in awarding costs under the Arbitration Rules (see § 43.4 of the Rules of Court of Arbitration at PCC). Unless arbitrators make the decision on costs, each party bears its own costs of arbitration
2. Czech Republic

- Cost of arbitration proceedings are not regulated by the Arbitration Act and can be regulated by arbitral institutions.

- ACEC Arbitration Court regulates them in its Principles Governing the Costs of Arbitral Proceedings, which are issued separately for domestic and international disputes.

- According to Sec. 1 of the ACEC Principles on Costs, the costs of international arbitral proceedings include the following: (1) fees of arbitral proceedings, (2) administrative costs of the ACEC Arbitration Court, (3) specific costs incurred by the ACEC Arbitration Court, and (4) proper costs incurred by the parties.

- In practice, a deposit is commonly required in arbitral proceedings in the Czech Republic.

- Each party bears its own costs, including the costs of legal assistance. According to the ACEC Principles on Costs, a party may be awarded partial compensation of its own costs if good cause is shown (Sec. 12).
3. Hungary

- Art. 18 (8) of the Budapest Rules provides that appointment of an arbitrator of foreign nationality shall be valid if the party appointing such arbitrator advances the travel and living expenses of such arbitrator.

- Each party generally bears its own costs. Art. 6 of the Regulation on the Arbitration Fees, Costs and Expenses of the Parties of the Budapest Rules allows for the tribunal to apportion the costs between the parties, if it deems it justified.
Arbitral Tribunal and State Courts

1. Poland
   - Generally favorable attitude of state courts towards arbitration
   - Means of recourse
     - appeal to a second arbitral instance
     - no appeal to a state court
     - action for the annulment of an award (before District Court and Court of Appeal)
     - cassation of a decision rendered in the course of proceedings for recognition and enforcement of an award having the force of law before the Supreme Court (Judgment of Polish Supreme Court of January 18, 2007; I CSK 330/06)

2. Czech Republic
   - Review of arbitral award by other arbitrators, if such possibility provided by the parties in arbitration agreement (sec. 27 of the Arbitration Act)
   - The review arbitrators cannot bind the original arbitrators to “correct” the original award. Therefore, they are only entitled to issue a new, final award
Setting Aside Arbitral Awards

- Jurisdiction in the country where the award was rendered
- Grounds for setting aside (Polish law)
  - lack of valid and effective arbitration agreement
  - breach of the right to a fair trial
  - award beyond the scope of submission
  - irregular composition of the tribunal or violation of basic procedural rights
  - an award obtained through a criminal offence or based on a forged or falsified document
  - res iudicata of an earlier court judgment related to the same case
  - lack of arbitrability
  - violation of the public order
- Generally, state courts uphold arbitral awards
Setting Aside Arbitral Awards

- Lack of specialized state courts dealing with actions to set aside an arbitral award
- Up to three instances
- Case-law largely consistent, but at times unpredictable
- Room for frustration of speedy decision of an action to set aside an award (e.g. by a third-party intervention)
- Suspension of enforceability of the award as a facultative corollary to the application to set aside the award
Confirmation and/or Enforcement of Arbitral Awards and Settlements

- Arbitral awards and settlements concluded before arbitral courts may be confirmed or enforced.
- Different procedure applicable to awards rendered in Poland and abroad:
  - Foreign awards – only grounds specified in Polish law or the New York Convention.
  - New York Convention, if applicable, takes precedence and lays down the exclusive catalogue of grounds for refusal of enforcements.
  - Enforcement of a foreign award requires a hearing – no surprise for the debtor.
IV. Conclusions
Questions?

Contact Information:

Maciej Jamka
maciej.jamka@klgates.com
+48.22.653.4204

Wojciech Sadowski
wojciech.sadowski@klgates.com
+48.22.653.4201