



PCA Perspective on Electronic Arbitral Awards

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Key Points

1. Current practice to issue hard copies of awards by courier with wet signatures. Electronic awards are the exception.
2. This practice results from a concern regarding recognition and enforcement across various jurisdictions
3. Clear rules regarding the recognition and enforcement of electronic arbitral awards would be useful
4. There is also a practice of issuing awards on multiple supports (paper and electronic), which should be addressed

PCA Arbitration Rules 2012

(and 2010/2013/2021 UNCITRAL Arbitration Rules)

Article 2

1. A notice, including a notification, communication or proposal, may be transmitted by **any means of communication that provides or allows for a record of its transmission.**
2. If an address has been designated by a party specifically for this purpose or authorized by the arbitral tribunal, any notice shall be delivered to that party at that address, and if so delivered shall be deemed to have been received. **Delivery by electronic means such as facsimile or e-mail may only be made to an address so designated or authorized.**

PCA Arbitration Rules 2012

(and 2010/2013/2021 UNCITRAL Arbitration Rules)

Article 34

[...]

2. **All awards shall be made in writing** and shall be final and binding on the parties. The parties shall carry out all awards without delay.

[...]

4. **An award shall be signed** by the arbitrators and it shall contain the date on which the award was made and indicate the place of arbitration. [...]

[...]

6. **Copies of the award signed by the arbitrators shall be communicated** to the parties by the International Bureau. [in the UNCITRAL Rules, “by the arbitral tribunal”]

Extract from Terms of Appointment

“12.2 The Parties agree that any award may be signed in counterparts, which will be assembled in a single electronic file before notification to the Parties.”

Extract from PCA letter to the Parties

“On behalf of the Arbitral Tribunal, please find enclosed with this letter the electronic version of the Arbitral Tribunal’s Final Award dated 15 April 2020.

In light of the prevailing circumstances related to COVID-19, it has not been possible to produce original signed hard copies of the Award for distribution to the Parties at this time. Such versions will be circulated at a later date should either Party so request.”

Concern *that awards issued electronically may face difficulties at the recognition and enforcement stages. Best not to risk it without knowing which jurisdictions might be involved.*

For the practice to change, *such concerns would have to be substantially alleviated. This could therefore form a useful avenue of legislative or other work for the Working Group.*

Practice of Using Multiple Supports

Example from PCA case under the 2010 UNCITRAL Rules:

- 16 August - scanned copy of Award communicated by e-mail.
 - Both parties acknowledge receipt by e-mail.
- Hard copies of Award bearing wet signature of sole arbitrator sent to parties.
 - 25 August - claimant acknowledges receipt.
 - 28 August - respondent acknowledges receipt.
- 28 September - respondent files request for correction, interpretation and an additional award

Practice of Using Multiple Supports

Example from PCA case under the 2010 UNCITRAL Rules:

- The UNCITRAL Rules provide a period of 30 days from the “receipt of the award” for the filing of such applications (Arts. 37, 38, 39).
- UNCITRAL Rules, Art. 2(2): [...] Delivery by electronic means such as facsimile or e-mail may only be made to an address so designated or authorized.
- Terms of Appointment: “All written notifications or communications to or by the Parties (including pleadings, submissions, witness statements and exhibits) shall be valid if sent by email to the representatives of the Parties and/or (as necessary) to the Tribunal to the email addresses shown in sections B and E above.”

Practice of Using Multiple Supports

Excerpt from Terms of Appointment:

“An advance courtesy copy of any award, including the final award, will be sent electronically. It will be followed by the formal notification of a hard copy sent by courier.”

PERMANENT COURT OF ARBITRATION

A photograph of the Permanent Court of Arbitration building in The Hague, Netherlands. The building is a grand, multi-story structure with a prominent clock tower on the left side. The architecture is Gothic in style, with many windows and a dark roof. The building is reflected in a body of water in the foreground. The sky is blue with some clouds. The text "PERMANENT COURT OF ARBITRATION" is written in blue capital letters at the top of the image.

Thank You