Title:
XIII.4.2 - Form and contents of award

Content:

No. XIII.4.2 - Form and contents of award

(a) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.

(b) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under Principle XIII.4.2.

(c) The award shall state its date and the place of arbitration. The award shall be deemed to have been made at that place.

Commentary:

1 Most arbitration laws and rules contain a number of provisions pertaining to the form in which the award is to be rendered by the tribunal. Typically, an award must contain:

- the complete names and domiciles of the parties and of their legal representatives;
- the name(s) of the arbitrator(s);
- a recital of the essential milestones of the proceedings (dates of briefs and hearings), demonstrating that the parties had adequate opportunity to present their case;
- the tribunal's holding on the merits including costs;
- the reasons for the tribunal's decision;
- a determination of the monetary or other relief to be accorded, including damages, interest and costs;
- the date of the award;
- the place of the arbitration;
- the signature(s) of the arbitrator(s).

2 The significance of some of the issues listed in Para 1 goes far beyond that of a mere formality. Thus, the place ('seat') of arbitration indicated in the award determines the nationality of the award. The award's nationality, in turn, is important for determining the competent court for setting aside procedures and also for determining whether the award can be enforced under the system of the New York Convention 1958. The indication of the place of arbitration in the award, therefore, serves the purpose of providing legal certainty at the setting aside and enforcement stage. However, the arbitrators are not required to hold the hearings and deliberations at that place. It is also important to note that the arbitrators are under no obligation to actually 'make' (i.e. sign) the award at that place. The tribunal could conduct an arbitration without ever physically meeting or conducting hearings or deliberating or signing the award at the seat of the arbitration. To avoid any uncertainties in this important area, Subsection (c) provides that the award "shall be deemed to have been made" at the place of arbitration, i.e. the seat indicated in the award.

3 Together with the tribunal's holding on the merits of the dispute, the reasons given by the arbitrators for their decision constitute the central part of the arbitral award. It is, therefore, very rare for parties to agree that no reasons are to be given by a tribunal for its decision on the merits. The standards to be applied to the reasons of the award are not as high as those which apply to court decisions.

4 International arbitrators sometimes render 'procedural orders' in which they decide on substantive legal issues which are in dispute between the parties. In such a case, the term given to the decision by the arbitrators does not prejudice a court's right to look behind the terminology and formalities chosen by the arbitrators and to consider the decision as a genuine arbitral award. A court may have to scrutinize the true nature of the decision in setting aside proceedings, which are only available for genuine arbitral awards. 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 (which must meet the formal requirements mentioned above in Para 1 and which is final) and not a procedural order (which must not meet for formal requirements mentioned above under Para 1, may be signed by the chairman alone and is not final but may be changed by the tribunal), irrespective of how the decision is called and framed by the arbitral tribunal. Thus, in the context of the qualification of the nature of the arbitrators' decision, the domestic courts always retain the last word. Otherwise, a tribunal could shield its decision from attack by the courts in setting aside and enforcement proceedings, simply by disguising it as a procedural order.