International Arbitration
Practice Guideline

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Drafting Arbitral Awards
Part I – General

The Chartered Institute of Arbitrators (CIArb)

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Drafting Arbitral Awards Part I – General

Introduction

1. This Guideline sets out the current best practice in international commercial arbitration for drafting arbitral awards. It is divided into three parts dealing with (1) arbitral awards in general, (2) awards of interest,[1] and (3) awards of costs.[2]

2. Part I of this Guideline provides guidance on:

i. how to draft and communicate arbitral awards (Article 1);
ii. the titles that are most commonly used (Article 2);
iii. the conduct of deliberations (Article 3);
iv. the form and content of awards (Article 4); and
v. issues arising after a final award has been communicated (Article 5).

Preamble

1. Parties resort to arbitration to obtain a final and binding resolution of their dispute. It is the arbitrators' role to resolve the dispute by deciding all of the disputed issues and recording their decision in a document, called an arbitral award. Arbitral awards should be prepared with the greatest care to ensure they conform with the terms of the arbitration agreement, including any arbitration rules and the law of the place of arbitration (*lex arbitri*), and are enforceable under the New York Convention.[3] Any failure to comply with the agreed process and the requirements as to form and content may lead to challenges and create difficulties with enforcement.

2. Arbitrators have a wide discretion to resolve the disputes in arbitration by issuing different types of awards. Consequently, most national laws and arbitration rules do not define the various types of awards that are available but, when they do, they have taken an inconsistent approach to the labelling of awards. Even though the title of the award does not determine its legal effect, choosing the wrong title may lead to misunderstandings. Accordingly, arbitrators should be careful to use the appropriate title in order to avoid being prematurely and unintentionally deprived of power.

3. This Guideline addresses the issues that arbitrators need to consider when drafting awards with the aim of minimising any difficulties in their recognition and/or enforcement.

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Article 1 – General principles

1. Arbitrators should make it clear that a decision is an award by including the word 'Award' in the title, if it is indeed intended to be an award.

2. Arbitrators should structure an award in a logical sequence and express their decision in a clear, concise and unambiguous manner.

3. Arbitrators should endeavour to make an award that is valid and enforceable.

4. Arbitrators should make their award in a timely and efficient manner.

5. Once arbitrators have made their award, they should communicate it to the parties and to any arbitral institution administering the arbitration following the method provided for in the arbitration agreement, including any arbitration rules and/or the *lex arbitri*.

Commentary on Article 1

Paragraph 1 – Arbitrators' decisions

In the course of an arbitration arbitrators normally issue various decisions. Decisions relating to the organisation and general conduct of the arbitral proceedings which are purely procedural and/or administrative in nature should be made in the form of procedural orders or directions.[4] Such decisions should be clearly distinguished from arbitral awards, which are intended to include a determination on the merits or affect the parties' substantive rights and which can generally be enforced under the New York Convention (see Article 2 below).

Paragraph 2 – Structural requirements

a) Arbitrators should keep in mind at all times that awards are first and foremost written for the parties. The clearer an award is, the more likely it is to be accepted by the parties and the less likely it is to be challenged. For these purposes, awards should be in a format and layout which aids the communication of the arbitrators' decision and invites reading. They may be written as a flowing narrative dealing with the evidence as it arises naturally in the sequence of things or, where there are many different issues, on an issue-by-issue basis, dealing with the evidence and argument applicable to each issue separately.

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b) Arbitrators should consider using short sentences. As soon as a sentence ceases to have a clear and logical link to the preceding sentence, arbitrators should write a new paragraph. Arbitrators should use numbered paragraphs. The award should also include informative headings and sub-headings. A table of contents is especially helpful in lengthy awards. To the extent possible, awards should avoid using technical or legalistic expressions and should be written in plain and simple language which sets out the decision in a coherent and unambiguous manner.

c) When drafting an award arbitrators should also consider the wider audience who may read and are invited to take actions in relation to the award, including judges exercising a supportive or supervisory role and/ or third parties (such as insurers) whose interests may be affected by it. An award should contain sufficient information to enable its audience to understand the issues and/or its meaning without the need to make further enquiry into the matter. They should not give rise to any questions as to their interpretation and they should not need clarifications.[5] Arbitrators should not attach extensive documents to the award and/or refer to documents attached to the award. If it is necessary to refer to key documents it is good practice to quote the relevant passage(s)/part(s) in full. However, sometimes, arbitrators may attach certain documents to the award, such as the terms of reference, provisional orders and/or earlier awards when required under the relevant rules and/or *lex arbitri*[6] or for ease of reference.

Paragraph 3 – Making a valid and enforceable award

a) Awards are of no value if they are invalid and of limited value if they are not enforceable internationally. To be valid, an arbitral award needs to conform with the arbitration agreement, including any arbitration rules and the *lex arbitri.* To be enforceable internationally an award should also comply with the requirements of the New York Convention. If one of the parties makes it clear that it may intend to enforce the award in another jurisdiction, the arbitrators may consider it appropriate to take account of any procedural requirements of the law of that jurisdiction to the extent that they are made aware of these. Additionally, arbitrators may consider it appropriate to consider the law of the place where the debtor resides and/or has assets, and/or any other place(s) of likely enforcement, if known and, if so, to seek assistance from the party expecting to enforce as to any particular requirements in such places.[7]

b) Arbitrators are not expected to consider the laws of every possible country where enforcement may be sought by the parties, it suffices to seek to minimise the risk that their award is set aside and/or refused recognition and/or enforcement under the New York Convention.

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Paragraph 4 – Time limits for making awards

a) Many national laws and arbitration rules do not specify any time limits within which the arbitrators must make their final award, leaving the matter to the arbitrators' discretion. However, some expressly include provisions regarding time limits to expedite the arbitral proceedings and avoid delays in concluding the final award.[8] Parties to the arbitration agreement may also prescribe a time limit, albeit this is less common.

b) If any time limits for issuing a final award are specified in the arbitration agreement, including any applicable rules and/or the *lex arbitri*, arbitrators should manage the whole of the arbitration with this in mind. If they are unable to comply, they should apply for or order an extension following any mechanism set out in the applicable rules and/or the *lex arbitri*. If there is no specified mechanism for granting an extension of time limit, arbitrators should address the matter as early as possible and ask the parties to grant them the power to extend it. Alternatively, arbitrators may invite one or more of the parties to approach the national courts at the place of arbitration to extend it, or apply themselves, if the *lex arbitri* so permits.[9]

c) In the absence of any specified time limit arbitrators should determine the appropriate time frame for making an award after taking into account the particular circumstances of the case, bearing in mind that good practice is to conduct the arbitral proceedings without delay and make awards in a timely manner. Additionally, arbitrators should, at the end of a hearing, inform the parties of the time frame within which they expect to make their award.

d) The rules of some arbitral institutions administering arbitrations provide that they must review all awards in draft before they are communicated to the parties and/or their representatives. In those situations arbitrators must take the delay this may cause into consideration. If an award is not made and communicated within the time specified, it may be set aside on the grounds that it was not made in accordance with the procedure agreed by the parties.[10]

Paragraph 5 – Communication of an award

a) The communication of the award is generally governed by the arbitration agreement, including any arbitration rules and/or the *lex arbitri*. Some arbitration rules may require the arbitrators to send the award to the arbitral institution administering the arbitration for it to communicate the award to the parties. In the absence of any agreement and/or specific provisions, it is for the arbitrators to determine the mode by which they will communicate the award to the parties.

b) In any case, arbitrators should make sure that the award is communicated to all parties and/or the arbitral institution at the same time and by the same means. Arbitrators should not withhold an award pending the payment of their fees, unless the arbitration agreement, including any arbitration rules and/or the *lex arbitri*, provide that they may do so.[11]

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b) In any case, arbitrators should make sure that the award is communicated to all parties and/or the arbitral institution at the same time and by the same means. Arbitrators should not withhold an award pending the payment of their fees, unless the arbitration agreement, including any arbitration rules and/or the *lex arbitri*, provide that they may do so.[11]

Methods of communication

c) The traditional method is to send physical originals of the signed award by courier to the parties and/or their representatives and any arbitral institution administering the arbitration. The advantage of this method is it makes it easier to prove service through the delivery acknowledgment which may be produced in evidence in setting aside and/or enforcement proceedings. Most arbitration rules require service of a physical original of awards. Even where electronic communication is permitted to ensure simultaneous receipt, hard copy originals should still be sent to the parties and/or their representatives by courier.[12]

Article 2 – Titles for arbitral awards

The most common titles given to awards made by arbitrators are: i) interim awards;

ii) partial awards;
iii) final awards;
iv) consent or agreed awards; and
v) default awards.

Commentary on Article 2

a) Arbitrators have a wide discretion as to the different types of awards that they may make. However, they should always check the arbitration agreement, including any arbitration rules and/or the *lex arbitri,* which may impose limitations on their discretionary powers and/or require decisions to be made in a particular form. It is also good practice for arbitrators to consult the parties as to whether they would like the decision to be made in a particular form.

b) Great care must be taken when choosing the title for an award, particularly the titles 'interim' and 'partial'. This is because there is no universally accepted definition for these titles of awards. Some jurisdictions distinguish between these titles in the following way: an interim award is considered to be an award made at an interim stage of the proceedings which does not finally dispose of a particular issue and is subject to later revision;[13] a partial award is considered to be an award that finally determines some, but not all, of the issues in dispute and the issues determined are not subject to later revision.[14]

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c) In other jurisdictions both 'interim' and 'partial' awards are considered to be final as to the issues they deal with and incapable of later revision. In these jurisdictions decisions that are capable of later revision are sometimes described as provisional orders rather than awards. An added complication is that in some jurisdictions awards that are intended to be capable of later revision are described as 'provisional awards'.[15]

d) A further complication is that to be enforceable under the New York Convention, a decision must be an 'award' and not an order. To assist parties enforce provisional orders, such as security for costs, a practice has arisen of describing these as 'interim awards'.

e) In light of the above, arbitrators should be careful when deciding what title to give to an award because it can have different meanings in different jurisdictions. They should consider whether the relevant rules and the applicable *lex arbitri* contain definitions or specific provisions as to the labelling of arbitral awards.

f) One way to avoid complications is to make it clear in the title of the award whether it is intended to be 'provisional' such as, for example, 'Interim Award on Provisional Measures'. Additionally, the text of the award should spell out whether it is a 'provisional' or a 'final' determination of the issues. If it is intended to be 'provisional' determination, it is helpful for arbitrators to expressly reserve their right to reconsider the issue at a later stage. Conversely, if it is intended to be 'final', it may be helpful, subject to the applicable rules, *lex arbitri* and/ or the law of the place of enforcement, if known, for arbitrators to state that it is not capable of later revision.

i) Provisional decisions

Examples of provisional decisions include decisions to preserve a factual or legal situation necessary to secure the claim which is the subject of the arbitration.[16] These types of decisions are interim or provisional in the sense that they are made pending the final determination of the issues in the arbitration. These may be variously described as provisional orders, interim provisional awards or interim awards. However, the title is not determinative and that is why it is helpful to describe the nature of the award in the text.

ii) Partial awards

Partial awards are most frequently used to record the determination of specific issues where the dispute is complex and can be divided into different stages, each concluded with a separate partial award. For example, if the arbitrators bifurcate the liability and quantum issues, they may make a partial award on liability and another partial award on quantum. If there are several awards, arbitrators should consider numbering their awards consecutively to avoid any confusion. These awards are sometimes called 'partial final' awards to aid understanding of the fact that it is both 'partial' (ie it does not dispose of all issues in dispute) and 'final' in respect of the issues it does decide in the sense that the decision cannot be changed.

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iii) Final awards

a) An award should be described as a 'Final Award' when it is intended to bring the arbitration to an end by deciding and disposing of all or the outstanding issues in dispute between the parties. A final award may be the first award dealing with all of the disputed issues or the last in a series of awards which deal with different issues sequentially. If a final award is the last one in a series of awards, arbitrators should summarise any decisions made in earlier awards, so that enables all of the arbitrators' decisions are consolidated into one stand-alone document.

b) A final award should also deal with the costs of the arbitration and their allocation as well as interest, if applicable.[17] If arbitrators decide to deal with the merits before dealing with the costs they should make a partial award containing their decision on the merits and expressly state that they are going to deal with costs in a separate award.[18] Alternatively, they should make a final award save as to costs and deal with the costs in a later award.

c) A critically important consequence of issuing the final award is that from then on the arbitrators have no jurisdiction to decide issues between the parties19 except that they may have a very specific and narrow jurisdiction to correct, interpret, supplement and/or reconsider the award in limited circumstances pursuant to the applicable law and/or arbitration rules (see Article 5 below).

Termination of proceedings without a ruling on the merits

d) In certain situations, a final award can put an end to the proceedings without a ruling on the merits. For example, in cases where the arbitrators conclude that they do not have jurisdiction[20] or where the subject matter of the proceedings has ceased to exist or where the proceedings have been terminated because the parties have failed to provide security for costs.21

iv) Consent or agreed awards

a) If the parties to a dispute settle their differences during the arbitration proceedings, they may ask the arbitrators to make a consent award or an award on agreed terms. When dealing with such requests, arbitrators should be satisfied that a settlement agreement has in fact been reached by the parties and both parties consented to it.

b) In addition, arbitrators should be satisfied that the matters which are dealt with in the settlement agreement were within the scope of the arbitration agreement pursuant to which they have jurisdiction. If the settlement agreement extends to matters beyond the ambit of the arbitration agreement, arbitrators should ask the parties to agree to broaden their jurisdiction to encompass these new matters before issuing a consent award.

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c) Arbitrators should be satisfied that the agreement between the parties is not illegal or otherwise contrary to public policy. If the arbitrators have unresolved concerns, they may decline to record the settlement as an award without giving reasons. Arbitrators should be particularly wary of requests for consent awards in respect of disputes involving large monetary claims which settle very quickly after the commencement of the arbitration as they may be used as a money laundering device.[22]

d) If the arbitrators are satisfied that they should make a consent award, they do not need to include any reasons for the award except to record that the award reflects the parties' agreement on different issues including, if appropriate, what has been agreed in respect of all of the costs of the arbitration and, more specifically, who is to pay the arbitrators' fees and expenses and when.

v) Default awards

a) Before issuing an award in proceedings where a party fails to appear or otherwise fails to take part in the proceedings, arbitrators should make sure that the dispute is within the scope of the arbitration agreement and they have jurisdiction.[23] For further guidance on proceedings where one or more parties do not appear or cooperate, please refer to the *Guideline on Party Non-Participation*.[24]

b) Even where there is no formal obligation on arbitrators to warn a non-participating party of their intention to consider issuing a default award, it is a sensible precaution against potential challenges to give a non-participating party reasonable notice that arbitrators may be making a default award in their absence unless they participate within the period specified.

c) A default award does not differ from an award made by the arbitrators except that it should include a detailed description of the efforts which have been made to give the non-participating party a fair opportunity to present its case. This is necessary in order to show that the requirements of due process and equal treatment of the parties have been satisfied in order to reduce the risk of later successful challenges to the validity of the award by the non-participating party.

Article 3 – Deliberations and voting

1. At the end of a hearing or if there is one followed by written submissions, after submission of the last written statement, arbitrators should declare the proceedings closed. It is good practice to notify the parties at the same time when the arbitrators will be deliberating and when the parties should expect their award. Arbitrators should always deliberate before making any decision. Deliberations should be confidential and should not be disclosed to the parties except for the decision itself and the reasoning as reflected in the award.

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2. Arbitrators should attempt to make a decision unanimously. If they cannot reach a decision unanimously, the decision may be rendered by the majority, pursuant to any applicable arbitration rules and/or the *lex arbitri*.

3. An arbitrator may issue a dissenting or separate opinion to explain a disagreement with the outcome and/or the reasoning of the majority, as long as it is not prohibited under the arbitration agreement, including any arbitration rules and/or the *lex arbitri*. Dissenting or separate opinions should be carefully drafted to avoid any appearance of bias.

Commentary on Article 3

Paragraph 1 – Conduct of the deliberations

a) Arbitrators should agree on a process for deliberations and decide whether to deliberate in person, by videoconference, by teleconference, or in writing. Deliberations can take place at any location the arbitrators consider appropriate. It is good practice to deliberately set aside time, immediately after the close of proceedings, for at least initial deliberations.

b) The extent of the deliberations necessarily varies depending on the nature of the dispute, the number of claims, the issues to be decided, the type of decisions required and the preferences of the individual arbitrators. In any case, arbitrators should deliberate in a collegiate manner. Each arbitrator should be given an opportunity to express their non-biased and independent view and all of the arbitrators should engage in a constructive dialogue with the aim of reaching a well-reasoned and thorough decision. Arbitrators cannot delegate their responsibility to participate in the deliberations or the decision-making process.

Obstructionist arbitrator(s)

c) If one arbitrator refuses to participate in the deliberations without good reason, the other arbitrators may proceed in the arbitrator's absence after giving appropriate notice of the meeting and offering an opportunity to submit comments on the issues to be decided. In the case where the remaining arbitrators proceed with the deliberations, they should draft the award and ask the arbitrator who refuses to participate to review it, giving that arbitrator another opportunity to submit comments. All these steps should be recorded in any award. If the two co-arbitrators refuse to participate, the presiding arbitrator can proceed by rendering the award alone, if the applicable arbitration rules and/or *lex arbitri* so permit.

Privacy and confidentiality of deliberations

Deliberations should take place in private with only the arbitrators present but others, such as a tribunal secretary appointed to assist the arbitrators, may attend if all of the arbitrators agree

and after informing the parties. Arbitrators, and others present, should keep all aspects of the deliberations confidential. Clearly, a party-appointed arbitrator should not communicate any aspect of the deliberations to the party who appointed them. A breach of the duty to keep the deliberations confidential may result in a claim for damages for breach of confidentiality against the arbitrator responsible.

Paragraph 2 – Voting

If at the end of the deliberations, the arbitrators are not in agreement and are therefore unable to reach a unanimous decision, then the presiding arbitrator should summarise the opposing opinions and ask the other arbitrators to vote. If there is a majority, this should be reflected in the award without the need for a dissenting opinion. If there is no majority, under some arbitration rules the presiding arbitrator may reach a decision alone.[25] If, however, the presiding arbitrator is not empowered to do so, the presiding arbitrator should engage in further discussions and try to reach a majority. If no majority is reached, there is a risk that there may be no award at all.

Paragraph 3 – Dissenting and concurrent opinions

a) An arbitrator may wish to make an individual separate opinion expressing disagreement with the reasoning and/or the conclusions of the majority. There is no required form in which dissenting or concurring opinions should be made. They may be annexed to the final award or included in the award itself; however, they do not have any legal effect and they do not form part of an award.[26]

b) It is good practice for an arbitrator to issue a written draft of any separate opinion for consideration by the other arbitrators before any award is made. The separate opinion should not disclose any details of the deliberations. It should be clearly identified as the personal opinion of its author; it should be limited to explaining the basis of the opinion; and it should not raise any new arguments that the arbitrator failed to raise at the deliberations.

Article 4 – Form and content of awards

1. Arbitrators should comply with any requirements as to form and content set out in the arbitration agreement, including any arbitration rules and/or the *lex arbitri*. In any event, an award should:

i) be in writing;
ii) contain reasons for the decision, unless the parties have agreed otherwise or if it is a consent award;
iii) state the date and the place of arbitration; and

iv) be signed by all of the arbitrators or contain an explanation for any missing signature(s).

2. Awards should also contain the following essential elements:

i) the names and addresses of the arbitrators, the parties and their legal representatives;
ii) the terms of the arbitration agreement between the parties;
iii) a summary of the facts and procedure including how the dispute arose;
iv) a summary of the issues and the respective positions of the parties;
v) an analysis of the arbitrators' findings as to the facts and application of the law to these facts; and
vi) operative part containing the decision(s).

Commentary on Article 4

Paragraph 1

Requirements as to form and content vary according to the arbitration agreement, including any arbitration rules and/or the applicable *lex arbitri.* Therefore, arbitrators should check the relevant law(s) and rules before making an award. Generally speaking, there are certain minimum requirements which are almost universally recognised.

i) Awards in writing

Arbitrators should make an award in writing in order to record their decision. It is an obvious and practical requirement which will avoid dispute as to what actually has been decided. The New York Convention implicitly refers to the written form of an arbitral award pursuant to Article IV(1)(a) requiring 'the duly authenticated original award or a duly certified copy thereof' to obtain enforcement.

ii) Reasons

a) All arbitral awards should contain reasons, unless otherwise agreed by the parties or where the award records the parties' settlement. The inclusion of reasons is necessary to demonstrate that arbitrators have given full consideration to the parties' respective submissions and to explain to the parties why they have won or lost. Most national laws and arbitration rules expressly require arbitrators to include reasons in their awards. Even where they are silent on the matter, it is good practice to provide reasons, unless the parties agree otherwise or where the award records the parties' settlement (see Article 2(iv) above).

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b) Arbitrators have a wide discretion to decide on the length and the level of detail of the reasons but it is good practice to keep the reasons concise and limited to what is necessary, according to the particular circumstances of the dispute. In any event, arbitrators need to set out their findings, based on the evidence and arguments presented, as to what did or did not happen. They should explain why, in the light of what they find happened, they have reached their decision and what their decision is.

c) Arbitrators should also consider whether it is appropriate to include a statement that the parties have had a fair and equal opportunity to present their respective cases and deal with that of their counterparty.

iii) Date and place

a) An award should include the date on which it is made. The date indicated has important consequences for the commencement of any time limits with which applications for a correction or annulment must be made.[27] The date of the award may be the date on which the award is finally approved, the date on which it is signed by all the arbitrators (if it is signed by way of circulation, the date of the last signature), or the date on which it is sent to the parties depending on the relevant rules and/or *lex arbitri.* If the arbitration rules require that an arbitral institution administering the arbitration scrutinises an award before it is communicated to the parties, the award should only be dated after the institution has reviewed the award.[28]

b) The award should also state the place of arbitration. In international arbitration awards are deemed to be made at the place of arbitration and not where they are actually signed,[29] unless the parties have agreed otherwise, or if the applicable arbitration rules provide that awards are made in a specific place.

iv) Signatures

a) The act of signing an award expresses endorsement of its content. The general principle is that all arbitrators should sign the award regardless of whether or not it was rendered unanimously. Arbitrators do not need to sign the award at the same place or at the same time, unless otherwise required by the applicable rules and/or the *lex arbitri*. In addition, arbitrators should always check for any specific requirements related to signing, including if there is a requirement for their signatures to be witnessed by one or more people, or that arbitrators sign every page of the award.[30]

b) Sometimes, however, arbitrators may be unable to sign an award, or may refuse to do so, to express their disagreement with the decision. In these cases, it is sufficient that the remaining arbitrators or the presiding arbitrator sign the award. If the presiding arbitrator refuses to sign the award, the majority will suffice. It is often a requirement of national laws and/or the

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arbitration rules, and it is good practice, for an award to include an explanation as to why any of the arbitrators have not signed the award.

Paragraph 2

i-v) Other content requirements

a) It is good practice to start preparing and regularly update as the arbitration develops the narrative paragraphs of an award at an early stage so as to set out the basic information including the names and addresses of the arbitrators, the parties and their representatives, the chronology of the facts, the respective positions of the parties and any agreed matters. The award should describe the process by which the arbitrators have been appointed and basis for their jurisdiction to resolve the dispute.[31] It should also contain a brief procedural history of the main stages in the arbitration, referring to preliminary conferences, exchanges of documents, hearing and post-hearing exchanges. The purpose of this is to enable the reader, such as a judge called upon to enforce the award, to see how the arbitrators came to have the authority to issue an award and understand whether the procedure followed was in accordance with the agreement of the parties, including any arbitration rules and/or the *lex arbitri*.[32]

b) The award should also clearly identify and present in a logical order the issues which need to be decided. They are often phrased as questions. The issues can be found in the parties' submissions or the arbitrators themselves can draft a list based on the parties' submissions.[33] It is good practice to request the parties to provide a list, preferably agreed between them, and/or ask them to comment on the list prepared by the arbitrators in order to make sure that all of the disputed issues have been included and that all matters fall within the arbitrators' jurisdiction. In any case, the list of issues should be presented in a logical sequence and in the order in which they will be discussed.

c) In addition, arbitrators should include a description of all claims and counterclaims, if any. This can be done by way of paraphrasing the relevant sections from the request for arbitration or the submissions made by the parties. Arbitrators should be careful to avoid considering matters that were not raised by the parties and/or leaving out matters which were raised by the parties.

vi) Operative part of an award

a) The award should conclude with a section, known as the operative or dispositive part, setting out the arbitrators' decision and orders issue by issue. This section should be short and clearly separated from the rest of the award. It should be consistent with the conclusions on the issues expressed earlier in the award.

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b) The operative part of an award should be drafted using mandatory language that requires compliance from the parties, such as 'we award', 'we direct', 'we order' or the equivalent.[34] In cases of non-monetary awards, where arbitrators have been asked to determine certain factual or legal situation(s), they may use the wording 'we declare'.

Article 5 – Effect of a final award

The arbitrators' mandate is terminated when the final award has been rendered subject to power:

i) to correct, interpret and/or supplement the award; and/or

ii) to resume the arbitral proceedings after a remission order by a court during challenge proceedings in order to eliminate a ground for setting aside or invalidating an award.

Commentary on Article 5

Correction

a) Virtually all arbitration rules and national laws allow corrections of awards.[35] This is necessary to correct unintended consequences of, for example, errors in computation or denomination, and clerical, typographical or similar errors. When correcting an error arbitrators should be very careful not to alter the content of the award beyond correcting that error.

b) To avoid the need for corrections, it is good practice for arbitrators to check that any calculations are correct and the currency is correctly denominated. They should also make sure that the names of the parties are accurate.

Interpretation

Arbitrators may be requested to clarify their decision or remove ambiguities in the award in limited circumstances. Their powers are usually limited by the applicable *lex arbitri* and/or the arbitration rules to interpreting specific parts of the operative part of the award or where it is unclear how the award should be executed.[36] Therefore, arbitrators may be able to reject any request for interpretation which goes beyond that.

Additional award

Arbitrators may be requested to make an additional award where they have failed to decide one of the issues raised by the parties. The purpose of an additional award is to prevent an award from being set aside because of that failure. Before making an additional award, arbitrators should always check the arbitration agreement, including any arbitration rules and/or the *lex arbitri,* in order to make sure that they have the power to do so.

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ii) Remission of an award

When a party has applied to a local court to set aside an award, the court may remit an issue or issues back to the arbitrators with a direction that they take appropriate steps to rectify a defect in the award.[37] In such cases, arbitrators need to make a fresh award in respect of the matters remitted to them within the specified time under the applicable rules and/or *lex arbitri* or within a time indicated by the court. When doing so, arbitrators need to be very careful not to change the content of the award beyond the scope of the remitted matters.[38]

Conclusion

Arbitral awards are of great practical importance because they have a direct legal effect on the parties to the dispute and may be enforced under the New York Convention. While there is no prescribed style and form that arbitrators should follow when drafting awards, they should ensure that their award complies with the minimum requirements as to the form and substance laid down in the arbitration agreement, including any arbitration rules and/or the *lex arbitri*, and the New York Convention. To disregard them could create difficulties in enforcing the award or invalidate it.

Note

The Practice and Standards Committee (PSC) keeps these guidelines under constant review. Any comments and suggestions for updates and improvements can be sent by email to psc@ciarb.org

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Endnotes

1. See ClArb Guideline on Drafting Arbitral Awards Part II — Interest (2016).

2. See ClArb Guideline on Drafting Arbitral Awards Part III — Costs (2016).

3. One of the principal advantages of arbitration over court proceedings is that arbitral awards can be enforced in over 150 jurisdictions around the world pursuant to the UN Convention for the Recognition and Enforcement of Foreign Arbitral Awards (1958) (also known as the New York Convention), see Status of the New York Convention available at www.uncitral.org/

4. For a useful list of matters that can be addressed and clauses that can be included in the procedural orders, see ICCA Drafting Sourcebook for Logistical Matters in Procedural Orders (2015), available at www.arbitration-icca.org.

5. Peter Aeberli, 'Awards and Their Drafting', available at www.aeberli.co.uk.

6. See e.g., Articles 215(1) and 216(1) of the UAE Civil Procedure Code, Federal Law No 11 of 1992 (stating that the arbitrators' award may be set aside or refused enforcement where it has been issued without the terms of reference.)

7. Humphrey LLoyd and others, 'Drafting Awards in ICC Arbitrations' (2005) 16(2) ICC Bulletin, p. 21 and Günther J. Horvath, 'The Duty of the Tribunal to Render an Enforceable Award' (2001) 18(2) Journal of International Arbitration, p. 148.

8. See e.g., Article 30 ICC Rules (2012); Article 37 SCC Rules (2010); Rule 28.2 SIAC Rules (2013). It is important to note that the ICC has introduced a new policy, for all cases registered as from 1 January 2016, which allows the ICC Court to impose cost sanctions for unjustified delays in submitting draft awards for scrutiny. For more details, see www.iccwbo.org.

9. See e.g., Section 50 English Arbitration Act 1996 which permits courts to extend a time limit for making the award.

10. Emmanuel Gaillard and John Savage (eds), *Fouchard, Gaillard and Goldman on International Commercial Arbitration* (Kluwer Law International 1999), p. 759. See also UNCTAD, 'Making the Award and Termination of Proceedings' UNCTAD/EDM.Misc.232/Add.41 (2005), p. 18.

11. See e.g., Section 56 English Arbitration Act 1996 which expressly states that arbitrators may withhold the award until full payment of their fees. See also, Article 34(1) ICC Rules (2012) which provides that the Secretariat will not send the award to parties until full payment of the costs of arbitration is received.

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12. See e.g., under the ICC Rules, an electronic transmission of the award does not constitute official notification of an award and official notification is deemed to occur when a party receives the original signed award, see Jason Fry, Simon Greenberg and Francesca Mazza, *The Secretariat's Guide to ICC Arbitration* (ICC Publication 729 2012), p. 341.

13. Gary B. Born, *International Commercial Arbitration* (2nd ed, Kluwer Law International 2014), p. 3020; Philipp Peters and Christian Koller, 'The Notion of Arbitral Award: An Attempt to Overcome a Babylonian Confusion in Christian Klausegger and others (eds), Austrian Yearbook on International Arbitration (2010), p. 162 and Fry, n 12, pp. 330-331; Julian D. M. Lew and others, *Comparative International Commercial Arbitration* (Kluwer Law International 2003), pp. 634-635.

14. Jeffrey Waincymer, *Procedure and Evidence in International Arbitration* (Kluwer Law International 2012), pp. 1272-1273; Born, n 13, p. 3021 and Nigel Blackaby and others, *Redfern and Hunter on International Arbitration* (6th ed, OUP 2015), para 9.26.

15. See e.g., Section 39 English Arbitration Act 1996 entitled 'Power to make provisional awards'. However, commentaries suggest that provisional decisions are properly entitled 'provisional orders', see Bruce Harris, Rowan Planterose and Jonathan Tecks, *The Arbitration Act 1996: A Commentary* (5th ed, Wiley Blackwell 2014), p . 204 and Robert Merkin and Louis Flannery, *Arbitration Act 1996* (5th ed, Informa 2014), pp. 155-156.

16. See CIArb Guideline on Applications for Interim Measures (2015). However, the national laws of certain jurisdictions provide that interim measures can be granted only by way of procedural orders. See, for example, Article 12 Singapore International Arbitration Act and Article 19B Singapore International Arbitration Act; see also, Section 39 English Arbitration Act which provides for provisional awards which can be used for granting relief on a provisional basis and expressly states that they can be subsequently changed.

17. See generally, CIArb Guideline on Drafting Arbitral Awards Part II – Interest (2016) and CIArb Guideline on Drafting Arbitral Awards Part III _ Costs (2016).

18. Hilary Heilbron, *A Practical Guide to International Arbitration in Londo*n (Informa 2008), p. 111 and Blackaby, n 14, para 9.18.

19. Greg Fullelove, 'Functus Officio' in Julio Cesar Betancourt (ed), *Defining Issues in International Arbitration: Celebrating 100 Years of the Chartered Institute of Arbitrators* (OUP 2016), chapter 24.

20. See CIArb Guideline on Jurisdictional Challenges (2015).

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21. See CIArb Guideline on Applications for Security for Costs (2015).

22. Lew, n 13, p. 247 and Waincymer, n 14, p. 1285. See also UNCTAD, n 10, p. 10.

23. See CIArb Guideline on Jurisdictional Challenges (2015).

24. See CIArb Guideline on Party Non-Participation (2016).

25. See eg., Article 31 ICC Rules (2012); Article 26.5 LCIA Rules (2014) and Article 33 UNCITRAL Rules (2010/2013). See also, Section 20(4) English Arbitration Act 1996.

26. Blackaby, n 14, para 9.130.

27. Born, n 13, p. 3037.

28. See, for example, Article 33 ICC Rules (2012) which states that an award can be made only after the Court has approved it. Fry, n 12, p. 323.

29. See e.g., Article 18(2) UNCITRAL Arbitration Rules (2010/2013), Article 31(3) ICC Rules (2012), Section 53 English Arbitration Act 1996.

30. See e.g., in Dubai arbitrators sign every page of the award. Blackaby, n 14, paras 9.148-9.149.
31. For the process of dealing with challenges to jurisdiction, see generally CIArb Guideline on Jurisdictional Challenges (2015).

32. LLoyd, n 7, p. 20; Ray Turner, *Arbitration Awards: A Practical Approach* (Blackwell 2008), p. 30; See Article V(1)(d), New York Convention.

33. In ICC arbitrations, a list of issues is usually included in the Terms of Reference, see Article 23 ICC Rules (2012). See also, Draft revised UNCITRAL Notes on Organizing Arbitral Proceedings which encourage arbitrators to prepare a list of issues based on the parties' submissions, available at www.uncitral.org.

34. Bernardo M. Cremades, 'The Arbitral Award' in Lawrence Newman and Richard Hill (eds), *The Leading Arbitrators' Guide to International Arbitration* (Juris 2014), p. 818 and Blackaby, n 14, para 9.154. There is an exception where the parties have agreed upon the inclusion of a conditional element in the award. However, such awards should be avoided. See Peter Ashford, Handbook on *International Commercial Arbitration* (2nd ed, Juris 2014), p. 426.

35. See e.g., Article 38 UNCITRAL Rules (2010/2013), Article 35 ICC Rules (2012), Article 27 LCIA Rules (2014), Article 37 HKIAC Rules (2013), Article 29 SIAC Rules (2013). See also, Article 33 UNCITRAL Model Law and Section 57 English Arbitration Act 1996.

36. Born, n 13, p. 3148 and Lew, n 13, p. 658.

37. Born, n 13, p. 3153 and Fullelove, n 18.

38. See e.g., *Goldenlotus Maritime Ltd v European Chartering and Shipping Inc [1993] SGHC 262* (where an award was remitted so that the arbitrators recalculate the damages to be paid. However, when doing so, arbitrators also changed the basis on which they previously awarded the damages. Consequently, the revised award was not binding because the arbitrators exceeded the jurisdiction conferred to them by the court which remitted the original award.) See Leng Shun Chan, *Singapore Law on Arbitral Awards* (Singapore Academy of Law 2011), p. 137.

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