



Pravna fakulteta  
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# An Award on Agreed Terms – a Civil Law Perspective

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- **Pro and contra settlement?**
- Viewpoint of the parties / **arbitrators** / **arbitral institutions** / justice system
- **Two options in arbitration**
- Settlement agreement  termination of proceedings
- Joint proposal of the parties  Award on agreed terms (Consent award, award by consent),

# Arbitration Act (SLO): Article 34



## Settlement

- If, **during arbitral proceedings**, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings. If requested by the parties, the **settlement shall be recorded** in the form of an arbitral award on agreed terms, except if the content of the settlement is in conflict with the public policy of the Republic of Slovenia.
- 2) An award on agreed terms shall ...state that it is an award.
- Such an award has the **same effect as any other award** on the merits of the case.

# Rules of the Ljubljana Arbitration Centre (Art. 43)



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AND INDUSTRY OF SLOVENIA

- If, **before the final award is made**, the parties agree on a settlement of the dispute, the Arbitral Tribunal shall **either issue an order for the termination** of the proceedings or, if so requested by the parties **and accepted** by the Tribunal, record the settlement in the form of an **award on agreed terms**. The provisions of Articles 40 and 41 shall apply to an award on agreed terms but the Arbitral Tribunal is not obliged to give **reasons** for such an award.

# Are arbitrators bound by the parties' proposal to issue an award on agreed terms ?

- Procedural prerequisites first (incl. Arbitrability)
- **Grounds for refusal (breach of public policy as a result of illegality; e.g. corruption, money laundering, tax evasion, funding illegal activities, detriment for the non-parties...)**..... Costs issues?
- **Standard of proof** for establishing illegality as a grounds for refusal (doubt?, probability?)
- **Effects of refusal:**  
Proceedings terminated; settlement agreement remains as a contract; whether valid or null and void not an issue for this arbitration?  
Proceedings on merits pending again?

# Can arbitrators assist parties in reaching a settlement

- Only if requested by the parties?
  - with express consent (e.g. included in ToR), included in PO1 (which was not objected on that point)
  - with consent of the parties, but on the initiative of the arbitrators?
  - without an express consent?
- Assistance to the parties v. independence and impartiality
- Different tools possible: e.g. drafting and orally presenting a preliminary draft of the award concerning points of law upon the joint request of the parties?

# IBA Guidelines on Conflicts of Interest in International Arbitration (4d)



An arbitrator **may assist the parties in reaching a settlement**

..... However, before doing so, the arbitrator should receive an **express agreement** ....

Such express agreement shall be considered to be an **effective waiver of any potential conflict of interest** .... If the assistance by the arbitrator does not lead to final settlement of the case, the parties remain bound by their waiver.

However, ....., the arbitrator shall **resign** if, as a consequence of his or her involvement in the settlement process, the arbitrator **develops doubts** as to his or her ability to remain impartial or independent ....

# Enforceability of awards on agreed terms

- The main difference between a contract and an award (on agreed terms), so ....
- Controversial issue: Does it matter whether there was still a genuine dispute in the moment when the matter was submitted to arbitration? Can an arbitral award on agreed terms be rendered based on settlement agreement reached (e.g. in mediation) even before the request for arbitration was filed?

# Mediation Act (Slovenia)



Art. 14(2)

The parties may agree that the **settlement agreement is recorded** in the form of enforceable notarial deed, as a settlement in court or as an **arbitral award on agreed terms**

# SCC Mediation Rules (2014)

- Article 14

In case of settlement, the parties may, subject to the consent of the Mediator, **agree to appoint the Mediator as an Arbitrator and request him/her to confirm the settlement agreement in an arbitral award.**



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## The New York Convention (Art. 1)



This Convention shall apply to the recognition and enforcement of arbitral awards [.....] and **arising out of differences between persons ...**,

### **Slovenia: Arbitration Act (Art. 10)**



“Arbitration agreement” is an agreement by the parties **to submit to arbitration all or certain disputes**

# The content of an award on agreed terms

- Conditional settlement (**remains in force unless...., enters into force IF....**)?
- Interim award on liability on agreed terms ? (**share of contributory negligence**)?
- Clauses establishing procedural obligations relating to other pending proceedings (e.g. »accepts to withdraw a claim, pending in ... court (or another arbitration)?  
**Prozessvertrag v. Konventionalprozess**)
- Can it regulate issues not covered by the arbitration agreement?
- Can third parties join, although not bound by the arbitration agreement?
- Should it determine the law applicable to the merits of the dispute (of the settlement)?
- »**no admittance of liability**« clauses and their legal effects
- **Administrative costs and arbitrator's fees; allocation of costs**



Thank you for your attention!