Polish Arbitration Survey
2016

KOCUR

KOZMINSKI UNIVERSITY

University of Economics in Katowice

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It gives us great pleasure to present the results of the survey "Commercial Arbitration in Practice. The Experience of the Largest Companies Operating on the Polish Market", which was conducted at the turn of 2015 and 2016. To the best of our knowledge, it is the first survey in Poland that examines how Polish businesses and their legal counsels perceive arbitration, and what their experiences are in this area.

In our survey, we examined how frequently businesses operating in Poland use arbitration, and what their expectations and observations are. We asked where users of arbitration see its advantages and drawbacks, and we looked at how some of the trends and practices currently applied in arbitration respond to those users' expectations and needs.

The survey was conducted as an online questionnaire, addressed to businesses and their legal counsels. We wanted to understand the point of view of arbitration users with diverse professional experience, and of those who, due to their occupation, are familiar with this method of dispute resolution. The invitation to complete the questionnaire was sent to several hundred of the largest companies operating in Poland, the leading law firms on the Polish market, legal practitioners and academics experienced in arbitration.

We hope that the findings of this survey will be of interest to you. We also hope that they will serve as a basis for debate about arbitration in Poland, and on what can be done to increase its popularity.

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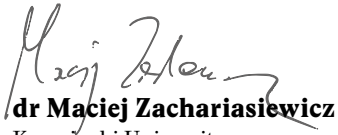

dr Maciej Zachariasiewicz
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00. Executive summary

Our respondents

› The questionnaire was completed by 103 respondents.

› Among the respondents who answered the question concerning their professional function, 59% were lawyers working at law firms (in this report we refer to this group as "law firms") and 41% were representatives of businesses, i.e. managers and in-house lawyers (in this report we refer to this group as "businesses").

› Due to rounding, some percentages shown in the charts may not equal 100%.

Experience concerning past arbitration proceedings

› The value of disputes our respondents had participated in were relatively high, with 46% of the respondents having participated in two to five arbitration proceedings in the last five years with a value of PLN 1 to 10 million (approx. EUR 250k to 2.5 million) (and another 15% had participated in one such proceeding).

› When asked about the results of their arbitration proceedings, the most popular response was that respondents represented the winning party in the majority of the proceedings they took part in (40%). Some 10% of the respondents claimed to have won all of their cases, while 20% stated that they won about as many cases as they lost.

› Our survey shows that the arbitration proceedings the respondents participated in relatively rarely ended in a settlement. Over 33% of the respondents stated that none of their cases were settled, while 43% claimed that only a minority of their cases were settled.

› Only 10% of the respondents asserted that the losing party voluntarily complied with the awards in all of their disputes. On the other hand, 15% claimed that this did not happen in any of their cases, with 22% stating that it happened only in a minority of their cases.

Opinions on arbitration

› There are large discrepancies between the representatives of businesses and law firms in the answers concerning the preferred method of dispute resolution. The results of the survey show that arbitration is a preferred method of dispute resolution among lawyers at law firms (57% of them declared preference for arbitration).

› Conversely, the representatives of businesses spoke more in favour of national courts as their preferred method of dispute resolution (57% of the responses).

› When asked to assess some of the aspects of arbitration proceedings, the respondents answered that they were least satisfied with the costs of arbitration (3.40 points on average on a 7-point scale, where 1 point meant "very dissatisfied" and 7 points meant "very satisfied"). The respondents were more satisfied with the attitude of arbitrators (4.09 points on average) and the speed of proceedings (3.78 points on average). They were most satisfied with the results of the proceedings in which they participated (4.55 points on average).

› It turns out that, despite there being no clear preference for a particular method of dispute resolution (arbitration or national courts) and a average level of satisfaction

with arbitration, 75% of the respondents declared that they intend to use arbitration in the future (with only 10% responding in the negative).

Arbitrators

› In general, the respondents were satisfied with the arbitrators' attitude in arbitration proceedings. However, when asked about their experience regarding the impartiality of arbitrators in arbitration proceedings, the answers showed that there is still room for improvement. As many as 19% of the respondents stated that at least one of the arbitrators acted in a partial way in the majority of their cases. A considerable 65% of the respondents stated that impartiality was maintained in most of their cases, but not all.

› We asked whether the role of a party-appointed arbitrator is different from that of a presiding arbitrator. In response, 52% of the respondents indicated that a party-appointed arbitrator should ensure that the position of the party who appointed him is heard and understood by the tribunal, notwithstanding the obligation to act impartially. However, a slightly smaller percentage of respondents (47%) stressed that the appointment of an arbitrator by a particular party should not affect his attitude towards the arguments presented by that party. The difference in responses to that question between the representatives of law firms and businesses is interesting. It turns out that more businesses are in favour of an arbitrator whose attitude is not affected by the party appointing him (as stated by 60% of the businesses). Law firms, on the other hand, seem to prefer that the arbitrator they appoint at least ensures that the lawyer's arguments in the case are heard and understood by the whole tribunal (as stated by 60% of the law firms).

› The most important feature taken into consideration when appointing an arbitrator is the candidate's competence in the sector that the dispute concerns (65% of the answers). Impartiality was ranked lower down (46%).

› The survey showed that the users of arbitration do expect arbitrators to assume an active role when conducting the proceedings and hearings (79% of respondents), including asking the parties and witnesses questions, and pointing to arguments that were not raised by the parties out of their own initiative. The experiences of respondents regarding arbitration proceedings show that, in practice, arbitrators do not always use their abilities to actively manage arbitration proceedings. Only 26% of respondents stated that the arbitrators did so in all of their cases, and 59% stated that the arbitrators actively managed the proceedings only in some of their cases.

Arbitral institutions

› The answers in the survey confirm that the most popular Polish arbitral institution is the Court of Arbitration at the Polish Chamber of Commerce in Warsaw (91% of respondents used its services). The Lewiatan Court of Arbitration was placed second (39%), and the Court of Arbitration at the Polish Bank Association is also relatively popular (19%).

› Among the international arbitral institutions, the most important institution from the Polish perspective is the International Court of Arbitration of the International Chamber of Commerce in Paris (ICC). Among the respondents who had experience of any international arbitral institution, 83% pointed to the ICC. Other popular arbitral institutions are the London Court of International Arbitration (LCIA) (32% of respondents), the Arbitration Institute of the Stockholm Chamber of Commerce (SCC) (22% of respondents) and the Vienna International Arbitral Centre (VIAC) (20% of respondents).

› When asked about the most important criterion of choosing an arbitral institution both in Poland and internationally, the decisive factor in both cases was the reputation of the institution (47% of the answers concerning Poland, and 62% with regard to international institutions). Criteria such as low costs, up-to-date arbitration rules etc. were ranked lower down. It demonstrates that in dispute resolution services, the trust for a particular institution is of utmost importance.

Costs of Arbitration

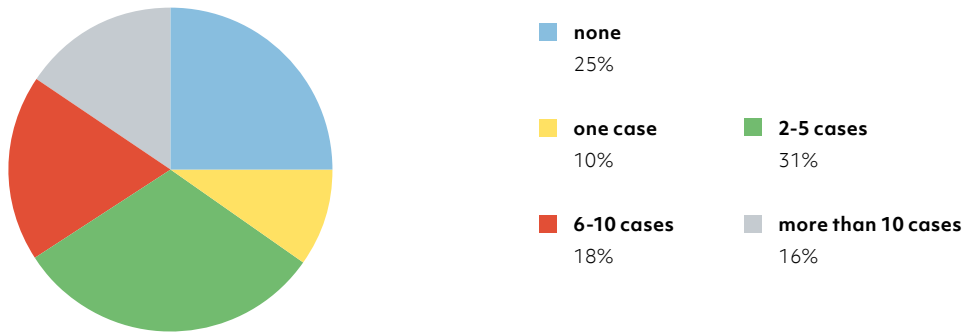
› The answers of respondents concerning the preferred principle of deciding the costs of arbitration differ. While 44% of respondents stated that the unrestricted "loser pays" principle should apply, almost the same number of respondents (41%) answered in favour of a principle whereby the losing party pays the entire costs of the proceedings, but covers the other party's costs of legal representation only up to a capped amount. What is interesting, 15% of the respondents supported the rule whereby each party bears its own costs, regardless of the outcome of the dispute (known as the "American rule").

01. Experience from past arbitration proceedings

In the first part of our survey, we asked the respondents about their experience concerning arbitration proceedings they participated in.

Our respondents differ in their arbitration experience. Most of them have participated in two to five arbitration proceedings in the last five years (31% of the votes). Another 16% indicated that they have participated in over ten arbitration proceedings in the last five years, while 18% stated that they have taken part in six to ten such proceedings. A quarter of the respondents admitted that they did not participate in any arbitration cases (25%), and 10% stated that they had participated in only one arbitration in the last five years.

Chart 1: How many arbitration proceedings have you participated in over the last five years?

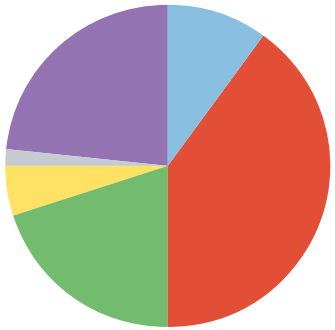


The values of the disputes our respondents participated in were relatively high, with 46% of the respondents having participated in two to five proceedings with a value of PLN 1 to 10 million (approx. EUR 250k to 2.5 million) in the last five years (15% participated in such proceedings once). A significant percentage of respondents participated in disputes with a value of PLN 10 to 100 million (approx. EUR 2.5 million to 25 million), with 25% of the respondents participating in such proceedings once, and 19% having taken part in two to five such proceedings. There were 21% of the respondents who indicated that they had participated in one proceeding with a value exceeding PLN 100 million (approx. EUR 25 million), and the same number stated that they had been involved in two to five such proceedings.

Chart 2: What were the values of disputes in the arbitration proceedings in which you have participated in the last five years?

When asked about the results of arbitration proceedings our respondents participated in, the highest percentage (40%) answered that in they mostly represented the party that won the dispute. Some 10% of the respondents claimed to have won all the cases, while 20% stated that they won the same number of cases as they lost. Only 5% of the respondents indicated that they lost the most of the time, and 2% admitted to losing all their cases.

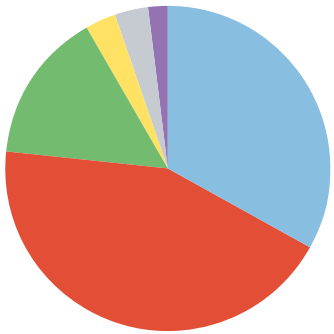
Chart 3: What were the results of the arbitration cases in which you participated?



- **the party that I represented won all of the cases** 10%
- **the party that I represented won the majority of cases** 40%
- **the parties that I represented won as many cases as they lost** 20%
- **the party that I represented lost the majority of cases** 5%
- **the party that I represented lost all of the cases** 2%
- **difficult to say** 23%

The responses show that arbitration proceedings in Poland relatively rarely end in settlement. Over 33% of respondents stated that none of the cases they were involved in ended in a settlement, and 43% claimed that the minority of cases were settled. Only 15% indicated that a settlement was reached in half of their cases, and just a combined 6% of respondents stated that most or all of their cases were settled.

Chart 4: Please indicate how many of the arbitrations you were involved in ended with a settlement (in the course of the proceedings or after the award was issued)?



- **in none of the cases** 33%
- **in most of the cases** 3%
- **in the minority of cases** 43%
- **in all of the cases** 3%
- **in around half of the cases** 15%
- **difficult to say** 2%

We also asked respondents whether the losing party voluntarily complied with the arbitral award. There were 15% of respondents who indicated that the award was not voluntarily complied with by the losing party in any of the cases they were involved in, and 22% admitted that the voluntary compliance with the award occurred only in a small number of cases. About 20% of respondents stated that the award was voluntarily complied with in half of their cases, and 18% of the respondents claimed that such a situation occurred in most of the cases they had been involved in. Just 10% indicated that the losing party voluntarily complied with the award in all the cases they had been involved in.

Chart 5: Please indicate how often the arbitral award in cases you were involved in was voluntarily complied with?

- **in none of the cases** 15%
- **in all of the cases** 10%
- **in the minority of cases** 22%
- **no award was issued** 3%
- **in around half of the cases** 20%
- **difficult to say** 12%
- **in the majority of cases** 18%

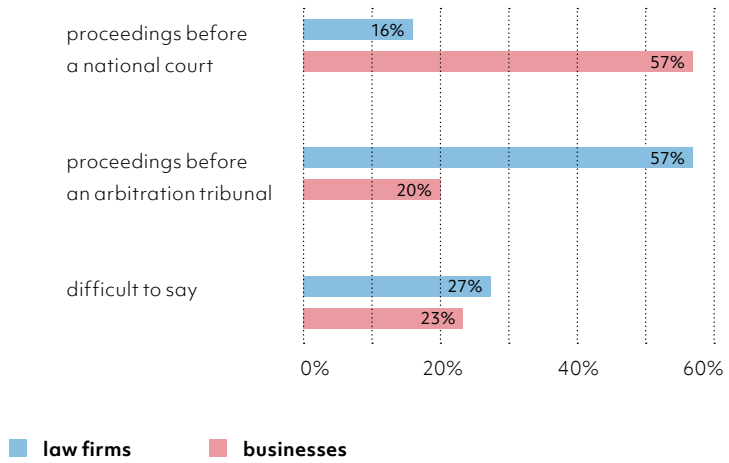
02. Opinion on arbitration

We examined how the respondents assess arbitration, and whether they prefer arbitration over national courts, as well as the reasons why they decide to use arbitration.

When asked about the preferred method of dispute resolution, the law firms (57% of which gave arbitration as their preferred method of dispute resolution, compared to only 16% who preferred national courts) and the businesses (among which only 20% preferred arbitration and 57% preferred national courts) differed in their opinions. Many respondents chose the answer "difficult to say" – as many as 27% of the law firms and 23% of the businesses.

One of the respondents pointed to "a mental barrier, meaning the habit of using national courts," which he claimed exists in Poland. It seems that this issue was reflected in the results of our survey. There are large differences in the opinions of businesses that have past experience with arbitration, and those who do not. As many as 71% of the businesses who had not participated in any arbitration preferred national courts. Among the businesses who had participated in arbitration proceedings at least once, the proportion changed in favour of arbitration. In this group, 38% favoured arbitration, 38% preferred national courts and 24% replied that it was difficult to say which dispute resolution mechanism they prefer.

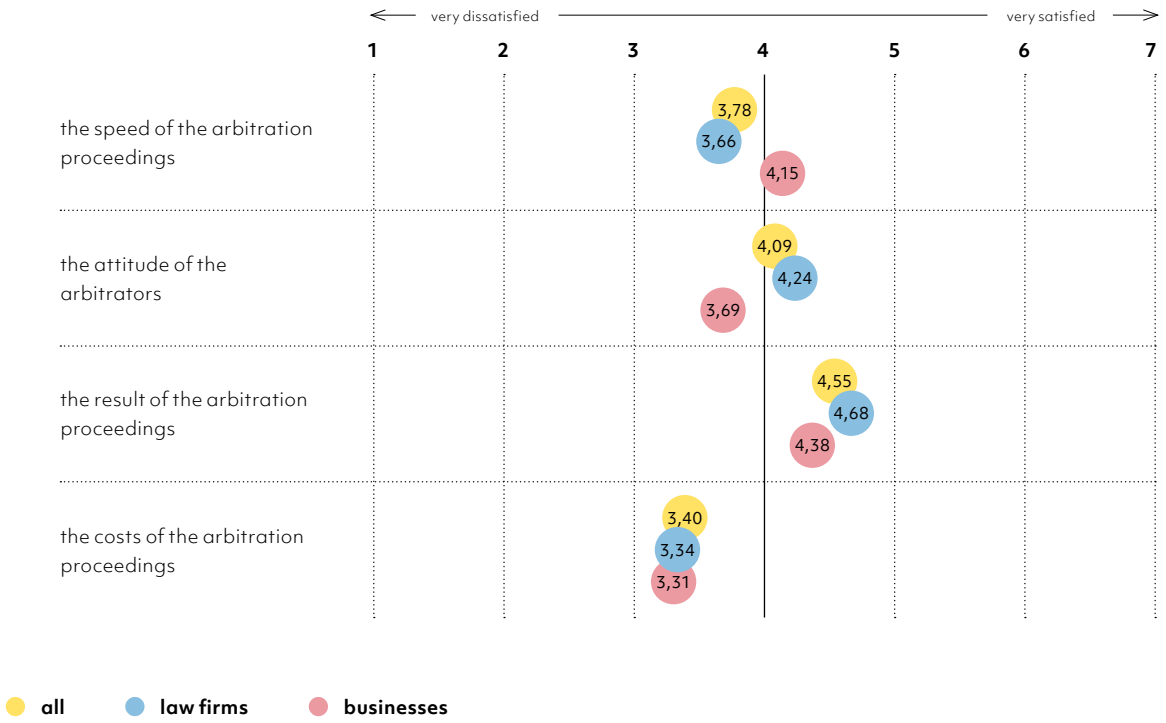
Chart 6: **Which method of dispute resolution do you prefer?**



We also examined whether the respondents were satisfied with their past arbitration experiences. To this end, we asked the respondents about several aspects of arbitration proceedings. It turns out that the respondents were most satisfied with the outcome of the proceedings (4.55 points on average). The level of satisfaction with the arbitrators' attitude was relatively high (4.09 points), as was the level of satisfaction with the speed of proceedings (3.78 points). The lowest level of satisfaction concerned the costs of arbitration (3.40 points).

There are discrepancies between the answers of respondents from law firms and from businesses. Firstly, the attitude of arbitrators was valued higher by the lawyers at law firms (4.24 points) than by the businesses (3.69 points). Secondly, the speed of the proceedings was assessed more harshly by the lawyers at law firms (3.66 points) than by the representatives of businesses (4.15 points). Both groups gave lowest ratings to the costs of arbitration proceedings.

Chart 7: Please indicate your level of satisfaction with various aspects of arbitration on a scale of 1 to 7, where 1 means "very dissatisfied" and 7 means "very satisfied".



The respondents see arbitration as highly informal (4.99 points on average on a 1 to 7 scale where 1 point means formal and 7 means informal).

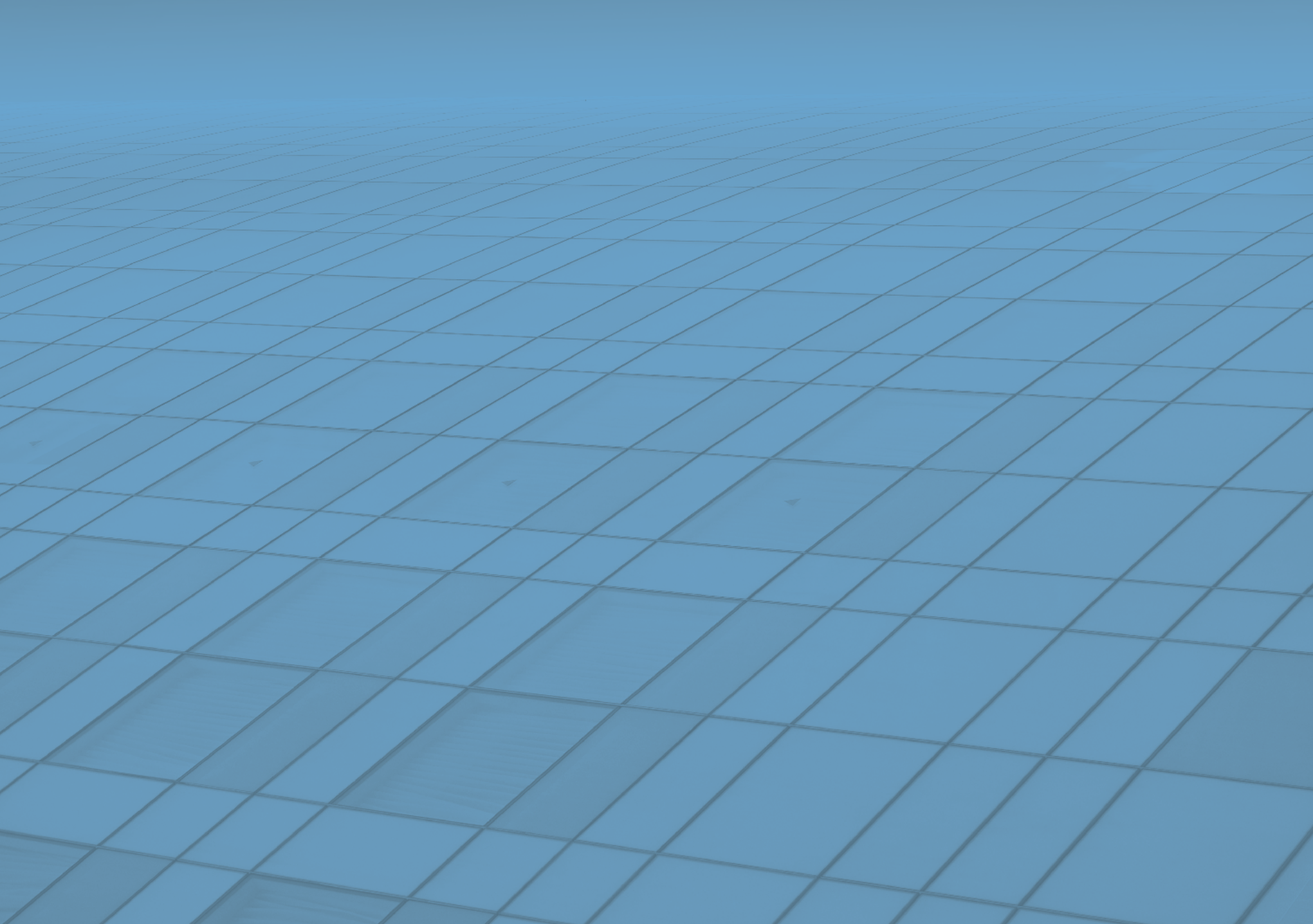
The results of the survey show that most of the respondents highly value the clarity of the rules under which arbitration proceedings are conducted (4.83 points) and the competence of the arbitrators (4.78 points). The respondents rated the impartiality of arbitrators with 4.35 points on average (where 7 points stood for completely impartial arbitrators). In this aspect, law firms assessed the arbitrators slightly higher (4.57 points) than businesses (4.17 points).

The duration of the proceedings was graded at 4.21 points on average (where 7 stood for the short time of the proceedings), though there are discrepancies in answers rendered by law firms and businesses. The former are not convinced that arbitration is speedy (3.84 points). As one of the lawyers commented, the length of arbitration proceedings is "comparable to court proceedings". Another respondent pointed to the "uncertainty [...] of the duration of the proceedings". In turn, the representatives of businesses gave a higher rating to the duration of the proceedings (as much as 4.63 points).

The survey confirms the generally bad opinion about the cost of arbitration (3.28 points in the entire group). The costs of arbitration were negatively commented on in individual remarks of the respondents as "very high", and arbitration was described as "too expensive (higher costs than in national courts)".

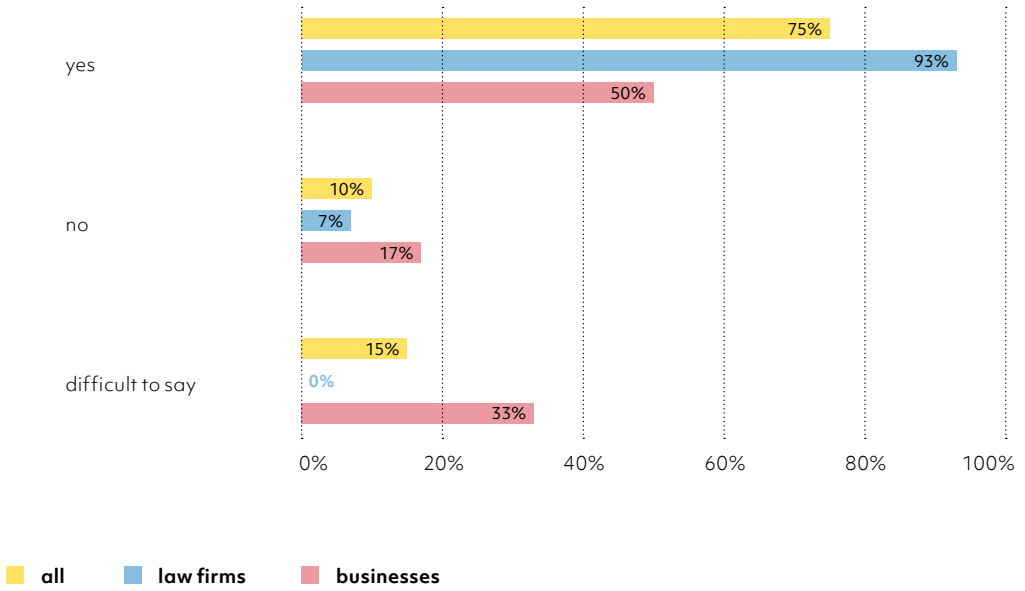
See the chart on the opposite page →

Chart 8: **Please assess the features you feel characterise arbitration proceedings, using the scale below.**



The responses to the question as to whether the respondents intend to use arbitration in the future provide an interesting insight into the general perception of arbitration in Poland. As many as 75% of respondents declared that they intend to use arbitration, whereas only 10% of the answers were negative and 15% of the respondents were unsure. The percentage of respondents who declared an intention to use arbitration in the future was higher among respondents from law firms (93% with only 7% of negative answers) than among respondents from businesses (50% with 17% of negative answers).

Chart 9: Do you intend to use arbitration in the future?



03. Arbitrators

The questions in this part of the questionnaire focused on the perception of arbitrators and their role in arbitration proceedings.

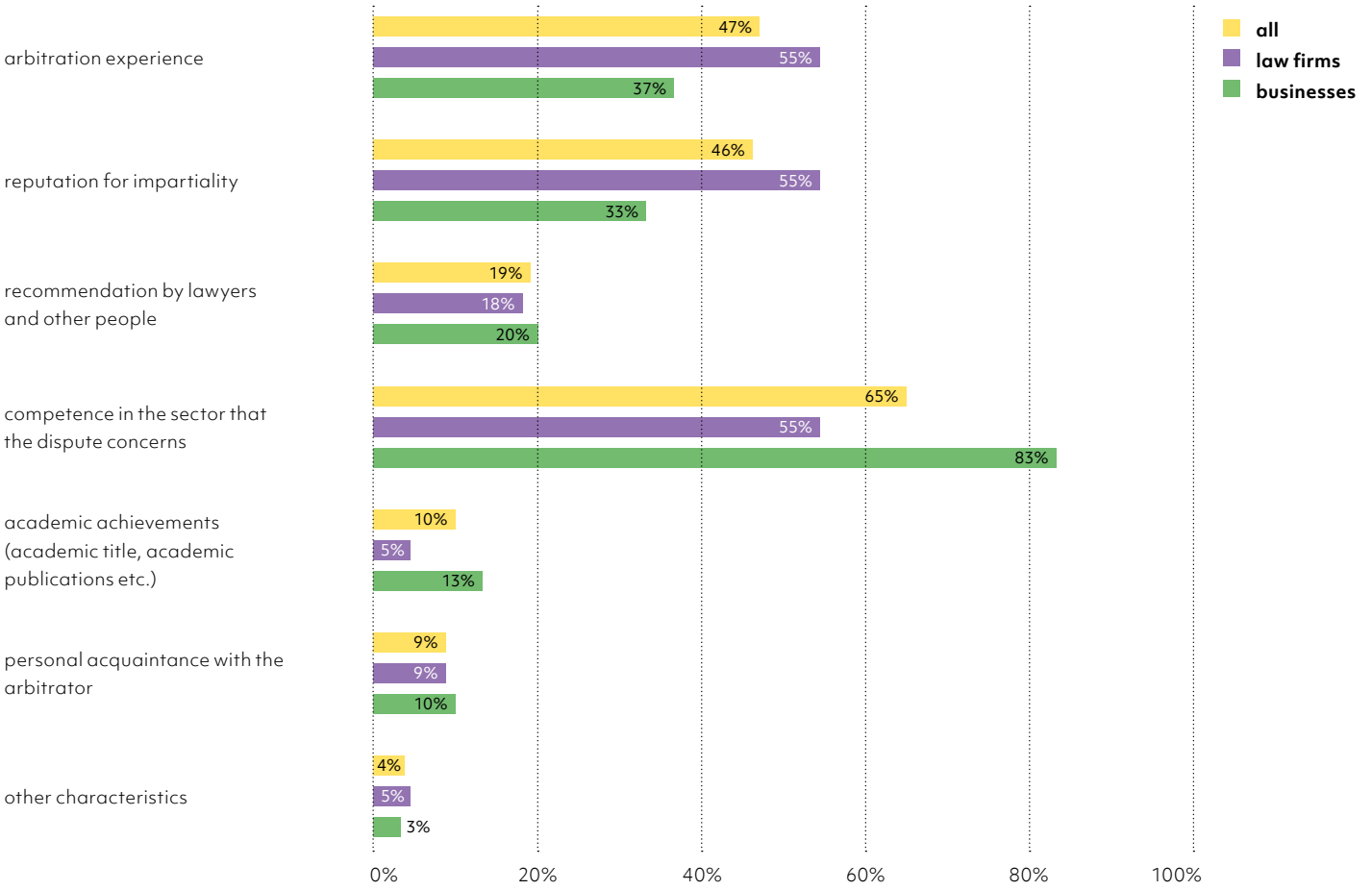
The most important characteristic that the users consider when appointing an arbitrator is a candidate's experience in the relevant sector (65% of answers). There were 47% of respondents who indicated that arbitration experience is important, while 46% pointed to the candidate's reputation as an impartial person. Much less significance was attached to the recommendation of the arbitrator by someone else (19%) and the academic achievements of the arbitrator (10%). Just 9% of the respondents admitted a personal acquaintance with the arbitrator is important.

While the law firms placed a higher value on arbitration experience and the reputation for impartiality (55% of the answers each), the competence of an arbitrator in the sector that the dispute concerns is more important for businesses (as many as 83% of the answers). The significance of the latter factor is confirmed by a remark from one of our respondents who claimed "the arbitrators had no idea about the specific nature of the sector that the dispute concerned."

One of the respondents mentioned the difficulties that are sometimes connected with the appointment of arbitrators, indicating that "the very limited number of arbitrators" and the fact that "the same people are appointed as arbitrators over and over again" show that "the group of active arbitrators [...] is too small."

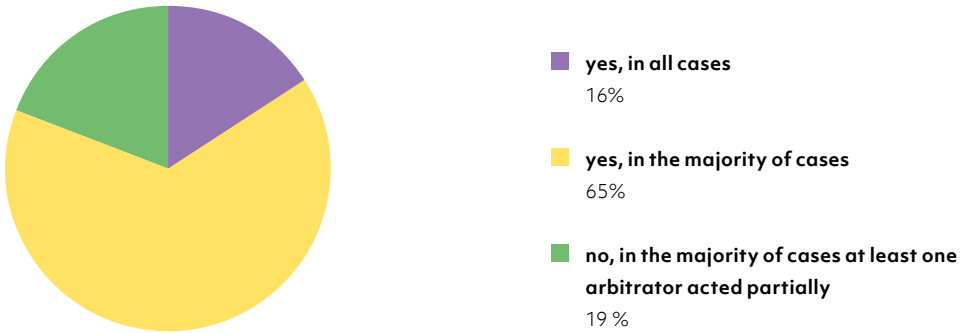
See the chart on the opposite page →

Chart 10: Please indicate the two most important characteristics that you consider when appointing an arbitrator.



It is clear that one of the basic duties of an arbitrator is the requirement to maintain impartiality. However, as many as 19% of the respondents stated that in the majority of cases they were involved in, at least one arbitrator acted partially. There were 65% of respondents who said that in most cases the arbitrators acted impartially, while 16% indicated that in all the cases they were involved in, the arbitrators acted in a way that complied with the requirement of impartiality. The attitude that users of arbitration expect from arbitrators will be discussed under the next question.

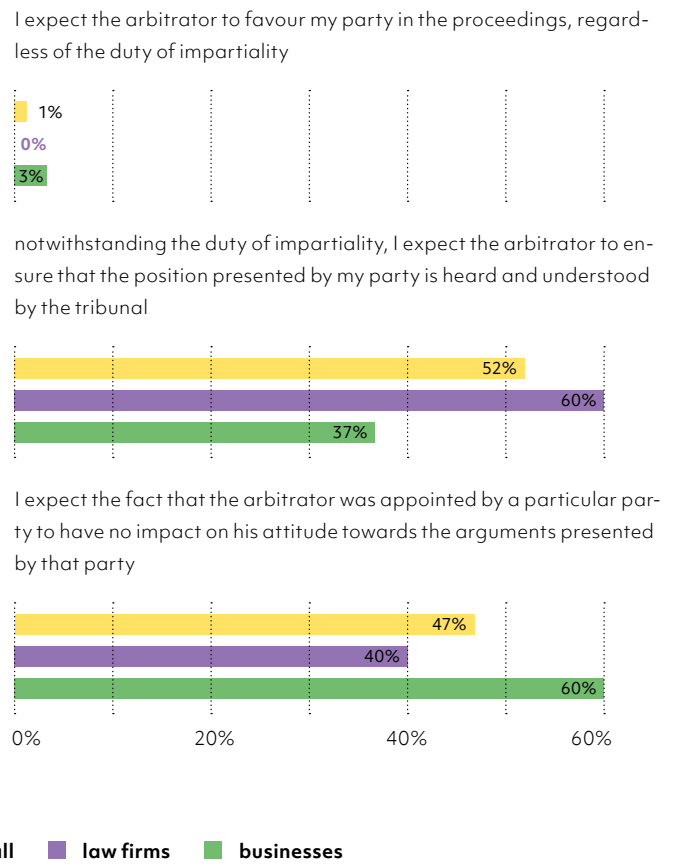
Chart 11: **In your opinion, did the arbitrators act impartially in the arbitration proceedings you were involved in?**



Although the general obligation to remain independent and impartial is not questioned, there is a discussion on aspects of the arbitrators' behaviour during the proceedings. In particular, it is questioned whether the role of a party-appointed arbitrator is the same as that of the presiding arbitrator. In order to examine how Polish businesses and law firms see this issue, we asked about their expectations regarding the behaviour of a party-appointed arbitrator. What is interesting, the largest group of respondents (52%) considered that it is the role of party-appointed arbitrators, notwithstanding their basic duty of impartiality, to ensure that the position of the party that appointed them is heard and understood by the tribunal. A slightly smaller percentage of respondents (47%) indicated that the arbitrator's appointment by a given party should have no impact on his attitude towards the arguments presented by that party.

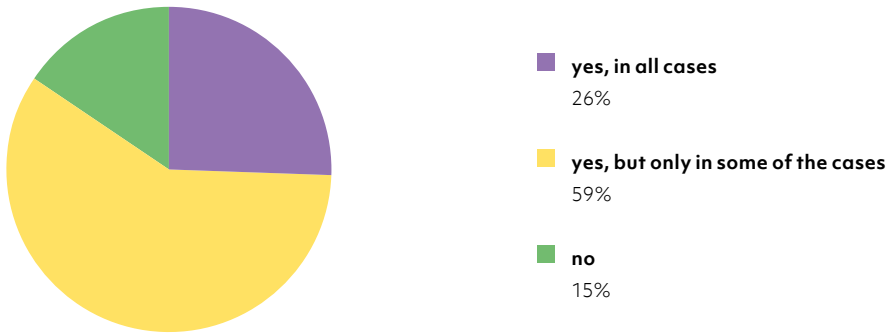
There were differences in the answers to this question rendered by the law firms and businesses. It turns out that more businesses are in favour of the model of an arbitrator uninfluenced by being appointed by one of the parties (60% of businesses answered in this way). The lawyers at law firms prefer the arbitrator they appoint to at least ensure that the position presented by the lawyers of the party that appointed it is heard and understood by the entire tribunal (according to 60% of the lawyers).

Chart 12: **Which of the statements below best describes your expectations towards the behaviour of the arbitrator you appointed?**



We also asked about the activity of the arbitrators in managing the arbitration proceedings, i.e. scheduling pre-hearing conferences, setting schedules for the exchange of briefs and for the hearings, as well as actively managing the taking of evidence. It turns out that in Polish arbitration, this kind of activity of the arbitrators is not a rule. Only 26% of respondents indicated that the arbitrators actively managed the proceedings in the majority of their cases. As many as 59% of the respondents claimed that the arbitrators actively managed the proceedings only sometimes. About 15% of the respondents reported that the arbitrators did not manage any of their cases. One of the respondents commented on this issue, stating that "the main problem is that not many arbitrators do what they say they do." He claimed that while arbitrators often stress that "it is important to set a procedural calendar or issue a procedural order," in reality "these practices are not applied, or the procedural orders and calendars are insufficient and incomprehensive."

Chart 13: **Please indicate whether, in arbitrations you were involved in, the arbitrators actively managed the arbitral proceedings, e.g. whether they scheduled a pre-hearing conference, set a schedule for an exchange of briefs and hearings etc.?**



We examined the arbitration users' expectations towards the activity of the arbitrators in the arbitration proceedings. Even though an active style of conducting proceedings is sometimes seen as a breach of the adversarial principle, or even a breach of the obligation of impartiality, the majority of the respondents expect the arbitrators to conduct proceedings in an active manner (49% firmly agreed that the arbitrator should assume an active role in the proceedings, and another 30% asserted they were rather positive about such an active role). Only 18% of the respondents answered that the arbitrator rather should not or definitely should not act in an active way.

The answers given by the respondents show that they do not always carry out a pre-appointment interview, i.e. a brief conversation between a party and arbitrator before appointing him or her to a particular case. Such a conversation usually concerns the availability of the arbitrator, the lack of a conflict of interests, their experience, knowledge, and specialisation. There were 38% of respondents who indicated that they do not conduct such an interview, and 32% claimed that they do it only in some cases. Only 30% stated that they always carry out a pre-appointment interview.

Chart 14: Do you think that an arbitrator should be active during the proceedings, e.g. asking parties and witnesses questions, pointing out issues or legal arguments that were not raised by the parties?

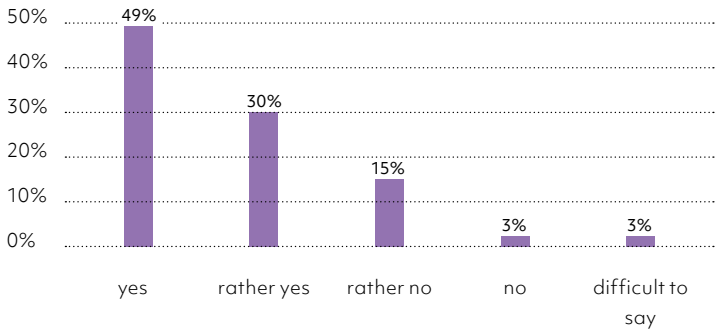
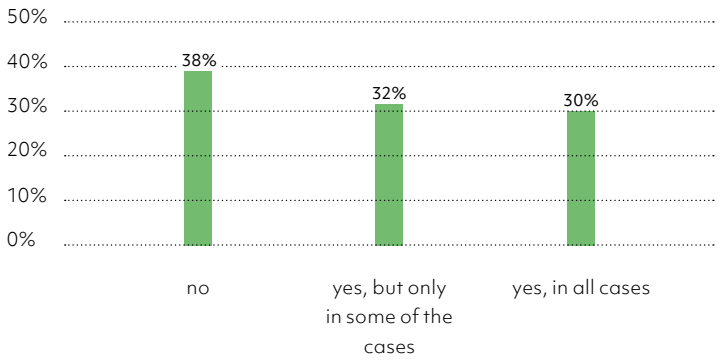


Chart 15: Do you conduct pre-appointment interviews with prospective arbitrators?

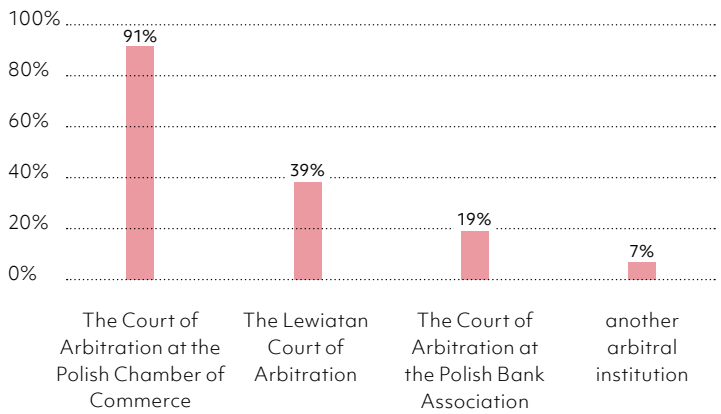


04. Arbitral institutions

The questions in this part of the survey concerned experience, criteria, and preferences regarding the choice of Polish and international arbitral institutions.

The answers clearly show that the most popular Polish arbitral institution is the Court of Arbitration at the Polish Chamber of Commerce in Warsaw. Over 91% of the respondents answered that they had taken part in proceedings in this institution. This is not surprising, as the Court of Arbitration at the Polish Chamber of Commerce is the oldest Polish arbitration institution and, according to its own statistics, adjudges the largest number of cases in Poland (250 proceedings initiated in 2015 and 300 proceedings in 2014). The Lewiatan Court of Arbitration was ranked second, as 39% of the respondents used that court (58 proceedings were initiated in 2014, there is no available data for 2015). A still considerable 19% of the respondents used the services of the Court of Arbitration at the Polish Bank Association, and just 7% of the respondents used the services of other domestic arbitral institutions.

Chart 16: Which arbitral institutions in Poland have you used? (you can indicate more than one)



When answering a question concerning which arbitral institution in Poland the respondents would use to resolve their dispute, 54% of the respondents pointed to the Court of Arbitration at the Polish Chamber of Commerce, 33% stated that they would choose the Lewiatan Court of Arbitration. Just 5% of the respondents indicated the Court of Arbitration at the Polish Bank Association, and 8% of the respondents would choose a different institution. Among all of the respondents who had used the Court of Arbitration at the Polish Chamber of Commerce, 56% of them indicated it as their preferred institution. Among the respondents who had used the Lewiatan Court of Arbitration, 45% named this institution as their preferred choice.

When asked about the most important factor when choosing an arbitral institution in Poland, the respondents indicated that it is primarily the good reputation of the institution (47%). Factors such as up-to-date and friendly arbitration rules (24%) and low costs (12%) were placed further down. About 11% of the respondents admitted that they just choose the arbitral institution out of habit.

Chart 17: Which Polish arbitral institution would you choose to resolve a dispute?

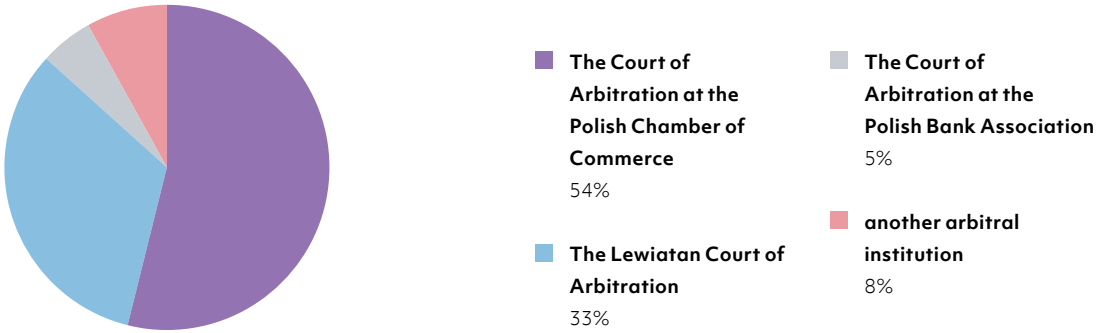
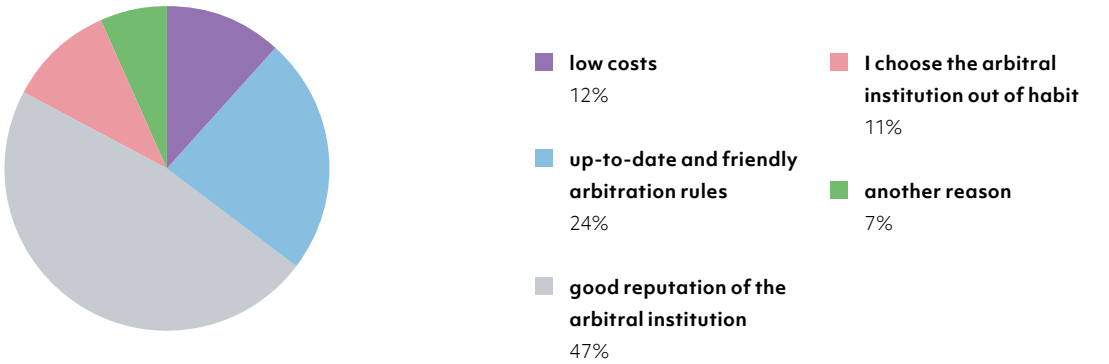
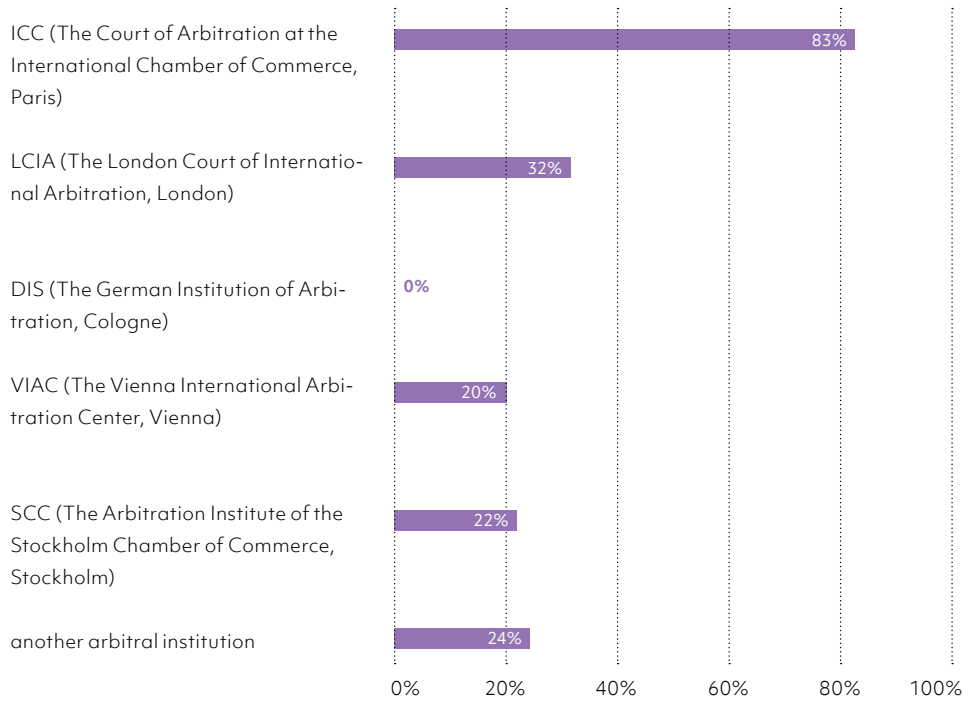


Chart 18: What is the most important factor when choosing an arbitral institution in Poland?



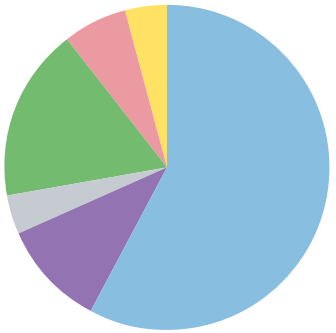
In our survey, we also asked about the experiences and opinions of respondents concerning international arbitral institution. The results confirm that the most significant international arbitral institution, from the standpoint of a Polish user, is the International Court of Arbitration at the International Chamber of Commerce (ICC). Among the people who had experience with an international arbitral institution, 83% of the respondents pointed to the ICC. Other popular institutions are the London Court of International Arbitration (LCIA) – 32% of respondents, and the Arbitration Institute at the Stockholm Chamber of Commerce (SCC) – 22% of respondents, and the Vienna International Arbitral Centre (VIAC) – 20% of respondents.

Chart 19: Which international arbitral institutions have you used? (you can indicate more than one)



The ICC prevails not only as the most popular but also as the preferred international arbitration tribunal. As many as 58% of respondents answered that they would choose it when resolving a dispute (only one preferred institution could be indicated). What is interesting, the VIAC in Vienna was the second most popular choice (17%) and the LCIA came in just third (10%).

Chart 20: Which foreign arbitral institution would you choose if you wanted to resolve a dispute?



ICC (The International Court of Arbitration of the International Chamber of Commerce, Paris)
58%

LCIA (The London Court of International Arbitration, London)
10%

DIS (The German Institution of Arbitration, Cologne)
4%

VIAC (The Vienna International Arbitration Center, Vienna)
17%

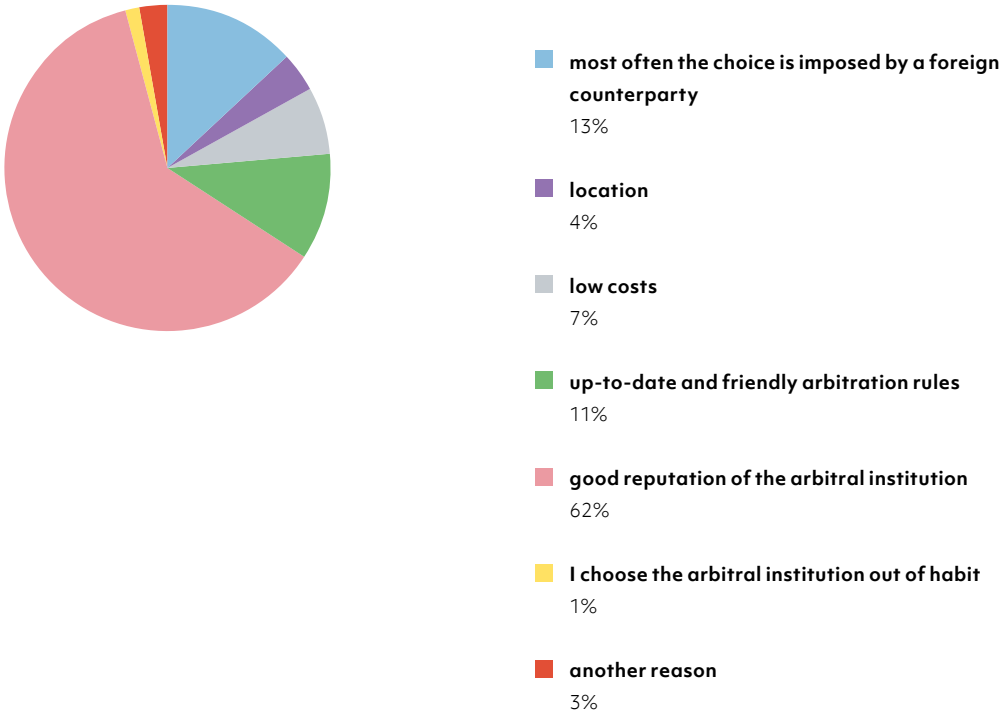
SCC (The Arbitration Institute of the Stockholm Chamber of Commerce, Stockholm)
7%

another arbitral institution
4%

As in the case of Polish arbitration institutions, we asked about the most important factor when choosing an international arbitral institution. Good reputation prevails here even more clearly than in the case of domestic arbitration. As many as 62% of the respondents indicated this criterion. Criteria such as low costs (7%) and location (4%) turn out to be far less significant. The importance of up-to-date and friendly arbitration rules is relatively low (11%). About 13% of the respondents admitted that, in general, they have no influence on the choice of an arbitral institution in an international transaction, because it is imposed by the stronger foreign counterparty.

The low significance of the criterion of up-to-date arbitration rules is not surprising. The competition on the international market of arbitration services means that arbitration rules are regularly improved according to the newest standards and good practices. The low importance of the criterion of low costs might be surprising because there are differences in this regard between the various arbitral institutions in the world.

Chart 21: What is the most important factor when choosing an international arbitral institution?

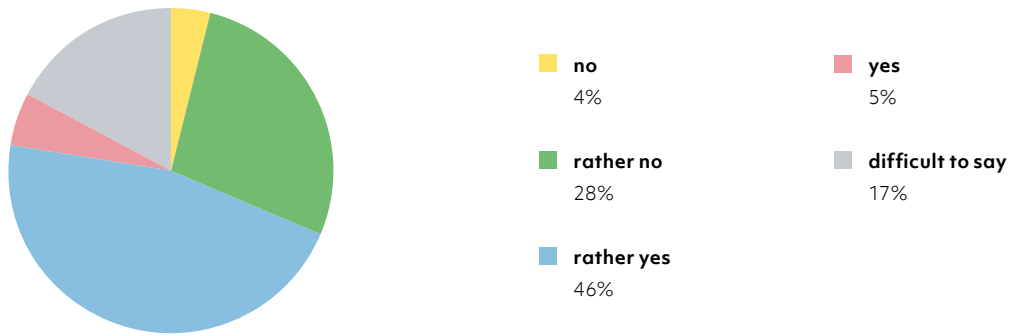


05. Arbitration costs

In the last part of the survey, we analysed some of the aspects of the decisions concerning the costs of arbitration and the assessment of prevailing practices in this area.

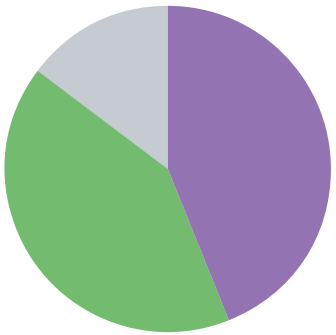
It is often stressed that the rules on deciding the costs of arbitration should be clear and predictable for the parties. We asked the users of arbitration whether, in their experience, they think that decisions on the costs in arbitration are clear and predictable. In all, 51% of the respondents answered in the positive ("yes" and "rather yes" answers), while 32% of the respondents indicated that the rules on deciding the costs of arbitration are not sufficiently clear and predictable for them ("no" and "rather no" answers).

Chart 22: **Are the rules on deciding about costs in arbitration clear and predictable?**



With regard to the issue of the costs of arbitration, we asked which rule should apply when deciding the costs of arbitration. Different principles are applied in international arbitration (the "loser pays" rule, the "American rule" whereby each party bears its own costs, and various possible combinations of these two). In 2015, the Arbitration Rules of the Arbitration Court at the Polish Chamber of Commerce were significantly changed. In their new version, the rules depart from a rule capping (up to an exact amount) reimbursable costs of legal representation in favour of an unrestricted "loser pays" rule. Taking the above into account, we asked the respondents which principle regarding costs should apply in arbitration. We found that 44% of the respondents spoke in favour of the unrestricted "loser pays" rule, whereby the losing party must pay the other party the entire costs of arbitration, including the entire (albeit "reasonable") costs of legal representation. Almost the same number of respondents (41%) spoke in favour of the principle whereby the losing party pays the costs of arbitration in full, and the costs of legal representation only to a capped amount. What is interesting, 15% of the respondents supported the rule under which each party bears its costs irrespective of the outcome of the dispute.

Chart 23: What rule concerning the costs of proceedings should apply in arbitration?



"loser pays", i.e. the losing party must pay the entire costs of the proceedings and legal representation
44%

the losing party pays the entire costs of the proceedings and the costs of legal representation only to a capped amount (e.g. determined in the arbitration rules)
41%

each party bears its own costs irrespective the outcome of the dispute
15%

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Kozminski University

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University of Economics in Katowice

The University of Economics in Katowice is the largest university in Upper Silesia offering education in the field of social-economic sciences. The person responsible for this project at the University of Economics was dr Jolanta Zrałek from the Faculty of Management, Department of Consumer Research.