

Łaszczuk & Partners

Session II:

Consolidation and de-consolidation
in M&A arbitration

Justyna Szpara

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Case study [1]

X, as the seller, and Y and Z, as the buyers, signed an SPA with regard to shares in the Target. The Target is also a party to the SPA, as there are certain obligations on the part of the Target under the SPA. As part of the transaction, X signed an IP Transfer Agreement, under which certain IP rights were transferred to the Target for certain payments. Y and Z guaranteed payment by the Target under the IP Transfer Agreement, in a Guarantee Agreement signed with X.

The SPA, the IP Transfer Agreement and the Guarantee Agreement all contain an arbitration clause.



Case study [2]

The arbitration clause in the SPA provides for arbitration under the Vienna Rules, with the seat in Paris. Under this arbitration clause, any dispute should be resolved by three arbitrators, where X should appoint one arbitrator; Y, Z and the Target jointly are to appoint one arbitrator; and the party-appointed arbitrators are to appoint the chair.

The arbitration clause in the IP Transfer Agreement provides for arbitration under the ICC Rules, with the seat in Warsaw. The clause is silent as to the composition of the arbitral tribunal.

The arbitration clause in the Guarantee Agreement provides for arbitration under the ICC Rules, with the seat in Paris. The clause provides that any dispute should be resolved by three arbitrators and that the party-appointed arbitrators are to appoint the presiding arbitrator.

None of the arbitration clauses refers to arbitration clauses in other agreements that form part of the transaction.



Case study [3]

A dispute arose over the IP rights of the Target. Y raised claims under the R&W regarding the Target's IP rights. The Target refused payment under the IP Transfer Agreement, claiming it is null and void. X initiated ICC arbitration against the Target for payment under the IP Transfer Agreement. The Target contemplates raising a counterclaim and joining Y and Z into the proceedings. Y and Z are about to initiate arbitration against X under the SPA.



Thank you for your attention.

Justyna Szpara

 Łaszczuk

Contact:

Łaszczuk & Partners
Pl. Piłsudskiego 2
00-073 Warsaw

phone: +48 22 351 00 67
email: justyna.szpara@laszczuk.pl
www.laszczuk.pl