Remarks on the current situation of Polish intra-corporate dispute arbitration as compared to German and Italian equivalents

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Introduction
For years, Polish corporate arbitration has been failing to reach its potential. This is happening despite the existence of a relatively modern and fast procedural framework existing under Polish arbitration law (i.e. only one instance of judicial control in setting-aside proceedings), and regardless of renowned arbitration institutions with prominent arbitrators. One of the most important problems hindering the development of corporate arbitration in Poland has been the lack of arbitration courts’ jurisdiction over intra-corporate disputes (disputes within a corporation)- especially those involving validity of shareholders’ resolutions in commercial companies. This problem has not only been legally controversial, but also of great practical importance since arbitration is generally considered to be particularly well placed to resolve such disputes. The key features of commercial arbitration, such as the speed and confidentiality of proceedings, as well as the professionalism and expertise of the arbitrators, are worth noting here- as they greatly improve the commercial and legal certainty for business. Traditionally, companies tend to see intra-corporate disputes as particularly problematic due to the risk of "corporate blackmailing" by minority shareholders. Considering the long duration of regular proceedings, a rapid resolution of the dispute by an arbitration court (even as fast as within a week) gives natural advantage against such undesirable practices.

Keywords: objective arbitrability; corporate arbitration; intra-corporate disputes.
To allow the arbitration court’s jurisdiction over shareholders resolutions’ disputes, a sweeping reform was introduced on 8th September 2019, which amended Polish Code of Civil Procedure (CCP)—especially articles 1157 CCP, 1161 CCP, 1163 CCP and art. 1169 CCP—which is in line with doctrine’s postulates on this issue. Until September 2019, Poland was only one of the few countries in the European Union that consistently blocked these disputes from being resolved by arbitration, which indirectly hindered the development of all corporate arbitration.

This article seeks to present how the latest Polish reform is developing against the background of other selected legal systems, through a comparative analysis of the objective arbitrability of shareholders resolutions’ disputes as well as possible other practical obstacles these disputes may face.

Arbitrability of shareholder resolutions’ disputes in Poland after the reform

For objective arbitrability of shareholder resolutions’ disputes, the articles 1157 CCP and 1163 CCP are the most crucial.

Under the new article 1157 CCP5, the amenability to judicial settlement (or settlement ability test) applied so far has lost its significance in disputes involving property rights disputes (except for maintenance cases), which resulted in all intra-corporate disputes (including disputes over shareholder resolutions) gaining arbitrability.

This firm solution ends the decades-long discussion on the ability to settle and objective arbitrability of such disputes, shaping the concept of arbitrability into one more similar to German and Austrian regulations, so representative of the Germanic civil law systems, from which Polish law greatly derives. However, despite being a prerequisite factor, the change of article 1157 CCP by itself is not sufficient to implement an effective arbitration court system for intra-corporate disputes.

The second key change is the amendment of Article 1163 CCP6, which aims to reconcile the private nature of arbitration with the need to expand the arbitration ruling effect onto other shareholders (extended effectiveness), including those not involved in the dispute (so-called neutral parties)7.

Firstly, according to paragraph 1 of Article 1163 CCP, an arbitration clause in the articles (memorandum) of association of a commercial company concerning disputes arising from company relationships is binding on the company, its shareholders, governing bodies, and their members. This solution puts an end to the discussions on the inconsistencies between the Code of Civil Procedure (CCP) and the Polish Commercial Companies Code (CCC)8 and prevents the jurisdictional dualism as well as the risk of parallel proceedings before arbitration court and regular courts. Previously, it would be possible for a shareholder to bring action to an arbitration court, and for a governing board member, not bound by the arbitration clause, to bring action to regular court. Consequently, it was possible that the court and the arbitral tribunal could issue conflicting decisions on the same case. This change also opens the way for the arbitration court to resolve disputes against members of the company’s bodies9, which was not possible due to the incomplete scope of ratione personae of the arbitration agreement under the old article 1163 CCP10.

Secondly, according to paragraph 2, in cases concerning the revocation or recognition of invalidity of a resolution of the shareholders’ meeting of a limited liability company or a general meeting of a joint-stock company, an arbitration clause is effective if it provides for the obligation to announce the commencement of proceedings as required for company announcements within one month from the date of their commencement at the latest (notification procedure). Moreover, each partner or shareholder may join the proceedings on one of the sides within one month from the date of their announcement and the composition of the arbitration court appointed in the earliest commenced case examines all other cases. (concentration of the arbitration court proceedings).

The overall reception of the reform by legal community is positive. Its main advantages result from legal certainty of the arbitrability of shareholder resolutions, potential to increase position of Polish corporate arbitration, and reducing the risk of parallel proceedings. However, new provisions also raise number of doubts from practitioners.

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5 ustawa z dnia 31 lipca 2019 r. o zmianie niektórych ustaw w celu ograniczenia obciążenia regulacyjnych (Dz.U. 2019 poz. 1495). (the Act of 31 July 2019 amending certain laws in order to reduce the regulatory burden).
6 Art. 1157. Unless otherwise provided for by specific regulations, the parties may bring the following disputes before an arbitration court: 1) disputes involving property rights, except maintenance cases; 2) disputes involving non-property rights, if they can be resolved by a court settlement.
7 Art. 1163.
§ 1. An arbitration clause in the articles (memorandum) of association of a commercial company concerning disputes arising from company relationships is binding on the company, its shareholders, governing bodies and their members.
§ 2. In cases concerning the revocation or recognition of invalidity of a resolution of the shareholders’ meeting of a limited liability company or a general meeting of a joint-stock company, an arbitration clause is effective if it provides for the obligation to announce the commencement of proceedings as required for company announcements within one month from the date of their commencement at the latest; the announcement may also be published by the plaintiff. In such cases, each partner or shareholder may join the proceedings on one of the sides within one month from the date of their announcement. The composition of the arbitration court appointed in the earliest commenced case examines all other cases for the revocation or recognition of invalidity of the same resolution of the shareholders’ meeting of a limited liability company or a general meeting of a joint-stock company.
§ 3. The provisions of § 1 and 2 shall apply mutatis mutandis to an arbitration clause in the statutes of a cooperative or association.
9 W. Jurczewicz, C. Wiśniewski, Zdanoć się arbitrażowo..., p. 28.
11 M. Śledzikowski, Związanie członka zarządu spółki z o.o. zapisem na sąd polubowny w procesie o naprawienie szkody na podstawie art. 293 KSH, ADR 2018, No 1.
and legal scholars. Most of them concerns the wording of Article 1163(2). First of all, the legislator did not provide for transitory provisions which would regulate the validity and effectiveness of the existing arbitration agreements incorporated in companies’ articles of association, including already pending proceedings governed by such clauses. The same dilemma applies to newest arbitration awards, based on old provisions. According to some commentators, these clauses shall remain valid while awards based on them shall stay effective so long as important procedural requirements of the latest amendments are duly met.

Secondly, the legal status of stakeholders (mainly partners or shareholders) involved in the dispute remains unclear: experts have been pondering whether they would be a party to the dispute or just an intervenor (and if so, what sort of intervenor). Most scholars opt for a status close to a main, autonomous intervenor.

Thirdly, it is uncertain whether the corporate governing bodies and their members are also able to join the proceedings as one of the parties—despite the lack of any explicit provision on that matter. Arguably, such possibility should be rejected due to their lack of legal capacity—which implies no capacity to be a party in court proceedings (they are only specifically entitled to challenge resolutions)—though this remains highly debatable.

Fourthly, the third sentence of article 1163(2) casts doubts—regardless of the chronological order in which the action was brought by different actors, all partners who joined the proceedings within the statutory time limit should be in identical legal position and standing and enjoy an equal opportunity to select the judging panel. It seems that the provision should therefore be understood as meaning that all actions should be consolidated for joint hearings and that any initial choice of arbitrators should be made not until the 30-day period has expired.

Finally, it is unclear whether an incorporated arbitration clause is the sole basis for arbitration proceedings concerning shareholders’ resolutions or a separate arbitration compromise is also acceptable.

The above controversies, as well as many others, pose a significant challenge to the practical efficacy of the law, potentially providing for some guerilla tactics such as obstructions and attempts to overturn the arbitral judgment. For this reason, an intensified discussion by scholars, legal practitioners and through jurisprudence, will be particularly important for the intra-corporate arbitration to really set off.

Especially, the development of appropriate intra-corporate procedural rules by arbitration courts will be a key determinant in resolving most dogmatic and practical issues.

However, the most practical issue will now be the question of how to introduce arbitration clauses into companies’ articles of association.

Although such dilemma should not arise when the articles of association are concluded (establishing a corporation is an unanimous act), the real issue occurs when the articles of association are to be altered in order to introduce the arbitration clause for the first time. If there are no other contractual provisions, the change in the company deed of a limited liability company (spółka z ograniczoną odpowiedzialnością) requires, according to the CCC, a majority of 2/3 votes (article 246(1) CCC), while the amendment to the company articles require requires a majority of ¾ votes for a corporation or joint-stock company (spółka akcyjna) (art. 415 (1) CCC).

Although based on the meaning of articles 246(3) and 415(3) CCC, the imposition of an arbitration clause on a minority shareholder or partner should not be regarded as any impairment of any rights vested in certain shareholders personally, it is difficult to ignore the argument that a party’s position may be different in arbitration proceedings than in court proceedings.

Moreover, an arbitration clause usually requires unanimity (arbitration being based on consent), which prima facie stands in contradiction to the majority principle known in company law. This conflict between the principles of company law and arbitration law has already been discussed in many European jurisdictions, including Germany, Austria, Switzerland and Italy.

On the one hand, the restriction of parties’ constitutional right to court by submitting disputes to the jurisdiction of arbitration courts, requires a fully voluntary arbitration clause.

On the other hand, however, while the unanimity requirement is still feasible in the case of several-member limited liability companies, it threatens to completely distort the sense of the regulation in relation to large joint-stock companies—especially public ones—with a large, fragmented shareholder base. For obvious reasons, this would lead to the practical impossibility of meeting this condition. Therefore, given the nature of specific relations that govern capital companies, in view of the serious collision between the two sets of principles, it is necessary to consider opting for the majority principle.

Arguments of a functional nature are also worth noting here. It is worth remembering that it is joint stock companies that may potentially, in the long term, be the main beneficiaries of the arbitrability of intra-corporate disputes, due to the abovementioned features of arbitration such as speed, legal certainty (especially in the context of resolution disputes), high professionalism and confidentiality.

As Professor Andrzej Szumański rightly pointed out, a thoughtless application of the axiology of arbitration law would probably lead the discussion to absurd conclusions.
Moreover, any legal differentiation such as the requirement of unanimity in the case of limited liability companies and majority rule with regards to joint stock companies would not be viable—especially since there are many limited liability companies with numerous partners, and double-member joint stock companies. The systemic argumentation would therefore also encourage a definitely uniform approach in this matter.

However, respect for minority rights in the form of possible obligatory sell-out of opposing minority shareholders' shares would be worth considering\textsuperscript{22}, which of course would require legislative intervention in the Commercial Companies Code.

An equally interesting issue might be the alignment of the "old" arbitration clauses with the requirements of the revised Article 1163 to make them fully effective \textsuperscript{23}. It seems that in this case, the majority appropriate for amending the articles of association should suffice. Moreover, the admissibility of a claim for certain shareholders' consent to a resolution amending the old arbitration clause be considered, due to the existence of a duty of loyalty of the partners (shareholders) on the grounds of the CCC\textsuperscript{24}. These conclusions are all the more important because a secondary change in the company's ownership structure may make it significantly more difficult, if not impossible, to reach a consensus on amending the old arbitration clauses—and thus prevent access to a predetermined and effective method of resolving intra-corporate disputes.

Despite these doubts, the reform is undoubtedly a step in the right direction. For a more complete assessment of the amendments, it is worth analysing how it compares with other legal systems, especially from the point of view of arbitrability and potential other impediments to the development of shareholder resolution disputes and other intra-corporate arbitration. The subject of comparative analysis in this article are Germany and Italy, where the corporate arbitration was regulated completely differently.

The arbitrability of shareholder resolution disputes in Germany\textsuperscript{25}

Traditionally, objective arbitrability under German law is understood very broadly—pursuant to Article 1030(1) ZPO, the parties may submit to arbitration any dispute of economic interest\textsuperscript{26}. Although corporate disputes have generally enjoyed objective arbitrability, numerous legal uncertainties also known to Polish law (e.g. lack of extended effectiveness of the arbitration court judgment, lack of concentration of proceedings) have for years resulted in the practical lack of arbitration court's jurisdiction over shareholder resolution disputes—which, as a result, practically hindered intra-corporate arbitration of all kind.

After two decades of disputes in jurisprudence and academia, the Federal Supreme Court (Bundesgerichtshof- BGH) has delivered three important judgments on this issue: the 1996 judgment\textsuperscript{27}("Arbitrability I"), the 2009 judgment\textsuperscript{28}("Arbitrability II") and the 2017 judgement\textsuperscript{29}("Arbitrability III"). In the most important of them - "Arbitrability II" - the Court made a real breakthrough by granting arbitral tribunals jurisdiction in cases of challenging shareholder resolutions of limited liability companies (GmbH). The Court, however, stipulated that the arbitration proceedings "must be designed to provide a level of legal protection equivalent to that of a state court" and "to grant legal protection to all members of the company subject to the judgment"\textsuperscript{30}. In the absence of statutory 'minimum standards', these must be specifically included in an arbitration clause\textsuperscript{31}. Therefore, The Court identified the following four main criteria\textsuperscript{32}, which must be met in order for an arbitration clause not to be null and void within the meaning of § 138 of the BGB (the public morals clause)\textsuperscript{33}.

Firstly, all shareholders must unanimously agree to the arbitration clause (either in the articles of association or in a


\textsuperscript{23}German „jeder vermögensrechtlicher Anspruch”. Non-pecuniary (German „nichtvermögensrechtliche Ansprüche”) may, on the other hand, be the subject of an arbitration clause, only if the parties are entitled to make a settlement as to the subject matter of the dispute.

\textsuperscript{24}BGH judgement of 29.03.1996. II ZR 124/95, NJW 1996, 1753.

\textsuperscript{25}BGH judgement of 06.04.2009 II ZR 255/08, BGHZ 180.

\textsuperscript{26}BGH judgement of 06.04.2017 I ZB 23/16.

\textsuperscript{27}K. Pörnbacher, A. Dolgorukow, Zdadność arbitrażową sporów korporacyjnych o zaskarżanie uchwał- perspektywa niemiecka, PPH 3/2016, p. 33.

\textsuperscript{28}Ibidem.

\textsuperscript{29}Ibidem, pp. 33-34.

\textsuperscript{30}Bürgerliches Gesetzbuch z 18.08.1896 r., hereinafter „BGB“.
In the Arbitrability II judgment, BGH explicitly supported the unanimity requirement which goes beyond the qualified majority needed by the German company law (GmbHG). Likewise, a large part of German scholars believe that the lack of unanimity requirement would infringe the shareholders’ rights, giving the reduction in legal protection caused by the abandonment of the jurisdiction of state courts. The BGH, however, left open the question of the adjustment of the "old" (already existing) arbitration clauses. and a large part of German doctrine considers that this can be done by a majority of three-quarters of the votes (required for an amendment of the articles of association), pursuant to § 53(2), sentence 1, GmbHG. In this case the shareholders rights are not infringed as the initial unanimous consent of the founding shareholders is implicitly accepted by shareholders joining the company at a later stage. After all, adapting the existing clause to the requirements of the law (in this case to the Arbitrability II) in order to guarantee its effectiveness hardly reduces the legal protection. In German doctrine, the prevailing view is that, in order to avoid the sanction of invalidity of the arbitration agreement - so dangerous for the interests of the company- the partners are even obliged to adopt a resolution on the adjustment of the prior arbitration clause. Such obligation is often derived from the corporate duty of loyalty. The common interest of the shareholders is to be able to enforce the previously agreed arbitration clause in all intra-corporate disputes. The unanimity requirement significantly hinders the introduction of an arbitration clause in the articles of association and thus, effectively blocks the development of intra-corporate arbitration in Germany.

Another factor that takes its toll on the practicability of intra-corporate disputes in Germany is the potential sanction of invalidity of arbitration clause embedded in Article 138(1) of BGB.

Its abstract assessment of the arbitration clause means that, even if all the Arbitrability II requirements have been met under the specific circumstances of the case, the defective clause remains null and void. As an example, may...
serve a two-person limited liability company, in which a non-contracting partner is also a member of the management board. The severity of the invalidity sanction makes it possible for the defendant to sabotage the arbitration proceedings, citing even the slightest deviation from the requirements laid down by the BGH. This solution is subject to frequent criticism—as an alternative, an ex post assessment of Arbitrability II requirements is proposed from a case-based perspective.

As one can see, the current state of discussions on objective arbitrability of shareholder resolution disputes still raises many doubts, and many issues have not been resolved to date. In consequence, intra-corporate arbitration in Germany is notoriously failing flat, while the number of corporate cases before the DIS stands at around 5%.

The arbitrability of shareholder resolution disputes in Germany

An innovative solution on a European scale can be found in Italian law. Its analysis is particularly valuable due to the fact that Italy is currently experiencing a just boom in corporate arbitration. In the most popular arbitration court - the Milan Chamber of Arbitration - corporate cases account for as much as 1/3 of all cases annually, thus being the predominant subject matter of the proceedings, even before construction works contracts and supply of goods. Domestic cases stand for almost 80% of all cases, largely due to numerous local disputes arising from company relationships. It is worth noting that a significant number of proceedings in corporate disputes have been observed already since 2007 (20% of all cases), i.e. only 4 years after the "release of corporate disputes" by the 2003 reform (see below). Therefore, the path followed by Italian arbitration is an important point of reference for further discussions in Poland.

In 2003, due to the protracted nature of the common courts (record-breaking judgements were delivered after several years) and in response to numerous calls from the arbitration community, Legislative Decree 5/2003 was introduced in 2003, aimed at eliminating the existing obstacles to arbitration in intra-corporate disputes. The decree allowed expressis verbis for the objective arbitrability of disputes arising from the company's relationship, including delibere assembleari (shareholder resolution disputes). Articles 34-37 of the Decree introduce derogations from the general regime of the Civil Code, while regulating in great detail the conditions and rules under which arbitral tribunals adjudicate. These rules apply only when both the seat of the company and the place of arbitration is in Italy. The Decree's most important provisions include: (a) the arbitration clause is binding to company and all its shareholders; (b) the clause shall specify a detailed procedure for the appointment of the arbitration panel; c) arbitration proceedings shall be disclosed in the official register of entrepreneurs; d) all shareholders shall enjoy the right to join the proceedings as main interveners, and third parties as side interveners until the first hearing. Furthermore, the Decree also contains original solutions, such as: a mandatory selection of the arbitration panel by a neutral third party; or (b) a prohibition on ruling on the basis of ex aequo et bono.

What is particularly important from Polish perspective, the Italian regulation firmly resolves the conflict between the axiology of company law and arbitration law in effective way, by presenting clear rules on how to introduce an arbitration clause into the articles of association. According to the Decree, in order to introduce an arbitration clause in the articles of association of a limited liability company or in the articles of association of a joint stock company, a resolution of the shareholders (shareholders) representing at least 2/3 of the capital is required. However, shareholders who voted against the introduction of the clause, or were absent at the general meeting, may "vote with their feet", i.e. exercise their right to leave the company within 90 days with remuneration (sell-out). Thus, the Italian laws not only explicitly decide the issue of axiology collision, but also introduces a special safeguard - a sell-out of minority shareholders' shares. By doing so, the legislator consistently gives primacy to the axiology of company law, while protecting shareholders unwilling to arbitrate. As a result, the Italian solution is considered effective, although some accuse it of excessive formalism.

However, this formalism apparently increases certainty vested in arbitration proceedings, which is reflected by the growing number of cases brought by the parties. Italian regulation eliminates the uncertainty known to other legal systems, while the narrow margin of procedural error means that arbitral awards are very rarely set aside by the common courts. It is highly likely that it is these rules that have been behind the huge success of Italian corporate arbitration in recent years.

Interestingly, the Italian solution could be considered exceptionally pro-arbitration, if it was not for the fact that it excludes intra-corporate arbitration in public joint-stock companies. According to the Decree, it does not apply to capital companies that use 'risky capital markets'.
del capitale di rischio), within the meaning of Article 2325-bis of the Italian Civil Code (and thus de facto all publicly listed companies). These are companies with shares admitted to trading on a regulated market (mercati regolamentati) and companies whose shares are dispersed to a significant extent. The restriction of corporate arbitration to limited liability companies and only private joint-stock companies has been met with strong criticism by the Italian literature\textsuperscript{61}, which ineffectively attempts to support shareholder resolution disputes in public companies\textsuperscript{62}.

Several main reasons for this restriction are usually mentioned by its supporters. Firstly, the alleged ease of imposing an arbitration clause on minority shareholders as the weaker party in this relationship is perilous\textsuperscript{63}. Secondly, the risk, increased with the size of the company, that non-qualified investors may not be aware of the arbitration clause at the time of purchase of shares\textsuperscript{64}. Thirdly, there is concern about the efficiency of arbitration proceedings in companies with large and fragmented shareholder base. Fourthly, attention is drawn to the asymmetry of power in arbitration proceedings - for example regarding the costs of proceedings\textsuperscript{65}. In conclusion the Italian legislator has established that arbitration offers a lower degree of legal protection than otherwise would be guaranteed by the proceedings before courts\textsuperscript{66}.

There are, however, several reasons to reject the above arguments against arbitrability of such disputes, which is important from Polish perspective. Firstly, even if one assumes that an individual investor usually does not concern himself to check the articles of association of the company prior to transaction, his real intention is rather not to participate actively in the life of a company, but only to invest his savings for the purpose of future dividends or reselling shares for profit. Secondly, the extensive and cyclical disclosure obligations known to public companies significantly improve the investor’s position, and the high liquidity of regulated markets gives investors an opportunity to rapidly sell shares - usually without significant loss\textsuperscript{67}. Thirdly, listed companies are subject to rigorous control by the national supervisory authorities, which makes them highly professional, not to mention the high recognition with which comes dispersed social and media pressure. Fourthly, it is worth remembering the protective rights resulting from the company law, which are vested in minority shareholder safeguards (e.g. in the form of the mentioned institution of sell-out or right to external financial audit). But most importantly, taking into account not only the interests of individual stakeholder groups, but above all the interests of the company itself, it is only arbitration that provides a guarantee of proper conduct in the face of intra-corporate disputes - and especially involving shareholder resolutions\textsuperscript{68}.

As one can state, the numerous advantages of arbitration make it precisely in the interest of large public companies that they are guaranteed the widest possible access to arbitration proceedings - and not the other way round. The scale of operations that they undertake on the capital market and their significance for development and economic growth makes it necessary to look at legal solutions from the point of view of their functionality as well as economic analysis. In the United States, where corporations play a particularly significant role, there is a growing tendency to transfer intra-corporate disputes - primarily resolutions - solely to arbitration.

Conclusions

The approach to the arbitrability of shareholder resolution disputes is relatively diverse among leading legal systems. In Germany (Austria and Switzerland alike), acceptance of the jurisdiction of arbitral tribunals in these is the result of many years of legal scholarship and jurisprudence.

This, however, causes numerous problems and controversies related to, among others, legal uncertainty, objective arbitrability, concentration of the proceedings and extended effectiveness of the arbitration tribunal’s decision. A more certain solution seems to be a clear statutory basis, which has been in place for almost 20 years in Italy (and recently, in Poland).

Given the above, Polish regulation should be a step in the right direction. It clearly allows for the objective arbitrability of shareholder resolution disputes in both limited liability and joint stock companies (as opposed to Germany) - lege non distinguiendo also in public companies (as opposed to Italy). Moreover, the statutory requirements of Polish law are not as detailed and formalized as in Italian law, leaving sufficient flexibility to the parties to the registration clause. The Polish regulation also lacks the severe nullity sanction known to German jurisprudence.

Interestingly, the reform has changed Polish law from one of the most restrictive to potentially the most liberal one in the entire European Union. Of course, the widespread use of statutory arbitration clauses by companies will require at least some trust of legal practitioners, and thus-time.

A certain practical problem that may stand in the way of the development of intra-corporate arbitration in Poland is

\textsuperscript{61} Pursuant to Article 34(1) of the Decree.
\textsuperscript{62} V. Sangiovanni, Some critical observations on the italian regulation of company arbitration, American Review of International Arbitration 2006, Volume 17, Nr 2 p. 286 - 291.
\textsuperscript{63} A. W. Wiśniewski, Międynarodowy arbitraż..., p. 252, P. Biuvanari, Il procedimento nell’arbitrato societario, Rivista dell’arbitrato 2003, nr 1, p. 27 ff.
\textsuperscript{65} F. P. Luiso, Appunti sull’Arbitrato Societario, Rivista di diritto processuale, 705, 707 (2003).
\textsuperscript{66} F. M. Buonakiti, L’Arbitrabilità delle Controversie nella Riforma del Diritto Societario tra Arbitrato Interno e Arbitrato Internazionale, Rivista dell’arbitrato s. 51, 53 (2003).
\textsuperscript{67} V. Sangiovanni, Some critical..., p. 290.
\textsuperscript{68} Ibidem..., p. 291.
the unregulated issue of how to introduce an arbitration clause into a company’s statutes (bylaws, or articles of incorporation). The Polish legislator should consider following the Italian legislator’s example by introducing a special provision that would allow for such a decision to be made by the majority required to amend the articles of association (in important matters). It would also be worth considering introducing a requirement to repurchase shares of those shareholders who opposed the introduction of such close.

To sum up, the new regulation represents a great opportunity for Polish corporate arbitration, in some respects having a potential greater than even the most liberal legal systems of the European Union countries. Of course, given the complex nature of intra-corporate disputes, including, above all, resolutions, the statutory solution must be supported not only by detailed solutions and the rules of permanent arbitration courts, but also by scholarly efforts and, above all, arbitration-friendly approach of the Polish jurisdiction in the years to come.

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