

# Introduction to International Commercial Arbitration

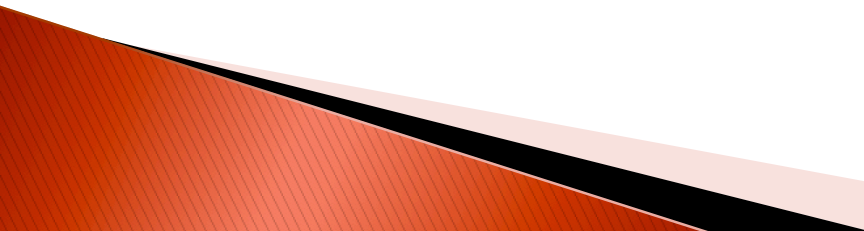
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# The Award

Lesson n.11

# What is the «Award»?

- ▶ There is no internationally acknowledged definition of Arbitral Award
  - ▶ Of course the easiest hypothesis is the decision on the merits, in writing and final and binding upon the parties
  - ▶ But this is not the only case in which the Arbitral Tribunal issue a decision
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# Categories of Award

- ▶ «Order» or «Award»?
  - *E.g.* a decision to order a disclosure of documents, or a decision that ascertain some partial fact-finding
- ▶ Final Award
  - A decision that completes the mission of the Arbitral Tribunal

# Categories of Award

- ▶ Partial and Interim Award
  - They are generally allowed (*e.g.* ICC Rules – UK Arbitration Act)
  - Main disadvantage: judicial review
    - Jurisdictional issues
    - Applicable law
    - Separation of liability and *quantum*
    - Limitation (by law or contractual)

# Categories of Award

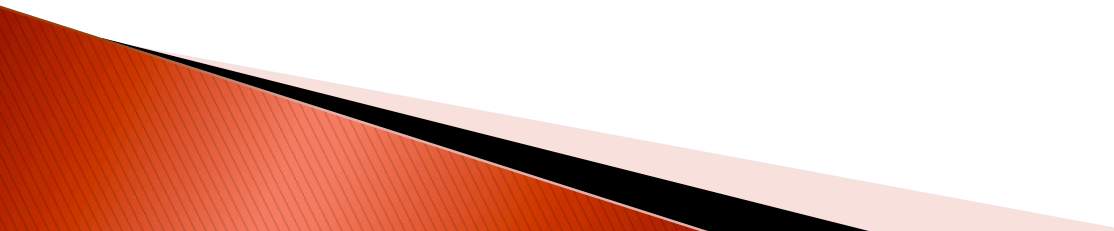
## ▶ Default Award

- When a party refuses to (completely or partially) take part in the Arbitration Proceedings, the task upon the Arbitral Tribunal is a bit more complicated

## ▶ Consent Award

- The parties reach an agreement and want this agreement to be embodied in an Award.
- It is allowed under many jurisdiction but there are exceptions (*e.g.* Italy)
- The Arbitral Tribunal is generally allowed to refuse

# Types of Remedies

- ▶ Monetary compensation
  - ▶ Punitive Damages
    - Allowed under applicable law? Which law do apply?
    - Enforcement?
  - ▶ Specific performance
  - ▶ Declaratory relief
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# Types of Remedies

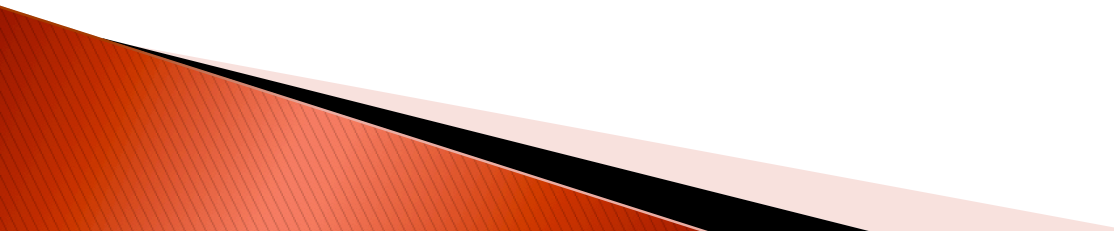
- ▶ **Adaptation of the contract**
  - Hardship
  - Quantity or price to be determined
- ▶ **Interest**
  - Procedural issue (UK, HK) or substantial issue (Germany)?
  - How much (statutory or discretionary)?
- ▶ **Costs**



# Validity of Awards

- ▶ Form of the Award
  - Requirements in the Arbitration Agreement (including, by reference, the Rules of Arbitration in an Institutional Arbitration)
  - Requirements in the *Lex Arbitri*

# Main Form Requirements

- ▶ In writing
  - ▶ Signed by the Arbitrators (all of them?)
  - ▶ Reasoned
  - ▶ Dated
  - ▶ Place must be stated
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# The Award as *Res Judicata*

- ▶ *Res Judicata*: an issue determined by the competent court or tribunal cannot be put back in question between the same parties
- ▶ Existing disputes → solved
- ▶ Subsequent disputes → no *stare decisis*, but probatory value
- ▶ Third parties → very complicated