CHAPTER 14

Award and Discontinuance of the Proceeding

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1 Introduction

A party’s objective throughout all of the case preparations, pre-hearing proceedings, and hearings described in earlier chapters of this volume is to secure a favorable award from the arbitrators. The award is a written and signed document that sets out the arbitrators’ decisions on all of the questions presented in the case and the reasons for those decisions. Unless annulled or set aside, it constitutes the final and binding resolution of those issues.

The award is a critical step in the investment arbitration process, but is not necessarily the final step. As discussed in Chapter 16 by Veijo Heiskanen and Laura Halonen, a dissatisfied party may seek to have an ICSID award annulled in whole or part utilizing the annulment process created by Article 52 of the ICSID Convention.1 Or, in non-ICSID cases, such as those arbitrated under the rules of other arbitral institutions or in ad hoc proceedings, a losing party may seek to have an adverse award set aside by a national court applying its national arbitration law. And while awards in favor of claimants are often paid voluntarily, some losing respondents may be reluctant to pay or otherwise comply. The same problem arises if a respondent receives an award of costs against an uncooperative claimant. In either case, measures to enforce may be required, a subject treated in Chapter 15 by Carolyn Lamm and Eckhard Hellbeck.

2 The Effect of the Award

A fundamental premise of the investment arbitration system is that the parties commit themselves to respect and give effect to the resulting award, subject

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to limited possibilities for annulling or setting it aside if a dissatisfied party can establish certain types of significant deficiencies in the award or the proceedings. Article 53(1) of the ICSID Convention thus directs that “[t]he award shall be binding on the parties and shall not be subject to any appeal or to any other remedy except those provided for in this Convention. Each party shall abide by and comply with the terms of the award except to the extent that enforcement shall have been stayed pursuant to the relevant provisions of this Convention.”

The fundamental obligation of the arbitrating parties to comply with the award is a consistent feature of procedural rules potentially applicable in investment arbitration. Article 32(1) of the “Permanent Court of Arbitration’s Optional Arbitration Rules—Two Parties of Which Only One Is a State” ("PCA Optional Rules") directs that the award "shall be final and binding on the parties. The parties undertake to carry out the award without delay." Under Article 26.9 of the rules of the London Court of International Arbitration ("LCIA Rules"), “[a]ll awards shall be final and binding on the parties. By agreeing to arbitration under these Rules, the parties undertake to carry out any award immediately and without any delay (subject only to Article 27); and the parties also waive irrevocably their right to any form of appeal, review or recourse to any state court or other judicial authority, insofar as such waiver may be validly made.” Article 34(6) of the Arbitration Rules of the International Chamber of Commerce ("ICC Rules") directs that “[e]very award shall be binding on the parties. By submitting the dispute to arbitration under the Rules, the parties undertake to carry out any award without delay and shall be deemed to have waived their right to any form of recourse insofar as such waiver can validly be made.”

Because of its important legal effect, an award must be carefully drafted. It must be truly dispositive, indicating in clear and imperative language just what the tribunal has decided on the questions presented.  

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2 Emphasis added.