Author: Urszula Comi

Title: Umowa o arbitraż a spółki powiązane: podstawowe problemy / Arbitration agreement and related companies: crucial issues

Source: Kwartalnik Prawa Prywatnego („Quarterly of Private Law")

Year: 2017, vol. XXVI, number 3, pages: 631-648

Keywords: International commercial arbitration, Groups of companies, Arbitration agreement

Discipline: Law (International Private Law)

Language: Polish

Document type: Article

Publication order reference: Warsaw

Abstract:

This paper analyses possibilities of binding non-signatory companies by an arbitration agreement signed by another company from the same group of companies. It discusses certain issues linked with this problem such as legal character, form and scope of an arbitration agreement, separability of an arbitration agreement, parties' autonomy and applicable law. There are strong arguments for binding non-signatories by an arbitration agreement, as binding companies from the same group can be necessary due to principles of equity and litigation economics. Nevertheless, legal regulations in Poland as well as in other states are not satisfactory to address the issue. For this reason state courts and arbitration tribunals created many doctrines forming a framework for binding a non-signatory company by an arbitration agreement. This paper outlines several most popular of those doctrines used in some European states and the United States. Those doctrines are not, however, recognised in Poland. Each doctrine has different prerequisites and thresholds. They have also various effects of application. However, most of them rely on a previous comportment of a company, which did not formally signed an arbitration agreement nor the basic agreement, but nevertheless it was engaged in executing the agreement signed by another company from the same group of companies. In the continental Europe the most reasonable and acceptable proposition for binding no n-signatories by an arbitration agreement is the so-called "good faith doctrine". It relies on a rule that no one can benefit from his dishonest behaviour. This rule should be the basis for reconsideration and amendment of Polish legal regulation concerning arbitration proceedings in order to keep up with economic reality.