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## GUIDELINES FOR THE ANONYMOUS PUBLICATION OF ARBITRAL AWARDS

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GUIDELINES FOR THE ANONYMOUS PUBLICATION  
OF ARBITRAL AWARDS<sup>1</sup>

PREAMBLE

1. The Guidelines aim to provide a set of common and uniformly applicable standards in order to publish arbitral awards and provisions anonymously and confidentially, even in absence of the parties' consent.
2. The Guidelines are intended for legal practitioners, arbitral institutions, universities, research institutions, legal journals, and, those interested in arbitral awards for research or information purposes.
3. The Guidelines do not derogate from any provision that, if necessary, permits or requires the full publication of an arbitral award.
4. The Guidelines should be considered together.
5. The Guidelines were developed for the publication of international commercial arbitral awards.

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<sup>1</sup> Translation from Italian by Daniele Sutto, Kate Kelso, Michael McIlwrath

## CHAPTER I

## DEFINITIONS AND GENERAL STANDARDS

SUMMARY: 1.1 Definitions. – 1.2 Scope of application. – 1.3 General standards for essential elements. – 1.4 General standards for non-essential elements. – 1.5 Residual standard for publication. – 1.6 Relationship to other standards.

**1.1 Definitions**

*“Procedural information”*: any element (including places, dates, figures, names...) that directly relates to the arbitral proceedings.

*“Substantive information”*: any element (including places, dates, figures, names...) that relates to the disputed legal relationship.

*“Essential elements of the award”*: any element, either substantive or procedural, necessary to the understanding of the award.

*“Identifying elements”*: any element, either substantive or procedural, that identifies the award or one of the persons involved therein. In particular, the identifying elements may be distinguished between:

- *“Necessary identifying elements”*: elements which always identify the party in the arbitral proceedings,

- *“Possible identifying elements”*: elements which identify the party in the arbitral proceedings only if considered in connection with other elements of the award or with other subjective and/or objective circumstances.

*“Non-identifying elements”*: elements which never identify the party involved in the arbitral proceedings.

*“Anonymously published award”*: award made unrecognizable through the application of these Guidelines.

*“Procedure for publication”*: process which an award or another arbitral provision undergoes, aimed to render it both extensively and restrictively unrecognizable while still preserving its legal issues.

*“Identification of the award”*: situation in which the award, either wholly or in part, may be identified by a third party not involved in the proceedings, but joined with one or more of the parties. In particular, it can be distinguished between:

- *“Extensive identification”*: when the award may be identified by an extensive number of persons,
- *“Restrictive identification”*: when the award may be identified only by a restricted number of persons who present a particular connection with the parties.

## **1.2 Scope of application**

The Guidelines are intended for the publication of domestic arbitral awards, international commercial arbitration awards and, in general, any provision issued in the proceedings or by the arbitral institutions in the course of the proceedings.

## **1.3 General standards for essential elements**

The “essential” and “non-identifying” elements must be indicated in full.

The “essential” and “identifying” elements (even in regard to a limited number of third parties) must be replaced or omitted using the following standards in the given order:

- substitution with general terms,
- substitution with more specific terms when necessary for a better understanding of the award,

- partial publication, to the exclusion of the “identifying” elements.

In residual cases, when the award is equally recognizable:

- it must be published with the consent of the parties,
- if no alternatives are available and the parties have not agreed or have expressly objected to the publication, the award must not be published.

#### **1.4 General standards for non-essential elements**

“Identifying” elements that are “non-essential” for the understanding of the award must be omitted and replaced with general terms.

The “non-essential” and “non-identifying” elements must be indicated in full, unless in connection with other elements that may render the award recognizable. In this case they must be omitted and replaced with general terms.

#### **1.5 Residual standard for publication**

The award must not be published only if none of the standards provided hereafter ensure that award will be rendered unrecognizable.

#### **1.6 Relationship to other standards**

The standards provided hereafter specify the previous standards.

In any event, if the application of the following standards render the award recognizable, the principle provided in par. 1.3, subpar. 3 will apply.

## CHAPTER II

STANDARDS FOR PUBLICATION WITH REGARD TO  
SPECIFIC CASES

SUMMARY: 2.1. Names of the arbitrators. – 2.2. Arbitration number (for institutional arbitration). – 2.3. Seat of arbitration and applicable law. Arbitral Institution. – 2.4. Names and identification of the parties. – 2.5. – Names of the counsels, witnesses, expert witnesses and other ancillary persons. – 2.6. Arbitration agreement. – 2.7. Dates and place of signature and place of deliberation. – 2.8. Language of the arbitration proceedings and language of the award. – 2.9. Dates. – 2.10. Numbers and figures. – 2.11. Places. – 2.12. Elements of the disputed legal relationship.

**2.1 Names of the arbitrators**

The names of the arbitrators and the mechanism of their appointment must be indicated in full.

**2.2 Arbitration number (for institutional arbitration)**

The arbitration number must be omitted. The arbitration number may be replaced with an alternative numbering, conventionally established by the person in charge of the award publication.

### **2.3 Seat of arbitration and applicable law. Arbitral Institution**

The seat of arbitration may be indicated. In case of international arbitration, if the seat is omitted, both the hosting country and the law applicable to the merits of the case must be indicated.

If indicating the hosting country or the applicable law renders the award recognizable without affecting its understanding, these elements may be omitted. Otherwise, par. 1.3 subpar. 3 will apply.

In the case of institutional arbitration, the name of institution administering the proceedings must be indicated unless it renders the award recognizable, considering the number of the proceedings administrated.

### **2.4 Names and identification of the parties**

The names of the parties (as natural persons) must be omitted and replaced with general terms indicating their role (e.g. claimant, respondent) in the arbitral proceedings.

Legal persons (e.g. associations, corporations, institutions, or generally, any legal entity), the personal details and the qualifications of the legal representative of such parties must be omitted.

The general legal qualification of the entity must be indicated. In the case that the specific qualification of the institution or its legal representative is essential to the understanding of the award, it must be indicated.

The facts that render a party recognizable, although different from names and personal details, must be indicated in general terms.

In any event, if the application of the previously-mentioned standards renders the award recognizable, par. 1.3, par. 3 will apply.

### **2.5 Names of the counsels, witnesses, expert witnesses and other ancillary persons**

The names of the counsels, witnesses, expert witnesses (tribunal-appointed experts or party-appointed experts) and all other ancillary persons, including any other person (different from the parties and the



arbitrators) playing a role in the proceedings must be omitted and replaced with a general indication of their role in the dispute.

In the event that one or more of the parties does not join the proceedings, it must be indicated.

The general relationships between witnesses and parties (e.g. employee, relative, etc.) may be indicated unless it renders the award recognizable.

In any event, if the application of the previously-mentioned standards renders the award recognizable, par. 1.3, subpar. 3 will apply.

## **2.6 Arbitration agreement**

The arbitration agreement must be indicated in full, subject to any omission of the seat of arbitration (in accordance with paragraph 2.3).

If the award is recognizable due to specific terms contained in the arbitration agreement, the arbitration agreement itself must be omitted if it is not essential for the understanding of the award.

The type of agreement (arbitration clause inserted in parties' contract or compromise) may be generally mentioned. However, if it is essential to the understanding of the award, par. 1.3, subpar. 3 will apply.

## **2.7 Dates and place of signature and place of deliberation**

Dates and place of signature must be omitted. For the place of deliberation, the standards provided in par. 2.3. will apply.

## **2.8 Language of the arbitration proceedings and language of the award**

The award must be published in the original drafting language. If translated into a different language, the original drafting language must be indicated.

It must be indicated if the arbitration or the award is multilingual.  
In any event, if the application of the above standards renders the award recognizable, par. 1.3, subpar. 3 will apply.

## **2.9 Dates**

The procedural dates must be omitted unless they are relevant to the understanding of the legal issues in the arbitral award. In that event, the same standards for substantive dates will apply.

Substantive dates must be generally indicated (month, year) without reporting the specific day. If essential for the understanding of the award, the day may be replaced with general terms so that it is possible to chronologically coordinate the date with other dates indicated in the award.

In any event, if the dates (even if generally indicated) render the award recognizable, par. 1.3, subpar. 3 will apply.

## **2.10 Numbers and figures**

Numbers and figures relating to “procedural information” may be indicated unless they render the award recognizable.

Numbers and figures relating to “substantive information” must be replaced with letters to be used each time the same number/figure occurs in the award.

The numbers indicating the arbitrators’ decision must be replaced:

- with a letter corresponding to the parties’ submission, if it is accepted in full; or
- with a different letter, indicating the percentage of the acceptance of the submission itself, in the case that the submission is not accepted in full.

In regards to the costs of the proceedings and other legal costs, only the figures must be omitted and, if necessary, replaced, with percentage terms (in case of partial or total compensation).

### **2.11 Places**

Places, both substantive and procedural, must be omitted unless essential to the understanding of the award. However, if they render the award recognizable, par. 1.3, subpar. 3 will apply.

### **2.12 Elements of the disputed legal relationship**

The type, the nature, the object and the legal-economic context of the disputed relationship must be indicated in full.

If some of the elements (particularly, economic and financial elements) render the award recognizable, general terms must be used progressively until the award is unrecognizable.

In any event, if the award is still recognizable, par. 1.3, subpar. 3 will apply.

## CHAPTER III

## PROCEDURE FOR PUBLICATION

SUMMARY: 3.1. Confidentiality of awards and provisions issued before publication. Confidentiality agreement. – 3.2. Procedure for publication. – 3.3. Heading of the award and possible classification. – 3.4. Electronic version of the awards. – 3.5. – Hard copy of the awards. – 3.6. Possible alternative procedures for the distribution of the award.

### **3.1 Confidentiality of awards and provisions issued before publication. Confidentiality agreement**

All legal entities (corporation, institutions or natural persons) collecting and handling arbitral awards for the purposes of publication must agree to a confidentiality agreement.

In any event, it is forbidden to spread or divulge to third parties – wholly or partially, in full or in summary – the awards, or, in general, any provisions not yet published or any details regarding them.

### **3.2 Procedure for publication**

The procedure for publication is structured as follows:

- reading of the award,
- identification of the both the necessary and possible identifying elements of the specific case,
- identification of both the extensive and restricted risks of identification of the award,
- identification of the essential elements for the legal understanding of the award,
- handling of the formal parts,

- handling of the substantive parts,
- re-reading of the anonymous award and verification that it is unrecognizable.

In the application of the previously mentioned standards, single words must be omitted or replaced without affecting the syntactic and consistent structure of the sentences. If there are no other available alternatives, some parts of the awards may be summarized or paraphrased.

The standards for the drafting of the award draw inspiration from the principles of clarity and stylistic simplicity in order to render the award fully understandable and fluent.

### **3.3 Heading of the award and possible classification**

The heading of the award must specify its sequence number (if included in a collection), the nature and type of the arbitration (e.g. *ex aequo et bono* – arbitration by law; institutional – *ad hoc*), the duration of proceedings (indicating the number of months without specifying the starting date) and the applicable procedural and substantive law.

If the award is included in a database or in a collection of awards, a conventional numbering may be used.

### **3.4 Electronic version of the award**

When the text of the award is available in an electronic format, the omitted words or phrases must be replaced with square brackets containing either suspensions dots (if the words or phrases will not be replaced) or substituent words or phrases (if the words or phrases should be replaced with other expressions). In any event, substituent or added words and phrases when compared to the original text must be written in capital letters or highlighted.

### **3.5 Hard copy of the awards**

When the text of the award is available only in hard copy, different procedures must be followed. First, the words or the phrases to be omitted must be deleted by graphical devices able to i) ensure illegibility of the word or phrase and ii) leave blank spaces substituting the deleted words and phrases. Subsequently, the resulting text must be photocopied and the blank spaces filled in either with suspension dots (in case of mere omission) or with substituent words and phrases. In any event, substituent or added words and phrases when compared to the original text must be written in capital letters or highlighted.

### **3.6 Possible alternative procedures for the distribution of the published award**

Notwithstanding paragraphs 3.4.and 3.5., the published award may be distributed in alternative ways (hard or electronic) in order to prevent the reconstruction or recovery of the replaced or deleted parts.