Polish Arbitration Survey
2019

CASE MANAGEMENT IN ARBITRATION

KOCUR

KOZMINSKI UNIVERSITY

Polish Arbitration Survey
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CASE MANAGEMENT IN ARBITRATION

It is our great pleasure to present the results of our survey on case management in arbitration. The goal of the survey was to determine what rules, techniques and practices are used with respect to the management of arbitration proceedings in Poland, and how they are viewed by arbitration practitioners.

The survey was conducted at the turn of 2018 and 2019. Our respondents answered questions in an online questionnaire. We sent the questionnaire to arbitration practitioners, i.e. counsels representing parties in arbitration proceedings, and to arbitrators. In all, 108 arbitration practitioners took our survey and we would like to take this opportunity to thank all the respondents for their time and effort. The high number of responses demonstrates that the issues raised in our survey are important for the arbitration community in Poland.

We hope that the findings of the survey will help to foster good practices in respect of the management of proceedings in arbitration in Poland.

Michał Kocur
Kocur & Partners

Prof. Maciej Zachariasiewicz
Kozminski University

Jan Kieszczyński
Kocur & Partners

00. Executive summary

› The questionnaire was completed by 108 respondents.

› The respondents indicated that arbitration proceedings most often last for 6-12 or 12-24 months. 30% of the respondents reported that the proceedings usually took 12-24 months, while 16% said that it was usually 6-12 months.

› The most common reason for arbitrations moving slowly is the chaotic management of the proceedings (53% of responses), while only a few respondents mentioned the inefficiency of the arbitral institution administering the dispute (8%).

› Only 22% of arbitrators, but as many as 64% of counsels, pointed to the chaotic management of proceedings as the main reason for the delay in arbitration.

› When asked about reasons for the delay in arbitration cases, a significant number of counsels opted for the answer "waiting for the final award after the proceedings have been completed" (42%), whereas arbitrators did not indicate this as a major cause of delay (only 7%).

› The practice of holding case management conferences is fairly well established in Polish arbitration practice. A considerable number of our respondents indicated that such conferences were held in most (38%) or all (22%) cases they participated in.

› Most respondents (76%) indicated that procedural orders are usually sufficiently precise and comprehensive.

108
respondents

12–24
months
the most frequently indicated length of arbitration proceedings

53%
of respondents
indicate chaotic management as the main reason for arbitrations moving slowly

› Nearly all of the respondents (97%) thought that procedural orders play a useful role in arbitration proceedings.

› The majority of our respondents answered that arbitrators should be active in the course of proceedings, but should not take the initiative when it comes to the taking of evidence (71% of answers).

› When asked about the degree to which the arbitral tribunal should be bound by the rules and time limits set in procedural orders, the majority of our respondents stated that arbitrators should follow them, but not strictly (60% of responses). There was almost no support (1% of responses) for the possibility of admitting pleadings or evidence submitted contrary to the framework set out by the procedural orders.

› The majority (85%) of our respondents feel that expert reports prepared by both tribunal-appointed experts and party-appointed experts could be used in arbitration cases.

› Most respondents (68%) agree that expert reports from experts appointed by the tribunal are more reliable than those submitted by party-appointed experts. 70% agree with the view that expert reports by the party-appointed experts may be credible, but should be thoroughly analysed by the arbitrators.

› A slight majority (52% of respondents) stated that expert reports from experts appointed by a party saved time in comparison to reports from tribunal-appointed experts.

› As many as 81% of respondents think that witness statements play a useful role, while 82% agree that witness statements help determine which witnesses should be heard, and thereby shorten the duration of the hearing. 85% of respondents agreed with the opinion that witness statements allow the parties to prepare for the examination of the other party's witnesses.

› According to the majority of our respondents (81%), witness evidence should be taken on the basis of written witness statements and subsequent cross-examination at the hearing, with the dominant role played by counsels.

› 59% of respondents believe that witness statements should be disregarded if the witness then fails to appear at the hearing, despite being ordered to attend by the arbitration tribunal.

› Most respondents felt that one hearing should be scheduled at the end of the proceedings (63% of votes).

› 31% of our respondents said that document production helped prove the essential facts needed to resolve the dispute. Another 37% pointed out that, although document production is often useful, it also causes delays in proceedings. In total, as many as 68% of our respondents believe that document production is useful for clarifying the facts of the case.

› 54% of respondents stated that the unethical behaviour of a party to the proceedings should affect the decision on costs, regardless of whether the parties have been warned about such a possibility.

› Views were split with respect to a system of financial penalties and rewards for arbitrators. While 47% of respondents were not in favour of applying fines and incentives to arbitrators, another 34% expressed a contrary view and would fine arbitrators if they do not deliver an award within the time limit set out in the arbitration rules.

85%
of respondents
say that expert reports can be used in arbitration cases, regardless of whether they are prepared by tribunal-appointed experts or party-appointed ones

68%
of respondents
think that document production is useful for clarifying the facts of the case

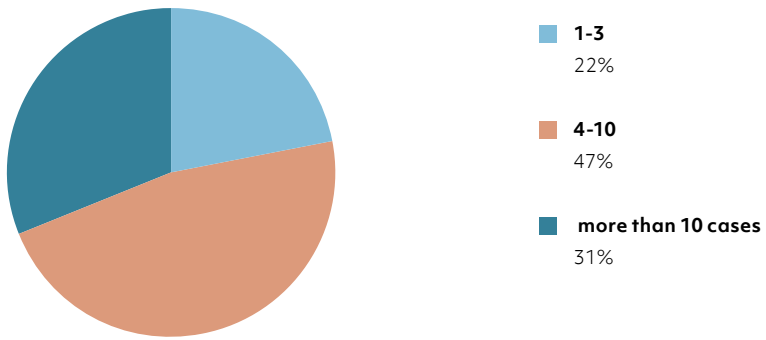
47%
of respondents
believe that there should be no financial penalties or incentives for arbitrators

01. Our respondents

In the first part of our survey, we asked our respondents about their level of experience in arbitration.

We asked our respondents about their level of experience in arbitration, i.e. the number of arbitration proceedings they had participated in over the last five years. Most respondents (47%[1]) answered that they had participated in four to ten cases. Another 31% of respondents had taken part in more than ten proceedings, and 22% stated that they had participated in one to three proceedings.

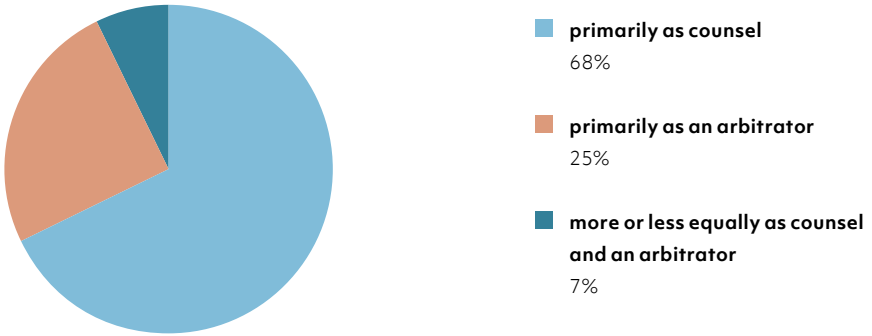
Chart 1: **How many arbitration cases have you participated in over the last five years?**



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

We also asked our respondents in what capacity they had participated in arbitration proceedings: whether they had acted primarily as counsels, or rather as arbitrators. Most of the respondents indicated that they had more frequently acted in the former role (68%), with 25% of respondents acting primarily as arbitrators. Only 7% of our respondents answered that they had acted in both these roles more or less the same number of times. Therefore, among arbitration practitioners, there are those who usually act as arbitrators and those who usually act as counsels. In this survey, we will refer to the former group as "arbitrators", and to the latter as "counsels". This classification is important for the results of the survey, because it shows how the answers depend on the role that lawyers play in the proceedings. Sometimes the responses provided by these two groups were significantly different.

Chart 2: In what capacity have you participated in arbitration proceedings?



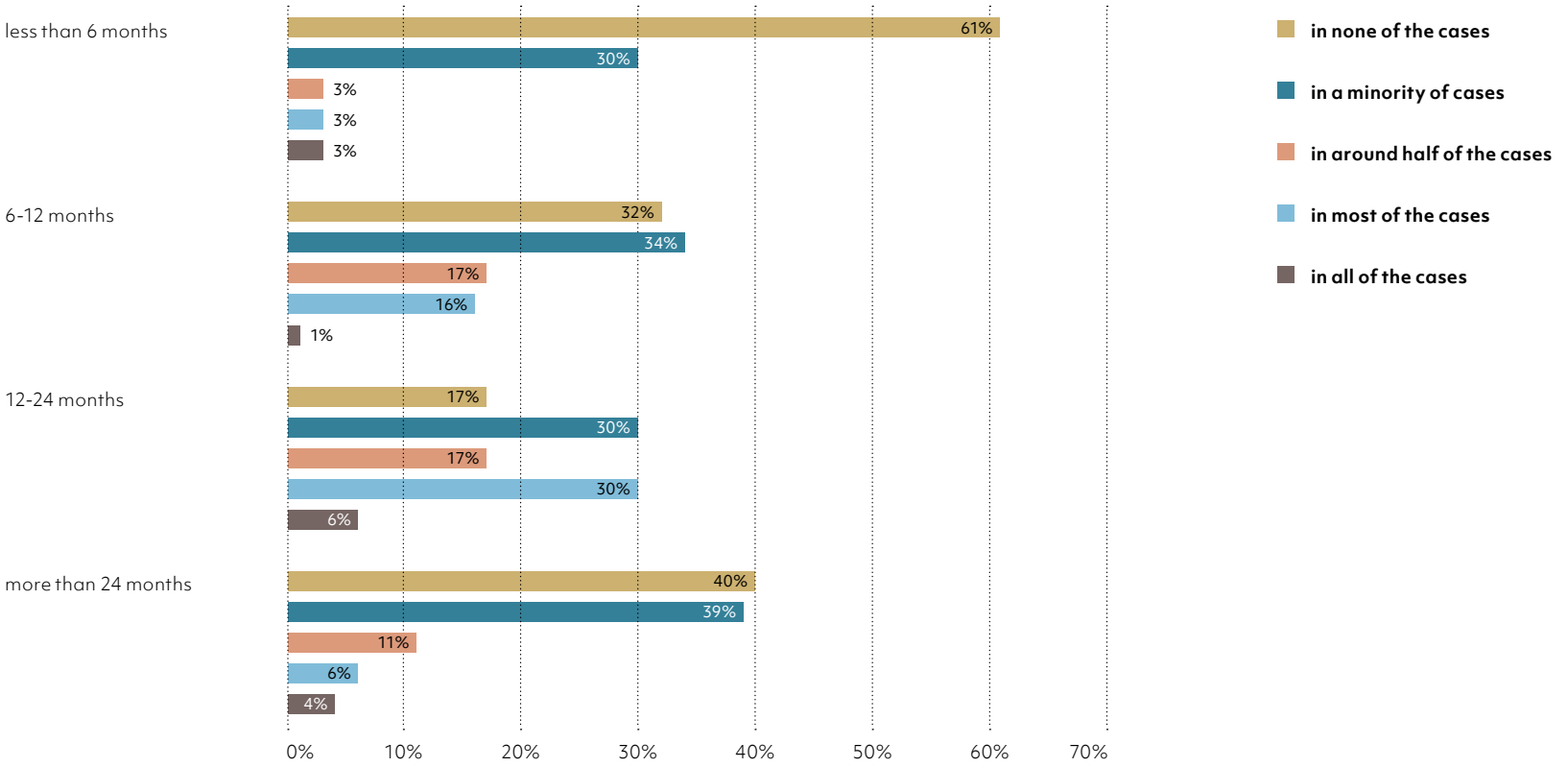
02. Length of arbitration proceedings

A key issue for the effectiveness of arbitration is the length of arbitration proceedings, so we examined how this aspect is assessed by our respondents.

We asked our respondents about the length of the arbitration proceedings they had participated in. 61% of our respondents said that none of the cases they had participated in had been concluded within six months. A further 30% stated that the proceedings had been concluded within six months in a minority of the cases they had been involved in. The good news is that, in the respondents' experience, arbitration proceedings seldom went on for longer than 24 months (40% answered that it had never happened to them, and 39% that it happened in a minority of cases). Our survey showed that arbitration proceedings most often last between 6-12 or 12-24 months, with the prevailing range being 12-24 months (30% said that this happened in most cases, compared to 16% of responses indicating that in most cases the proceedings lasted for 6-12 months).

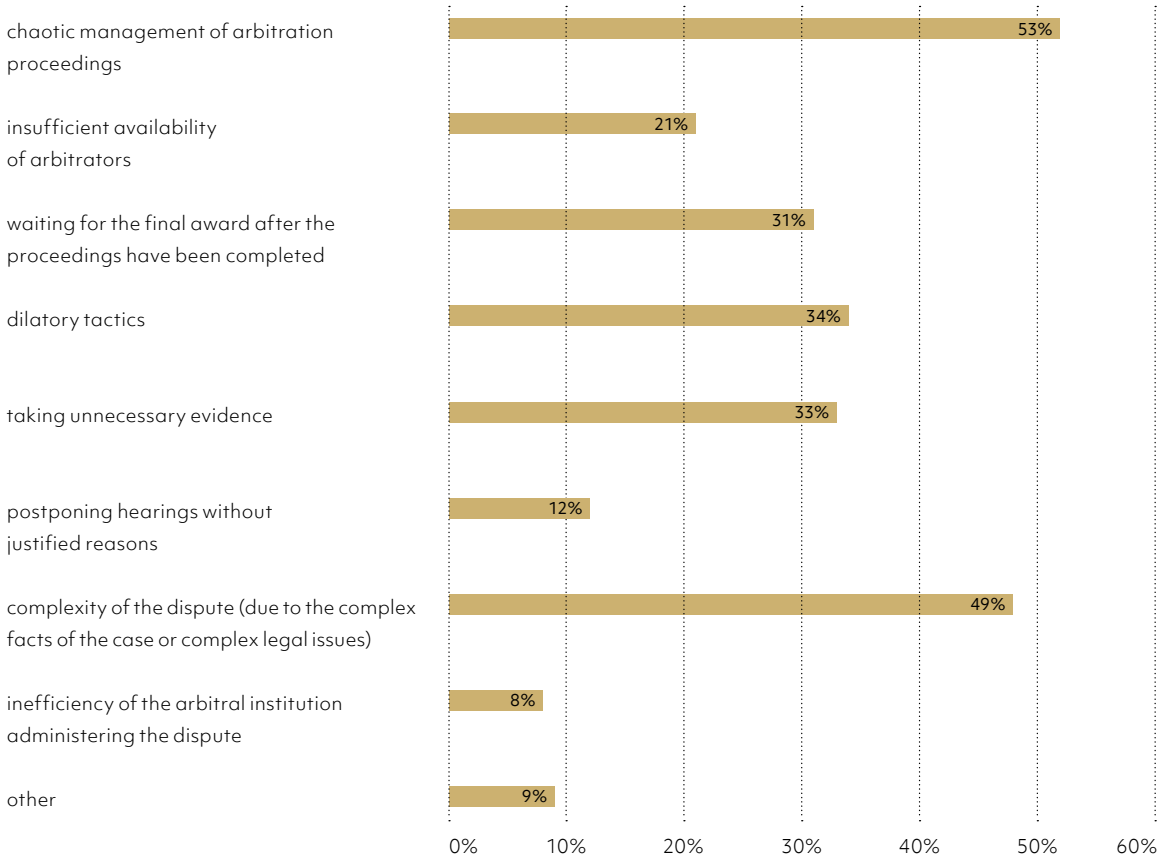
See the chart on the opposite page →

Chart 3: What was the length of the arbitration proceedings you have participated in (with the date of the constitution of the arbitral tribunal being the start date of the proceedings, and the date of delivery of the award being the end date)?



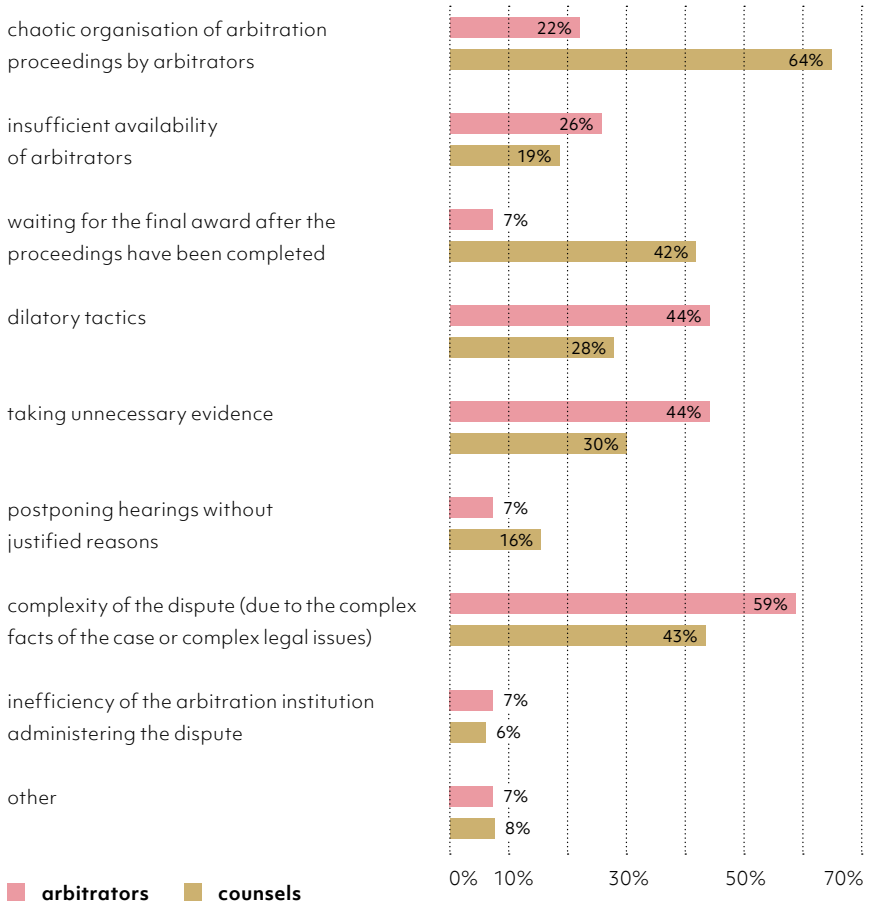
Our respondents were also asked to give the reasons for delays in arbitration proceedings. The most frequently indicated reason was chaotic management of arbitration proceedings (53% of answers). The complexity of the dispute, i.e. complex facts of the case or complex legal issues, was the answer given nearly as often (49% of answers). The third and fourth spots were taken by "deliberate actions of the counsels aimed at prolonging the proceedings" ("dilatory tactics") (34%) and "taking unnecessary evidence" (33%), respectively, followed in fifth place by "waiting for the final award after the proceedings have been completed" (31%). Our respondents also pointed to the insufficient availability of arbitrators (21%) and the practice of postponing hearings without justified reasons (12%). Respondents pointed to the inefficiency of the arbitral institution administering the dispute (8%) as the reason why the proceedings were prolonged. Several respondents also stressed the difficulties that arise in relation to evidence from reports in arbitration (the difficulty in finding an expert, waiting for reports, etc.).

Chart 4: What are the main reasons for delays in arbitration proceedings? (you can indicate up to three reasons)



The answers to the question about the reasons for delays in arbitration proceedings are different among arbitrators and counsels. Only 22% of arbitrators consider the chaotic organisation of proceedings as the main cause of delay. This result contrasts with the replies given by counsels. 64% of them stated that this was the main reason for the lengthiness of proceedings. In this context, it seems interesting that 44% of arbitrators consider the taking of unnecessary evidence an important reason for the length of arbitration proceedings (while only 30% of counsels agreed with this opinion). This may suggest that arbitrators, although generally feeling responsible for the management of arbitral proceedings, do not feel they are responsible for the proactive control over evidentiary proceedings through a critical examination of the parties' evidence. Arbitrators may often be inclined to think that the admission of all or almost all of the evidence material is necessary to ensure the parties' right to be heard and the due consideration of the case. They may also find it necessary to ensure the enforceability of an arbitration award. Among counsels, a considerable number of votes (42%) indicated waiting for the final award after the proceedings have been completed as a reason for prolonged proceedings. This indicates that counsels believe that an award should be issued in a shorter period of time. However, arbitrators did not recognise this particular factor as a significant cause of delay (only 7%). As many as 26% of arbitrators admitted that arbitrators are not available sufficiently, while only 19% of counsels saw this factor as a reason for the lengthiness of proceedings.

Chart 5: **What are the main reasons for delays in arbitration proceedings? (you can indicate up to three reasons)**

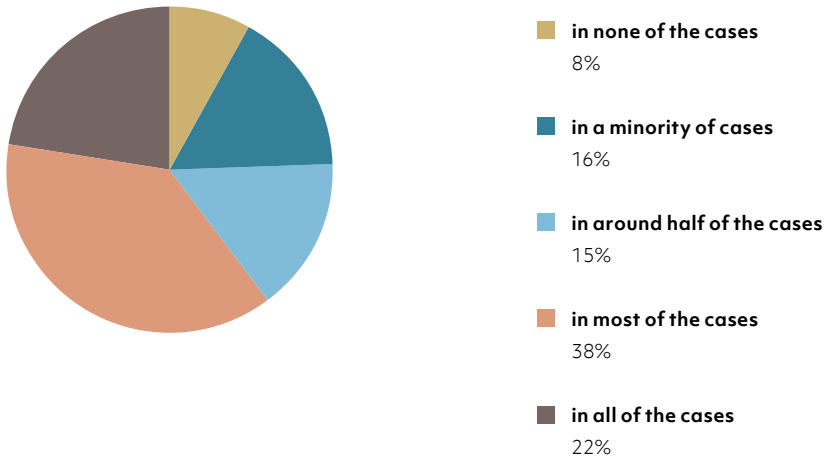


03. Case management conferences and procedural orders

In this part of the survey, our questions focused on the role of case management conferences and procedural orders.

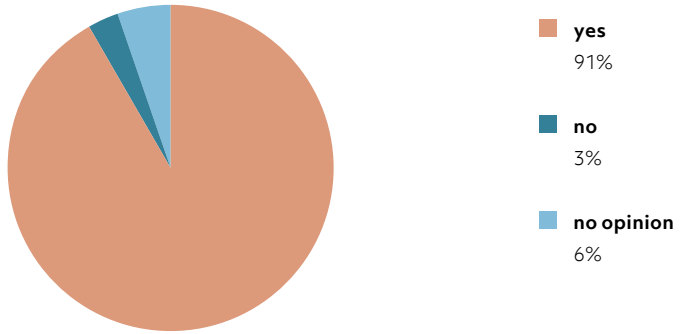
We asked our respondents how many arbitration cases they had participated in where there was a case management conference (either in the form of a teleconference or a meeting with the participation of the counsels). As it turns out, the practice of holding case management conferences is fairly well established in Polish arbitration practice. A considerable number of our respondents indicated that such conferences were held in the majority (38%) or in all (22%) of the cases in which they participated.

Chart 6: How many of the arbitration cases you have participated in had a case management conference (in the form of a teleconference or a meeting with the participation of the counsels)?



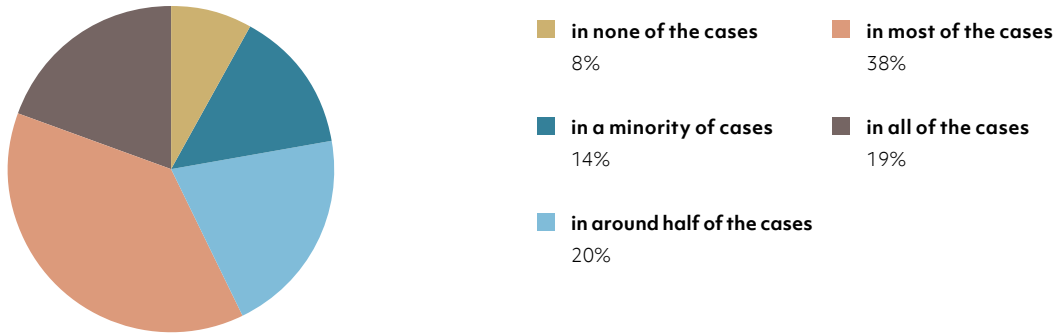
When questioned about the usefulness of case management conferences in arbitration, our respondents almost unanimously indicated that these conferences have a useful role (91% of votes in favour, as opposed to 3% of votes against, with 6% of respondents having no opinion on this matter).

Chart 7: Do case management conferences, in the form of a telephone/video conference, have a useful role in arbitration proceedings?



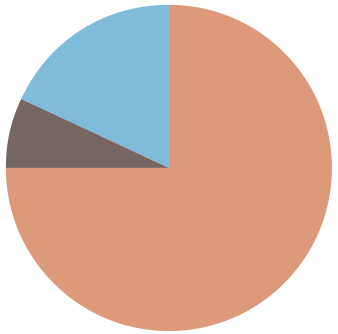
By asking this question, we wanted to find out about our respondents' experience with procedural orders. It appears that this instrument for managing arbitration proceedings has become popular in Polish arbitration practice. 19% of our respondents indicated that such an order was issued in all the cases they had been involved in, and 38% said that it was issued in most cases. Another 20% stated that procedural orders were issued in about half of the cases in which they had participated.

Chart 8: In how many arbitration cases you have been involved in did the arbitrators issue a procedural order?



Most of the respondents were convinced that procedural orders were usually sufficiently precise and comprehensive. 76% of respondents indicated that they were, in principle, sufficient. Only 7% thought that they were usually too general and insufficient. Around 18% said it was difficult to point to any rule here.

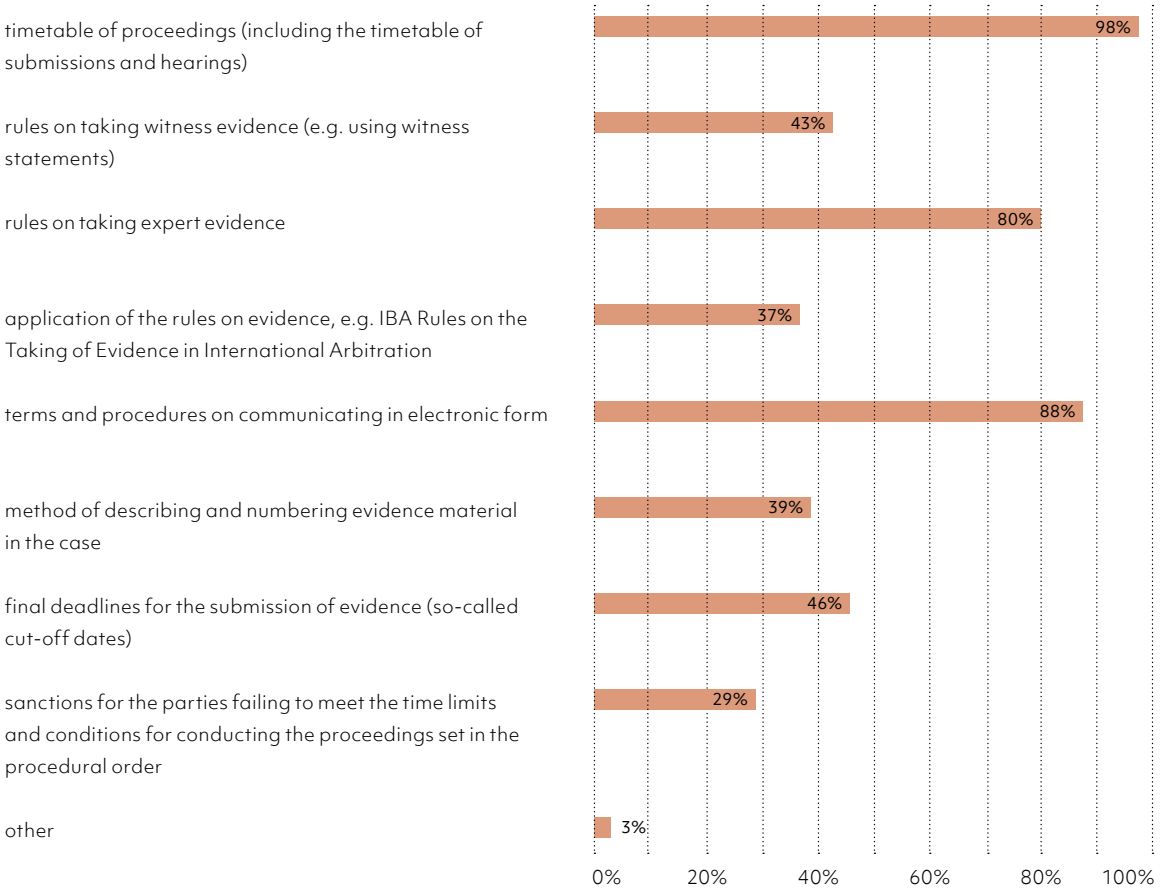
Chart 9: Were procedural orders sufficiently precise and detailed?



- **in principle, they were sufficient—they defined the timetable of proceedings (including the timetable of submissions and hearings) and the principles governing the conduct of proceedings**
  76%
- **most often they were too general and insufficient (for example, the timetable of all the essential elements of proceedings were not agreed in advance)**
  7%
- **sometimes they were sufficient and sometimes too general—it is difficult to point to any rule**
  18%

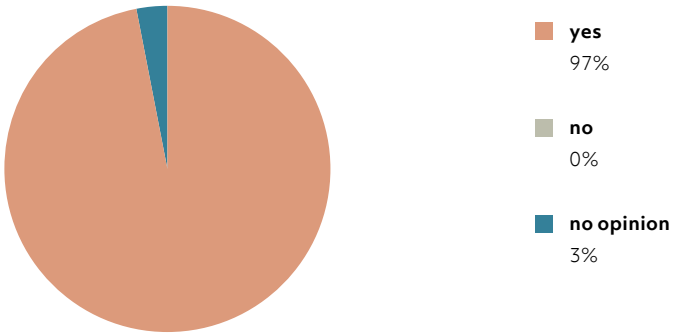
In light of our respondents' answers, the following should be considered as key components of every procedural order: a procedural timetable (including the timetable of submissions and hearings) (98%), terms and procedures regarding the method of communicating in electronic form (88%) and rules on taking witness evidence (e.g. using witness statements) (80%). The final deadlines for the submission of evidence (cut-off dates) (46%) and rules on taking expert evidence (43%) are also relatively popular. The less frequent components are: methods of annotating and numbering evidence material in the case file (39%), the application of evidentiary rules (e.g. IBA Rules on the Taking of Evidence in International Arbitration) (37%) and sanctions for the parties failing to meet the time limits and conditions for conducting the proceedings set out in the procedural order (29%).

Chart 10: In most cases, the procedural orders specified: (you can give any number of answers)



We also asked our respondents to assess the usefulness of procedural orders. Almost all the respondents (97%) stated that procedural orders play a useful role in arbitration proceedings. There were no opposing votes. Only 3% of respondents said that they had no opinion on this issue.

Chart 11: **Do procedural orders have a useful role in arbitration proceedings?**



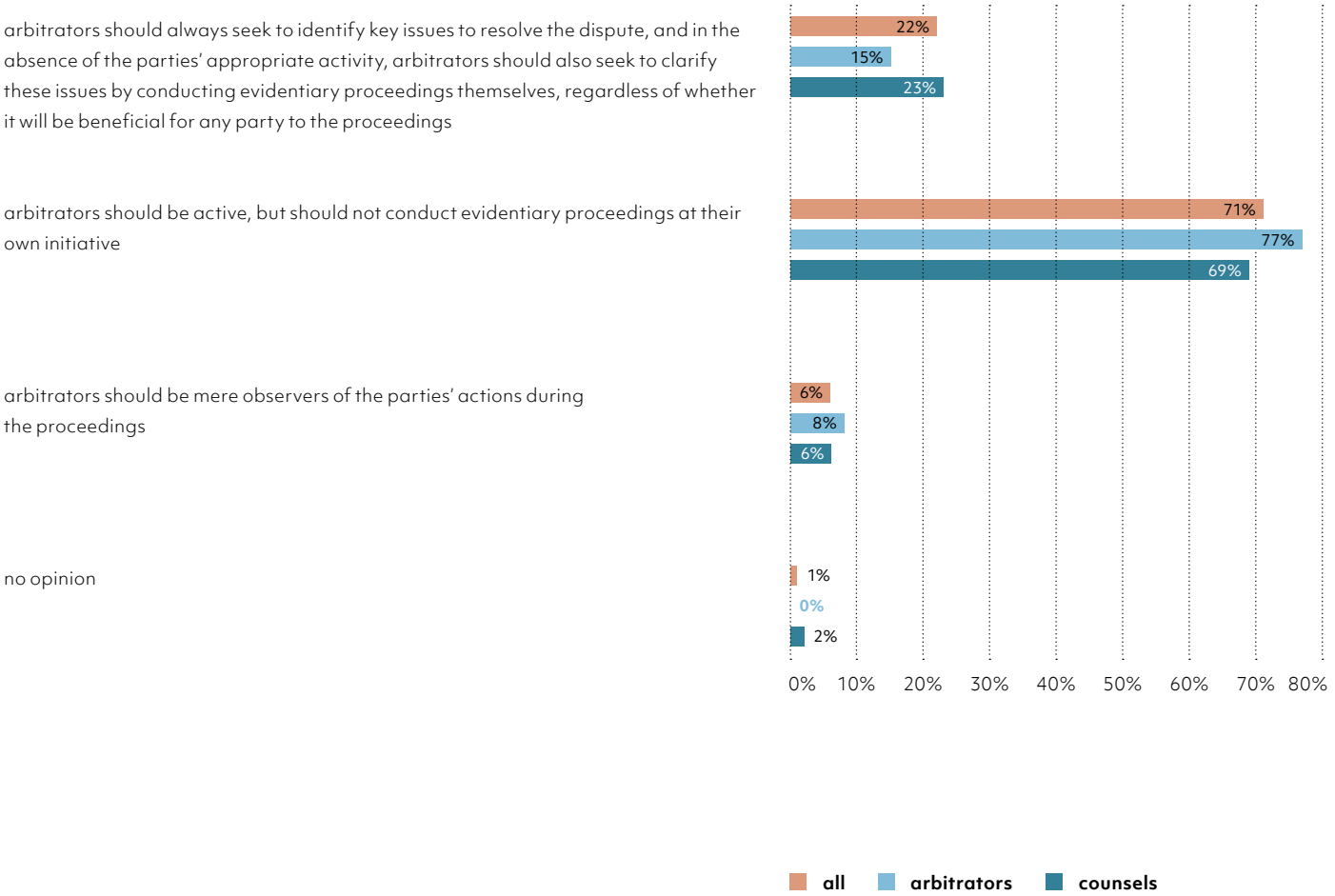
04. Arbitrators and the active management of arbitration proceedings

In this part of the survey, our questions concerned the role of arbitrators in managing arbitration proceedings.

When asked about the preferred model of arbitrators' activity in arbitration proceedings, an overwhelming majority of our respondents replied that arbitrators should be active, but should not conduct evidentiary proceedings at their own initiative (71% of answers). Only 22% of respondents agreed that arbitrators should always seek to identify key issues to resolve the dispute, and if the parties fail to do so then arbitrators should also seek to clarify these issues by conducting evidentiary proceedings themselves, regardless of whether it would be beneficial for any party to the proceedings. This inquisitorial model of an arbitrator is slightly preferred by counsels (23%) than by arbitrators themselves (15%). Finally, for 6% of respondents, the preferred role of arbitrators is best recognised by the statement that arbitrators should be mere observers of the parties' actions during the proceedings. It seems clear that the model of an inquisitorial arbitrator taking the initiative when it comes to evidence is not considered appropriate. Our respondents seemed to prefer a model in which arbitrators actively manage arbitration proceedings, but without showing too much initiative when taking evidence. According to our respondents, this initiative should be left to the parties.

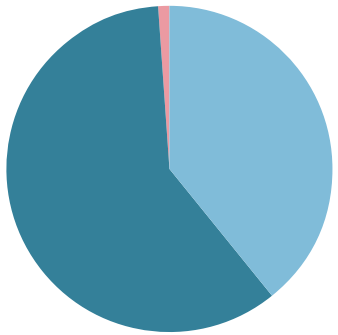
See the chart on the opposite page →

Chart 12: Which of the following models of an arbitrator's behaviour in the proceedings is the most desirable?



In response to the question about the degree to which the arbitral tribunal should be bound by rules set out in procedural orders, a majority of our respondents stated that arbitrators should follow them, but not strictly (60%). Many practitioners (39%) believe that arbitrators should strictly comply with the rules set out in procedural orders. It should also be noted that there was a general lack of support for admitting pleadings and evidence other than as set out in a procedural order (only 1% of our respondents thought that all pleadings and evidence should be admitted). The respondents are therefore supporters of a consistent, but not absolute, adherence to the rules set out in procedural orders.

Chart 13: To what degree should arbitrators adhere to procedural orders?



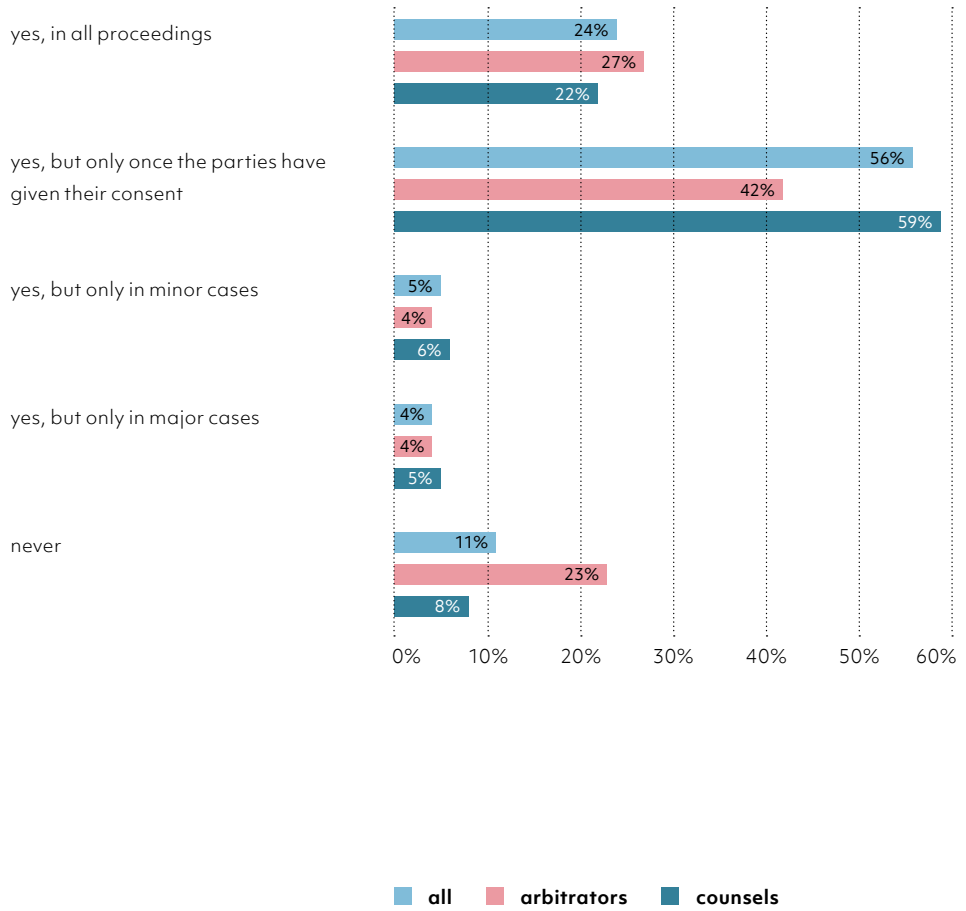
arbitrators should strictly comply with the rules set out in procedural orders for the submission of pleadings and evidence, and the principles of holding proceedings and on sanctioning any failures (e.g. by disregarding pleadings and evidence submitted after the time limits set in the procedural order have passed)
39%

arbitrators should comply with the rules on submitting pleadings and evidence, and the principles of holding proceedings, as specified in procedural orders, but not too strictly
60%

arbitrators should admit pleadings or evidence submitted contrary to the rules specified in the procedural order, because it is the arbitrators who are responsible for a just resolution of the case
1%

When asked whether arbitral tribunals should impose limits on the length of the parties' submissions, a majority of respondents answered that this practice should be applied only if the parties have given their consent to this (56%). 24% of our respondents felt that such a limitation should be applicable in all proceedings. In turn, 11% of the respondents said that the length of the parties' submissions should never be limited. The answer "never" was chosen more often by arbitrators (23%) than counsels (8%).

Chart 14: Should the arbitral tribunal limit the maximum length of the parties' submissions (in order to ensure the smooth conduct of the proceedings)?

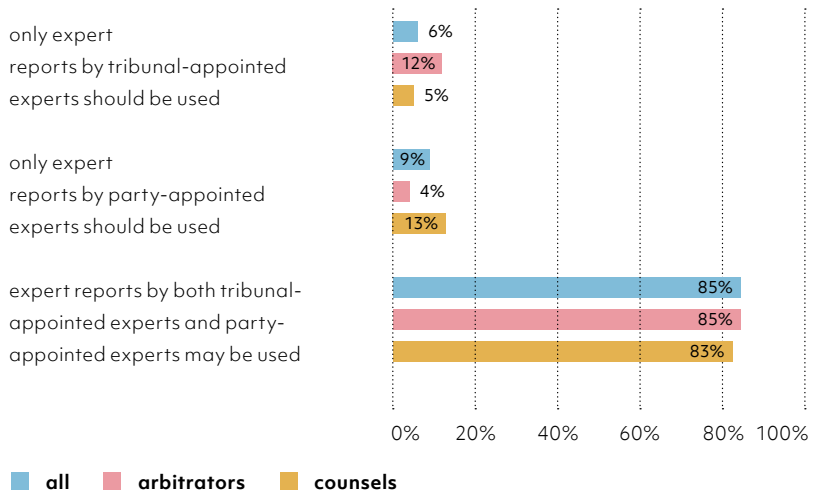


05. Expert evidence

Our survey also focused on experiences and preferences regarding expert reports.

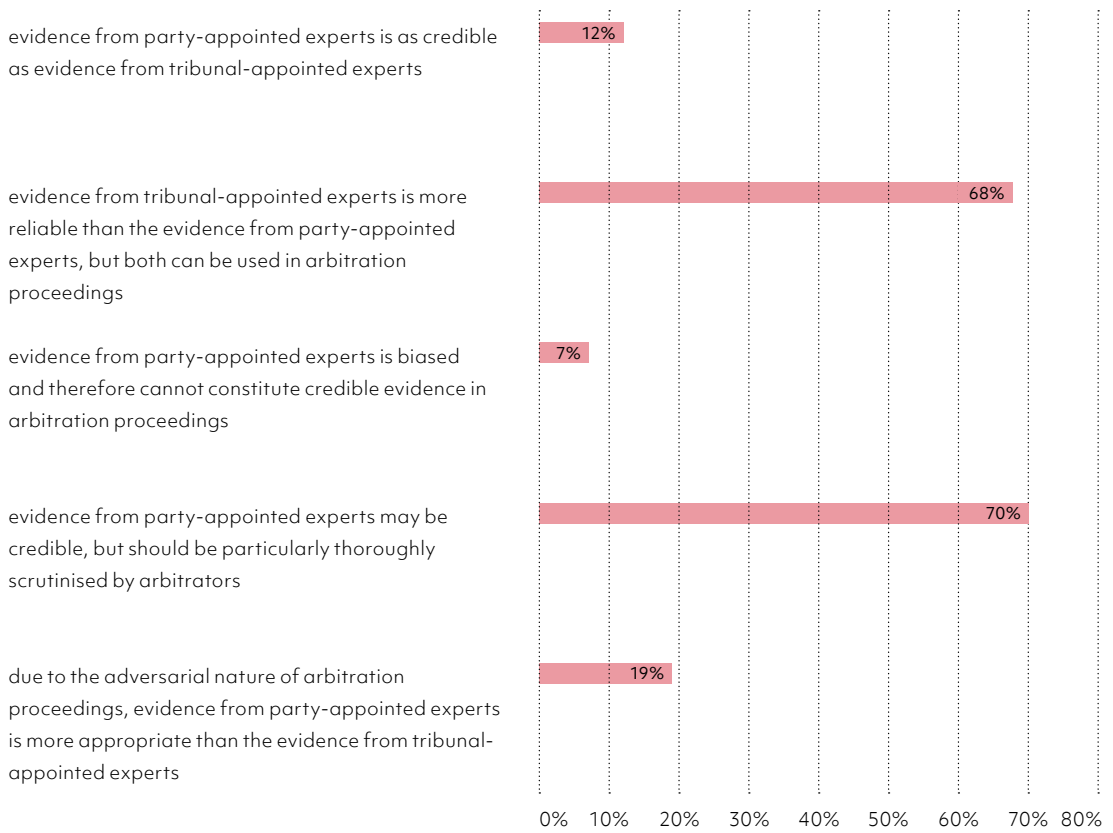
We wanted to find out how arbitration users see the issue of using reports prepared by tribunal-appointed experts and reports by party-appointed experts. A vast majority of users (85% of answers) agreed that both forms of evidence, namely reports by tribunal-appointed experts, as well as reports by party-appointed experts could be used in arbitration cases. A small number of respondents thought that only evidence from reports by party-appointed experts (9%), or only evidence from reports by tribunal-appointed experts (6%) should be used. The views expressed by counsels and arbitrators about the exclusive use of evidence from reports by tribunal-appointed experts or by party-appointed experts seem interesting. Just 12% of arbitrators believe that only evidence from reports by tribunal-appointed experts should be used, an opinion shared by 5% of counsels. On the other hand, the proportions were reversed when the question concerned party-appointed expert reports, with 13% of counsels stating that only these reports should be used, and just 4% of arbitrators sharing that view.

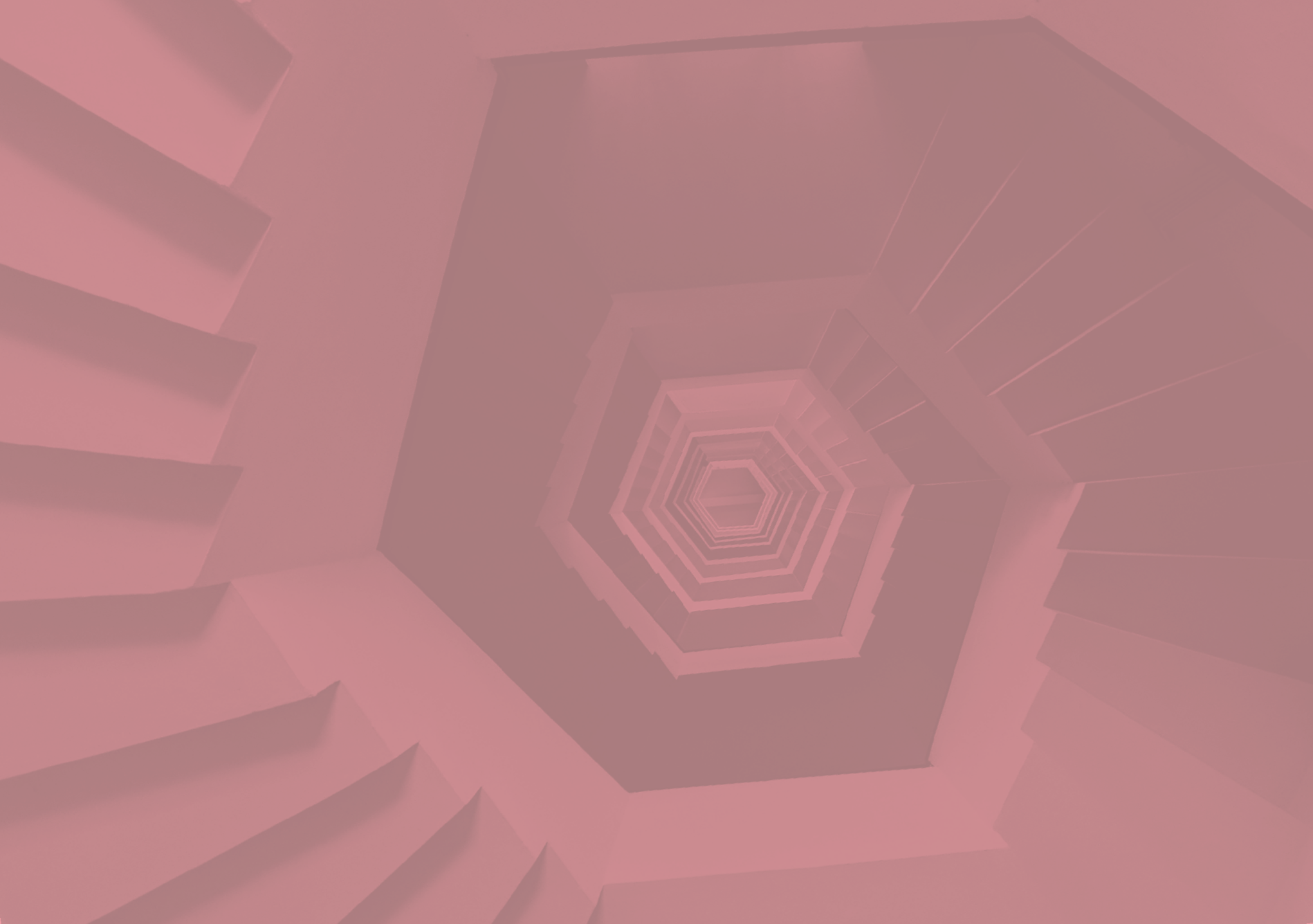
Chart 15: **What model of expert evidence do you prefer?**



Despite the general acceptance of reports prepared by party-appointed experts, a majority of respondents believe that their evidentiary value is weaker than that of reports by tribunal-appointed experts. 68% of respondents agreed that evidence from tribunal-appointed experts is more reliable than the evidence from party-appointed experts, but that both can be used in arbitration proceedings. 70% of respondents agreed that evidence from party-appointed experts can be credible, but should be thoroughly scrutinised by arbitrators. 19% of respondents stated that, due to the adversarial nature of arbitration proceedings, the evidence from party-appointed experts is more appropriate than evidence from tribunal-appointed experts. Only 7% of respondents held that party-appointed experts are biased, and therefore their reports cannot constitute credible evidence in arbitration proceedings.

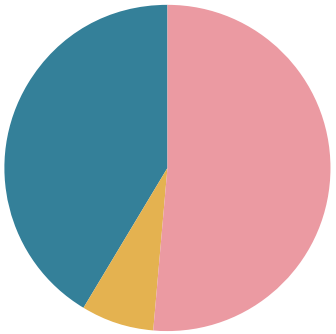
Chart 16: **Which of the following statements do you agree with? (you can give any number of answers)**





The need to take expert evidence significantly extends arbitration proceedings. We asked arbitration users whether they noticed differences in this respect between reports by party-appointed experts and by tribunal-appointed experts. Most of our respondents believe that reports by party-appointed experts save time in comparison to reports by tribunal-appointed experts (52%). However, there were many respondents (41%) who did not perceive any major differences in terms of the duration of the proceedings. Only 7% of respondents stated that reports by party-appointed experts lengthen proceedings when compared to reports by tribunal-appointed experts.

Chart 17: Which of the following statements about party-appointed experts do you agree with?



they shorten arbitration proceedings in comparison to reports by tribunal-appointed experts
52%

they lengthen arbitration proceedings in comparison to reports by tribunal-appointed experts
7%

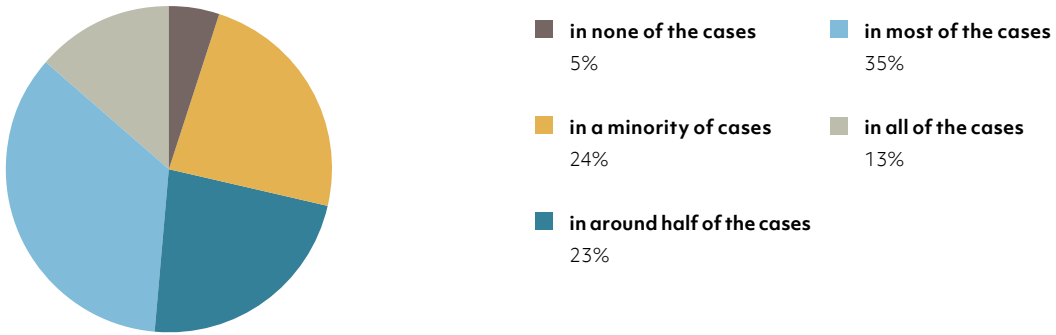
they have no effect on the duration of arbitration proceedings, as compared to opinions by tribunal-appointed experts
41%

06. Witness evidence

In this part of the survey, we asked our respondents about their experience and opinions regarding witness evidence in arbitration proceedings.

Another group of questions focused on witness evidence. First, we asked how often our respondents had encountered witness statements in their Polish arbitration practice. It turns out that witness statements are used relatively frequently in arbitration cases. The highest percentage of respondents (35%) indicated that witness statements were used in most of the cases they have been involved in. 13% of arbitration users stated that witness statements were used in all the cases they participated in, and only 5% of respondents had never come across them.

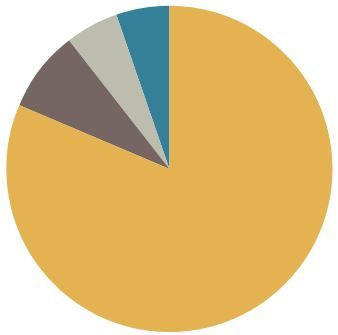
Chart 18: **How often have you come across witness statements in Polish arbitration practice?**



As many as 81% of respondents said that witness statements usually play a useful role in arbitration proceedings. When we asked about specific features and advantages of witness statements, 82% of respondents agreed that witness statements help determine which witnesses should be heard at the hearing, thereby shortening the duration of the hearing. 85% acknowledged that they allow the party to prepare for the cross-examination of the other party's witnesses. Only 5% of the survey's participants stated that they are of little use and actually contribute to prolonging proceedings and increasing costs. Just 7% of respondents believe that witness statements are worthless as evidence because they are prepared by the counsels. However, for many respondents, the fact that witness statements are prepared by counsels is not a disadvantage. Thanks to this, the statements are clearly formulated and help determine the facts most relevant to the case (26% of responses).

See the other chart on this topic
on the opposite page →

Chart 19: **Do witness statements play a useful role in arbitration proceedings?**



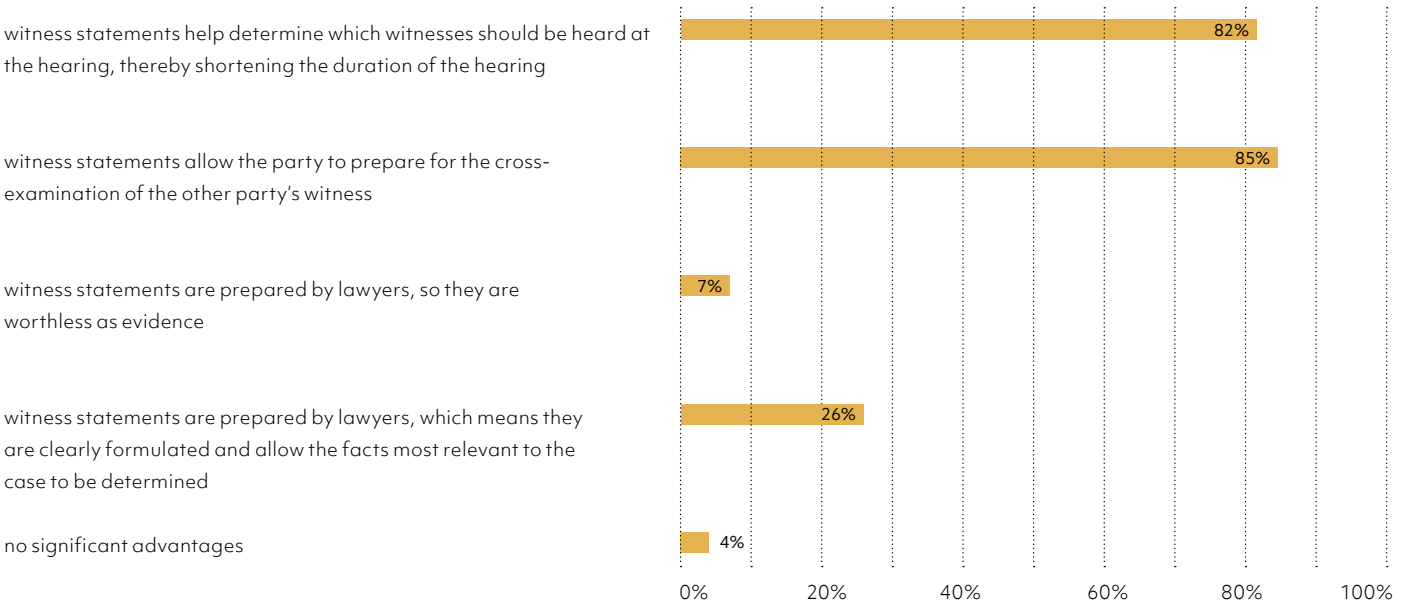
yes, they are usually useful
81%

yes, but only in cases with a large number of witnesses
8%

no, they are of little use and merely extend proceedings and increase costs
5%

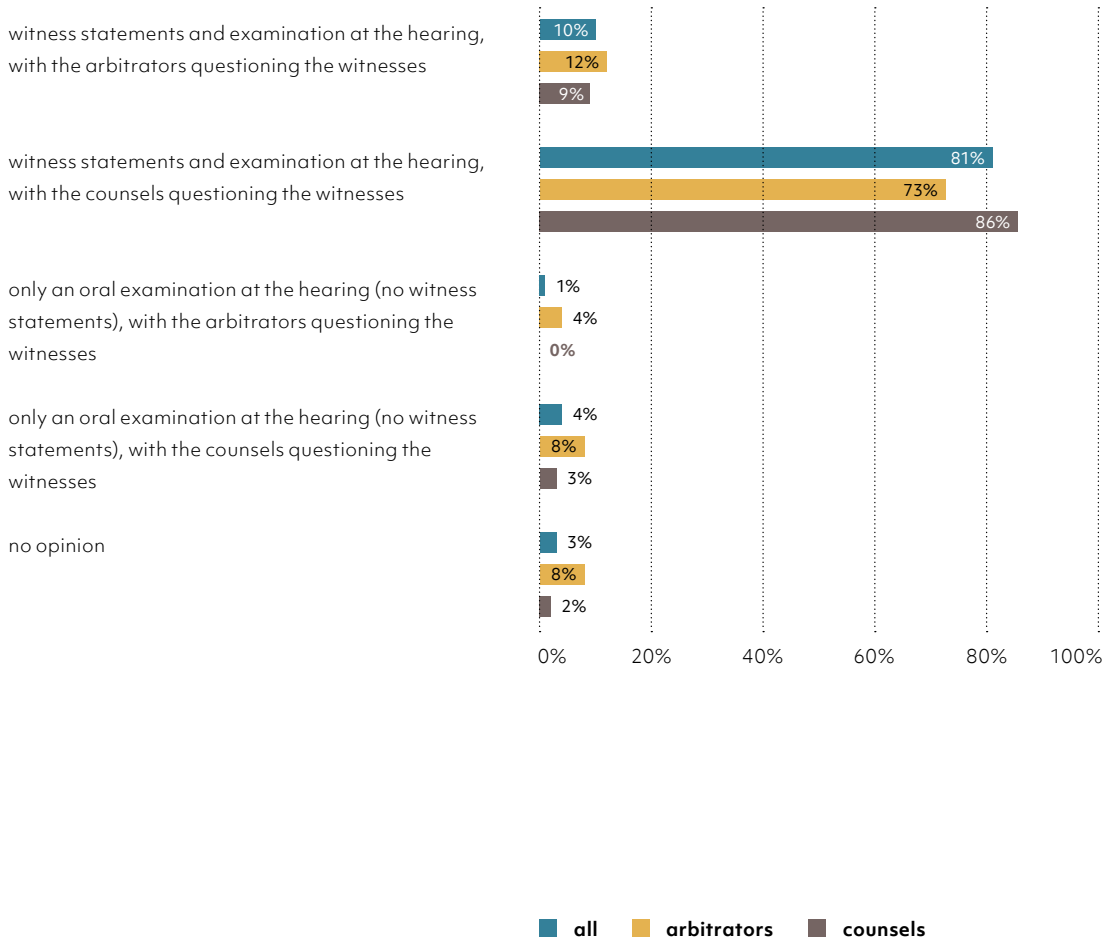
no opinion
5%

Chart 20: Which of the following statements about witness statements do you agree with? (you can give any number of answers)



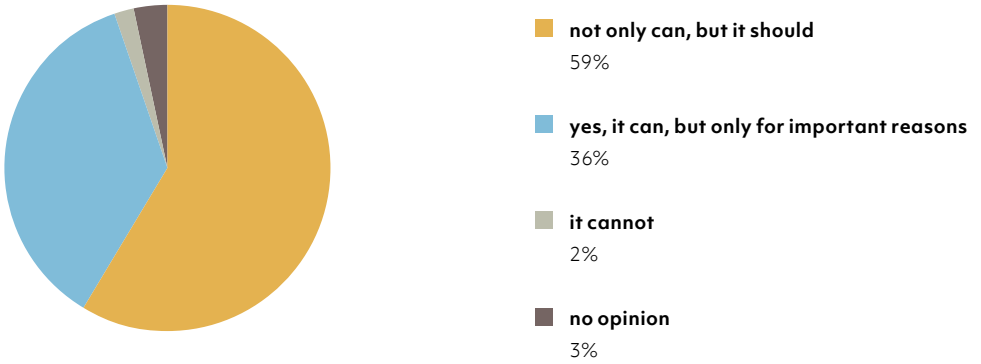
The respondents were also asked about the most desirable model of taking witness evidence. This question concerned the connection between witness statements and oral testimonies at the hearing. The respondents were generally in agreement, with 81% stating that witness evidence should be based on witness statements and an oral examination at the hearing, with the questions being asked by counsels. An alternative model, based on witness statements and an oral examination at the hearing, with the arbitrators examining the witnesses, was chosen only by 10% of respondents. The answers were similar in both groups of respondents, although counsels more frequently (86%) than arbitrators (73%) said that they should have a predominant role when examining witnesses. The answers indicate that neither counsels nor arbitrators support the inquisitorial model in which arbitrators consider themselves as the most competent to examine witnesses.

Chart 21: What is the most desirable model of taking witness evidence?



We also wanted to find out how the tribunal should behave when a witness fails to appear at the hearing, despite an order from the tribunal ordering the parties to ensure the appearance of witnesses. 59% of respondents believe that if this happens, the arbitrators should disregard the evidence from the absent witnesses. On the other hand, 36% of the respondents believe that the arbitrators may disregard such evidence, but only for important reasons. Only 2% of respondents indicated that the evidence from an absent witness cannot be disregarded, despite the fact that the witness did not appear at the hearing.

Chart 22: If the arbitral tribunal ordered the parties to ensure the appearance of witnesses, yet witnesses failed to appear at the hearing, can the tribunal disregard the evidence from such absent witnesses?

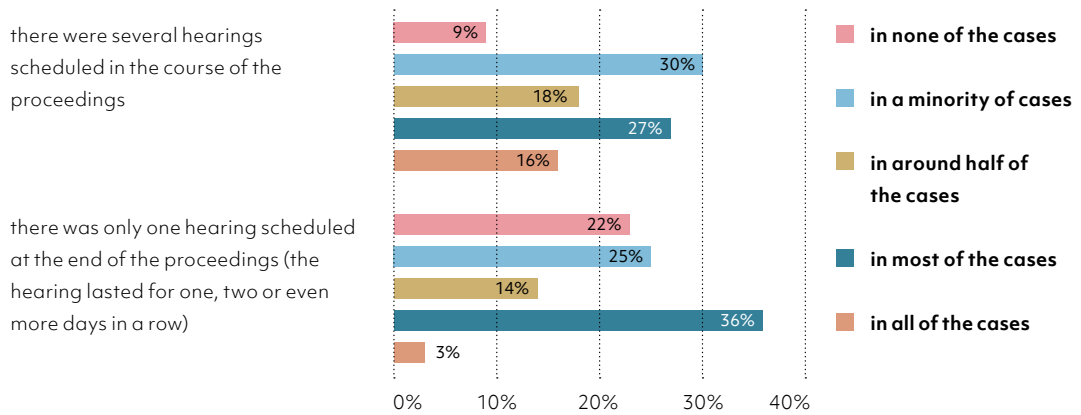


07. Scheduling of hearings

This part of our survey focused on the manner of scheduling hearings in arbitration proceedings.

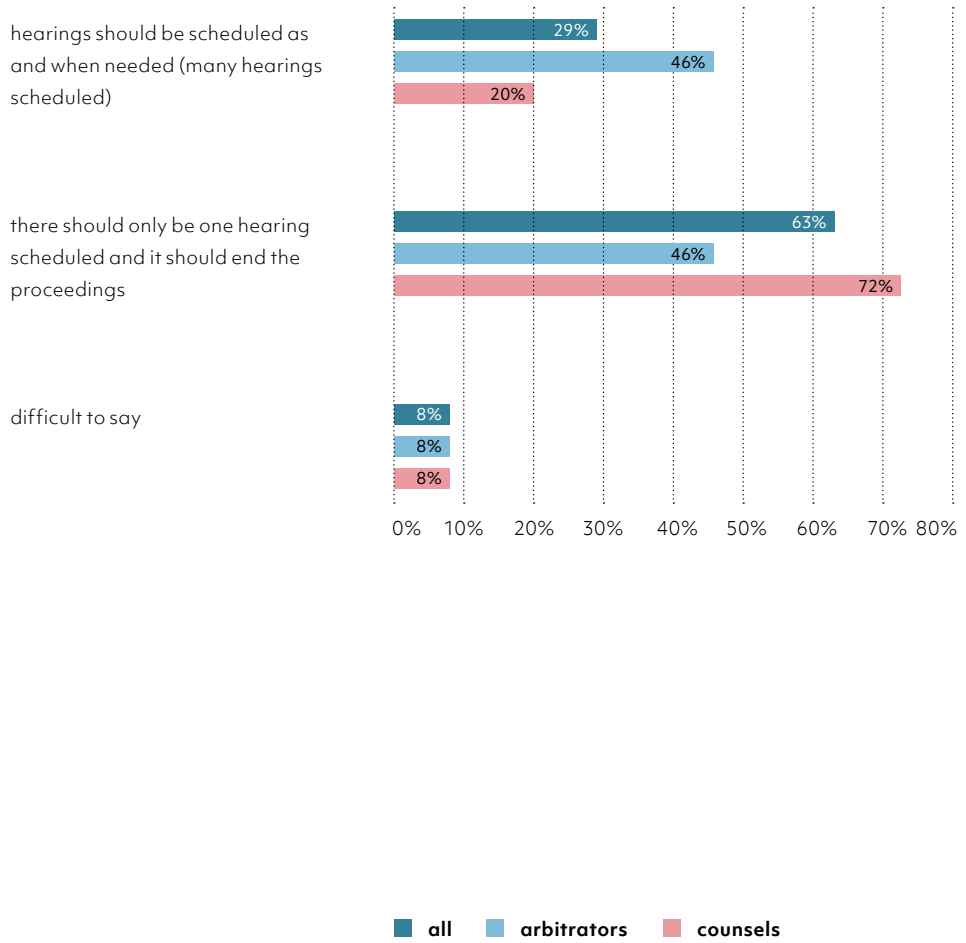
The next area covered by our survey was the respondents' experience with respect to the scheduling of hearings in the course of arbitral proceedings. The responses show that the experiences are very diverse. The answers are distributed in such a way that it is difficult to point to a dominant practice. 27% of respondents indicated that most of the cases they were involved in had several hearings scheduled in the course of the proceedings. 36% of respondents claimed that in most cases only one hearing was scheduled at the end of the proceedings. A significant percentage of respondents (22%) had never come across the model of having one hearing scheduled at the end of the arbitral proceedings.

Chart 23: **What is your experience in terms of the scheduling of hearings?**



We asked our respondents about their preferences regarding the scheduling of hearings. The favourite model seems to be for one hearing organised at the end of the proceedings (63%). An alternative model, in which hearings are scheduled as and when needed, is preferred by less than a third of our respondents (29%). The preference for one hearing is definitely more visible in the group of counsels (72%) than among arbitrators (46%).

Chart 24: What are your preferences regarding the scheduling of hearings?

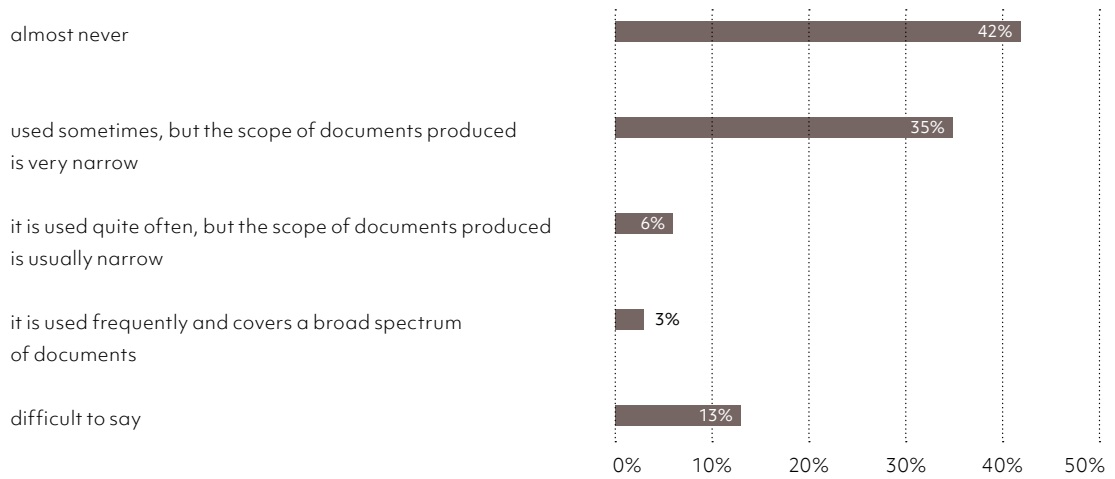


08. Document production

This area of our survey included questions about the practice of document production in arbitration proceedings.

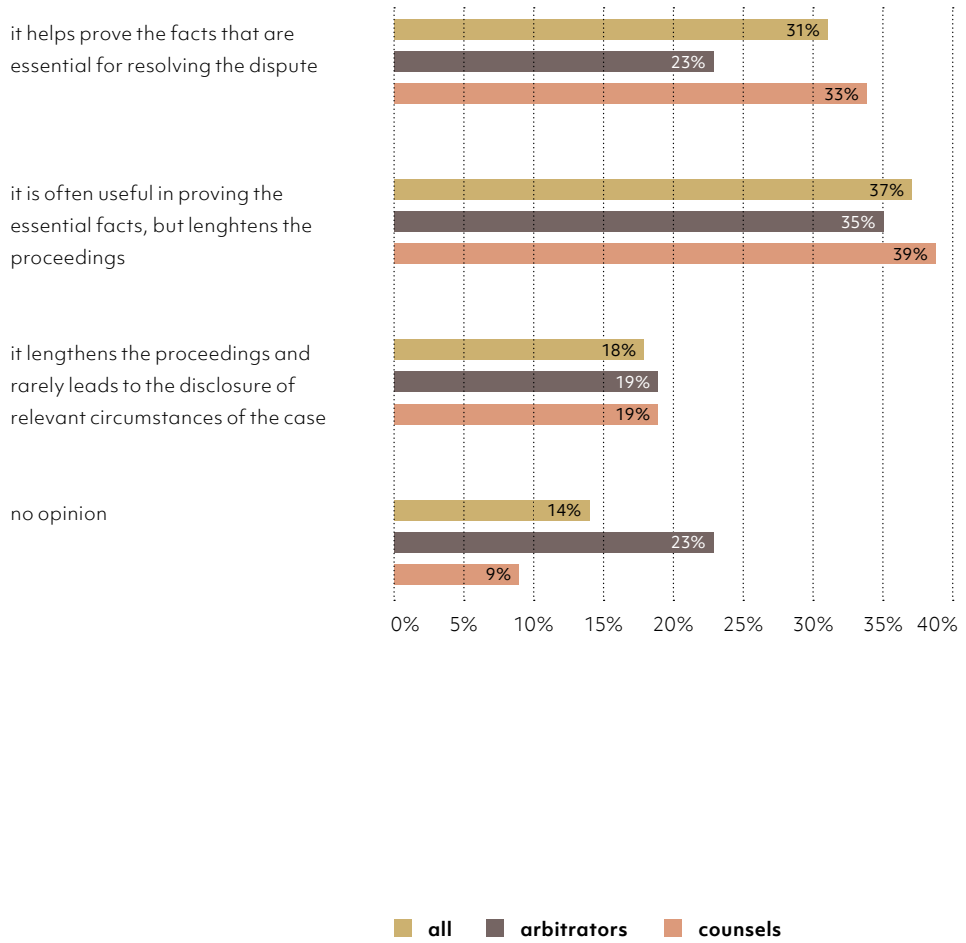
We also sought to analyse the arbitration practice concerning document production. 42% of respondents stated that document production almost never took place in their proceedings, while 35% said document production sometimes took place, but the scope of documents produced was very narrow. 6% of respondents experienced document production quite often, but the scope of documents produced was usually narrow. Only 3% of survey participants stated that document production was frequent and covered a broad spectrum of documents.

Chart 25: How often and to what extent is the practice of disclosing documents in the possession of the other party (document production) used in Polish arbitration practice?



Although document production is rarely and narrowly used in Polish arbitration practice, our respondents recognise its potential. According to 31% of our respondents, document production helps prove the facts that are essential for resolving the dispute. 37% pointed out that document production is useful, but delays the proceedings. Therefore, 68% of respondents overall believe that document production is useful for clarifying the facts of the dispute. Only 18% stated that it rarely leads to the disclosure of relevant facts of the case, and has a negative impact on the length of the proceedings. A relatively large number of respondents said that they had no opinion on this matter (14%). Document production is viewed more favourably by counsels (72% see the usefulness of this tool) than by arbitrators (among whom only 58% supported this instrument).

Chart 26: Does document production play a useful role in arbitration proceedings?



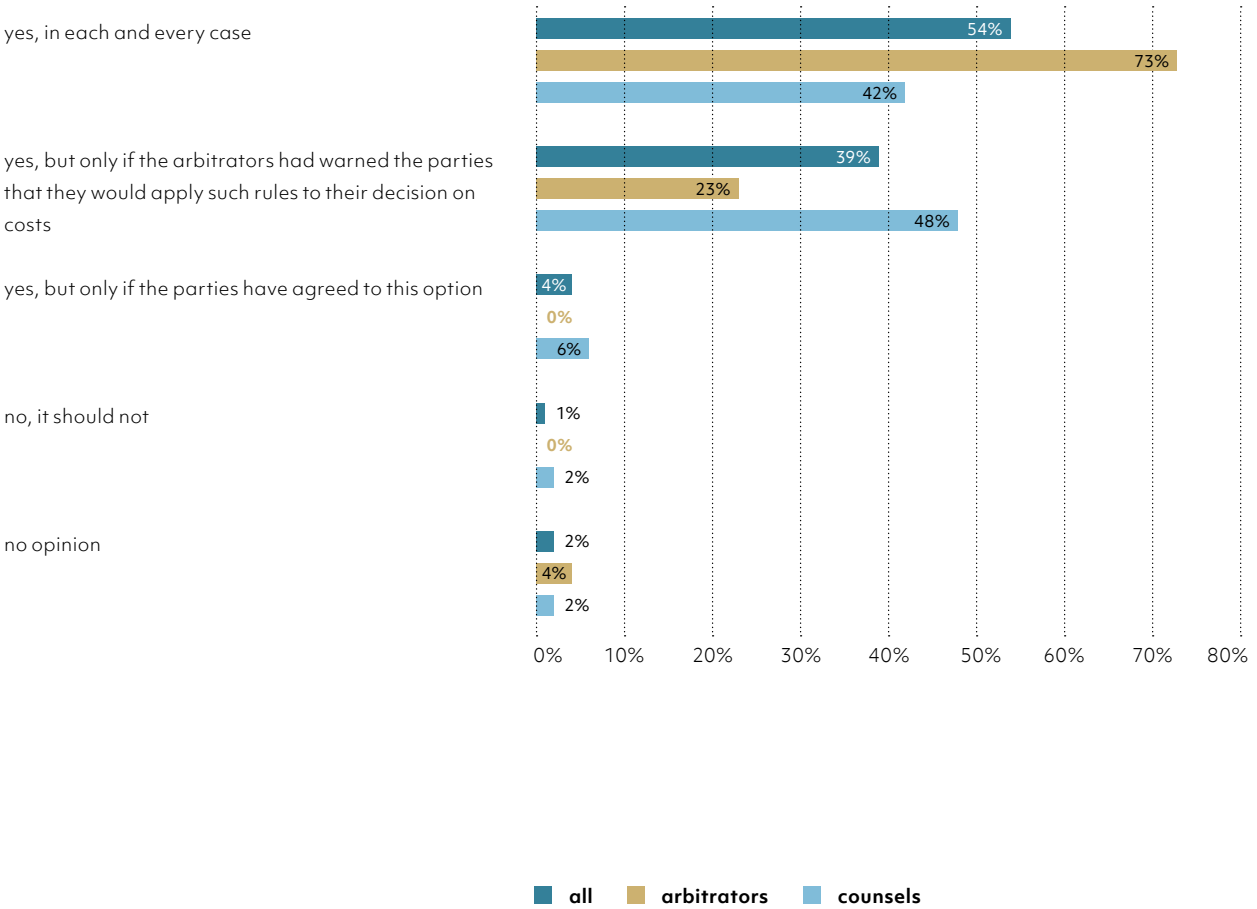
09. Sanctions for parties and arbitrators

In the last part of our survey, we looked at issues regarding sanctions for unethical behaviour in the course of proceedings and for delays in resolving the case.

Our respondents were asked whether unethical behaviour should have an impact on the decision on costs. Over half of respondents (54%) said that unethical behaviour of the parties or their counsels should always affect the decision on costs. A less popular view was that arbitrators could take the parties' behaviour into account when deciding on costs, as long as they had warned the parties that they would apply such rules (39% of responses). The arbitrators' unconditional discretion in this matter gathered greater acceptance among arbitrators (73%) than among counsels (42%). Just 4% of votes were in favour of the solution under which arbitrators may apply cost sanctions for unethical behaviour only if the parties have agreed to this.

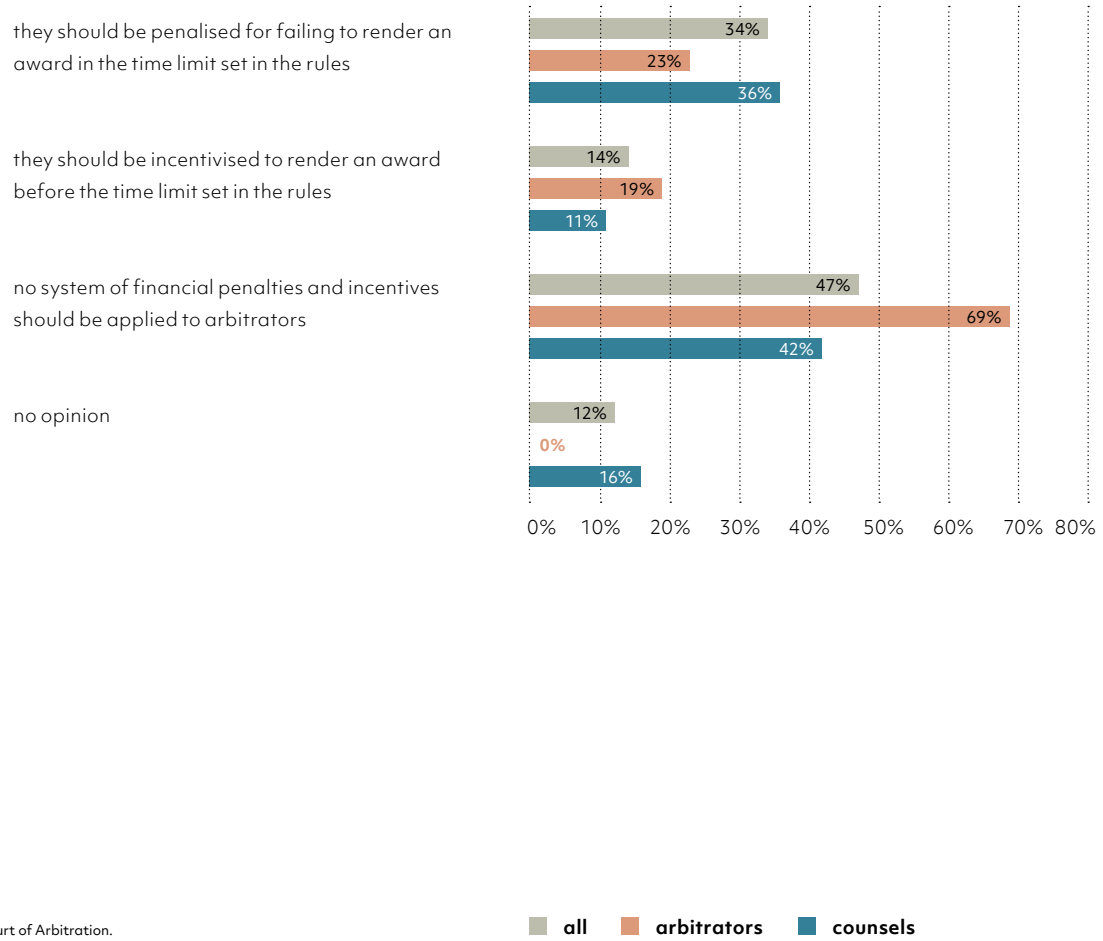
See the chart on the opposite page →

Chart 27: Should the unethical behaviour of the parties or their counsels, consisting in the obstruction of arbitral proceedings, adversely affect the decision on costs in relation to the party who behaved unethically?



Arbitrators' fees are an important component of arbitration costs. There are instruments that make arbitrators' fees dependent on the time in which they render awards. These instruments may have a negative effect – if the arbitrators do not deliver an award on time, or a positive one if they render it very quickly. These instruments are reflected in some arbitration rules.[2] The answers we received indicated a relatively low level of acceptance for these instruments. 47% of respondents thought that no system of financial penalties and incentives should be applied to arbitrators. 34% of respondents expressed a different view, indicating that arbitrators should face fines for not rendering an award within the time limit set in the rules. Only 14% of respondents would be willing to give arbitrators additional fees for rendering an award before the time limit imposed by the rules. The system of financial penalties for arbitrators failing to meet the deadline for rendering an award was more strongly supported by counsels (36%) than arbitrators (23%), whereas the system of rewards enjoys greater support among arbitrators (19% of arbitrators as compared to 11% of counsels). The use of a penalties and rewards system was rejected by more arbitrators (69%) than counsels (42%).

Chart 28: Should the time in which arbitrators render awards affect arbitrators' fees? (you can indicate up to two answers)



[2] See, for instance, Article 2 of Appendix III of the ICC Rules; § 39(2) of the Rules of the Lewiatan Court of Arbitration.

Contact us:

Michał Kocur
michal.kocur@kocurpartners.com
+48 22 622 15 62

Jan Kieszczyński
jan.kieszczynski@kocurpartners.com
+48 22 622 15 62

Prof. Maciej Zachariasiewicz
zachariasiewicz@kozminski.edu.pl

Organisers:

K O C U R

Kocur & Partners

Kocur & Partners is a leading Polish law firm specialising in litigation and arbitration. Michał Kocur and Jan Kieszczyński were responsible for this project at the firm.

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