Title:
XIII.4.4 - Termination of proceedings

Content:
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(a) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with paragraph (b) of this Principle.

(b) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:

i) the claimant withdraws its claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on its part in obtaining a final settlement of the dispute;

ii) the parties agree on the termination of the proceedings;

iii) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(c) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to provisions of the applicable arbitration law relating to the correction and interpretation or the setting aside of the award or the rendering of additional awards.

Commentary:

1 A typical scenario for a termination order arises if the parties have negotiated a settlement 'in the shadow of the arbitration', i.e. without the help of the arbitrators outside the arbitral proceedings. The tribunal should then issue an order for the termination of the arbitral proceedings pursuant to Subsection (b) ii). This standard practice is also reflected in Principle XIII.4.3 (a).

2 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.

3 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 judicata effect. If the settlement is void, a claimant may re-submit its claim to a newly appointed arbitral tribunal.