XIII.2.6 - Decision making by panel of arbitrators

(a) In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members.

(b) Questions of procedure may be decided by a presiding arbitrator, if so authorized by the parties or all members of the arbitral tribunal.

Commentary:

1. The voting rules contained in Subsection (a) result from the fact that international arbitral tribunals typically consist of one or three arbitrators. In a three member tribunal the rule helps to avoid a deadlock in the voting of the arbitrators on the legal issues relevant for the decision of the dispute. A deadlock may still happen in scenarios where there are three different views on a legal issue.

2. Because questions of procedure may be decided by the chairman alone if so authorized by his co-arbitrators (which typically happens in an international arbitration) pursuant to Subsection (b), procedural orders, in contrast to arbitral awards, may be signed by the chairman alone.

3. The French Court of Appeal of Paris (Société Braspetro Oil Services (Brasoil) v. GMRA, Rev. d’Arb. (1999), 834, 836 et seq.) has made it clear that if the arbitrators have dealt with the merits of the parties’ presentations and have put an end to the disputed issue by deciding, in a definitive manner, that part of the dispute in their reasoned decision, they have exercised the jurisdictional powers conferred on them by the arbitration agreement. In that case, they have rendered an award, even if they have called their decision “procedural order”.