Title:
XIII.4.3 - Settlement

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(a) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(b) An award on agreed terms shall be made in accordance with the provisions of Principle No. XIII.4.1 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.

Commentary:
1 When parties have negotiated a settlement of their dispute "in the shadow of the arbitration", i.e. without the help of the arbitrators outside the arbitral proceedings, the tribunal should issue an order for the termination of the arbitral proceedings pursuant to Subsection (a). Usually, the arbitral tribunal will not issue such an order on its own motion but will wait for a request from both parties. If no such order is issued by the tribunal, the mere fact that the parties have reached a settlement on their substantive claims does not terminate the arbitral procedure. To avoid such a "sleeping arbitration", experienced arbitrators will always ask parties who have reached a settlement and who have not requested an order for the termination of the proceedings to submit such a joint request to the tribunal. A unilateral request to terminate the proceedings by one party, without the other party having had an opportunity to comment, does not constitute a sufficient basis for the arbitral tribunal to terminate the proceedings. Before issuing a termination order, the tribunal must be completely convinced that the parties have actually reached a settlement which definitely and finally resolves all outstanding issues between the parties. Such an order has no res iudicata effect. If the settlement is void, a claimant may re-submit its claim to a newly appointed arbitral tribunal.

2 Not infrequently, parties who have negotiated a settlement agreement, either "in the shadow of the arbitration" or with the assistance of the arbitrators during the arbitral proceedings seek to have their agreement formalized with the help of the arbitrators. Upon a joint request by the parties, the arbitral tribunal in such a case will record the parties' settlement in the form of an "arbitral award on agreed terms" or "consent award" pursuant to Subsection (b). This type of decision is regulated in Art. 30 UNCITRAL Model Law. Contrary to an order for the termination of the proceedings, this decision of the tribunal constitutes a genuine arbitral award. Subsection (b) states that "such an award has the same status and effect as any other award on the merits of the case". It is for this reason that Subsection (b) also provides that an award on agreed terms has to be made in accordance with the provisions concerning the form and content of arbitral awards and shall state that it is an award. This latter statement may be of particular relevance at the enforcement stage. The statement makes it clear for foreign enforcement courts that the award on agreed terms is a genuine award and can be enforced under the 1958 New York Convention.