



# **Module 11: Deciding and Drafting the Award**

**Professor Anselmo Reyes**

**International Judge, Singapore International Commercial Court**

# Deciding and Drafting the Award

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- Award constitutes determination and order of arbitral tribunal on all issues referred to arbitration by parties
- Award must be in writing and signed (S.67)
- Award has effect of res judicata on issues decided
- Contrasts with order of tribunal which addresses procedural questions relating to conduct of arbitration
- By agreeing to arbitration, parties renounce to their right to appeal (S.81)

# Deciding and Drafting the Award (cont'd)

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- Award results from consideration by tribunal of all facts and law on issues submitted
- Decision of three-person tribunal collegial
- Majority decision may result in absence of consensus
- Purpose of award is to:
  - Determine dispute submitted by parties
  - Inform parties about decision of arbitral tribunal
  - Provide evidential base for successful party to seek enforcement of award

# Types of awards

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Arbitration award may be:

- Final
- Partial
- Interim
- Consent
- Default

Arbitration Ordinance requires award to be reasoned, unless parties have agreed otherwise (S.67)

# Remedies

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- Arbitral tribunal may award any remedy or relief that may be ordered by a Hong Kong court, including determination of parties' liability for costs (S.70(1))
- Arbitral tribunal may award specific performance:
  - Unless otherwise agreed by parties
  - Except in cases involving contracts relating to land or interest in land (S.70(2))

# Formal Validity of the Award

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- Arbitral tribunal has obligation to produce valid and enforceable award
- To be valid, award must conform to parties' agreement, chosen rules and applicable law
- Award must be (S.67):
  - in writing
  - Final and binding
  - Supported by reasons
  - Signed by majority of all members of tribunal
  - Dated, place of arbitration named and delivered to all parties

# Formal Validity of the Award (cont'd)

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- Award must comply with five basic legal requirements to ensure its enforceability:
  - Compliance with submission
  - Cogency
  - Certain
  - Final
  - Operative
- If award fails to comply with substantive requirements:
  - May be set aside in Hong Kong (S.81)
  - Enforcement may be refused in Hong Kong (S.84)
  - Enforcement may be refused outside Hong Kong under NY Convention

# Content of the Award

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- Front page
  - Sets out file number, identify of parties and their representatives, nature of award, legislation and rules under which arbitration is conducted
- Recitals
  - Background leading to award including: reference to underlying contract and arbitration agreement, provisions on appointing arbitral tribunal, how arbitral tribunal was appointed, how procedure has been conducted, etc.



# Content of the Award (cont'd)

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## Preamble

- Sets out background of dispute and parties' case:
  - Origin of dispute
  - Common Ground
  - Summary of parties' contentions and claims
  - List of issues to be decided
  - Submissions and evidence received

## Reasoning

- Tribunal must take care to decide all issues, but only those submitted by arbitration agreement and must calculate amount to be awarded on each issue

# Content of the Award (cont'd)

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- Operative Directions or Dispositive Section
  - Statement by tribunal stipulating type of award rendered, including specific information as to who is to pay, how much, to whom and when.
  - Addresses remedies being awarded under each claim and counterclaim (damages, specific performance, costs, Interest, etc.)

# Content of the Award (cont'd)

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- Signature
  - Arbitral tribunal must sign award (S.67)
  - Good practice to have signatures of tribunal witnessed
  - Award must be dated and seat of arbitration mentioned
    - If member of three-person tribunal fails to sign award, must be an explanation for absence of signature
- Dissent Awards
  - Rare for arbitrator to render dissenting award



# Q&A