

LEGAL CHALLENGES TO DELAYED ARBITRAL AWARDS

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“It’s never too late, we’ve still got time”

(Kylie Minogue)¹

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¹ The Song *Never too late* was written and produced by British production team Mike Stock, Matt Aitken and Pete Waterman for Kylie Minogue’s second album *Enjoy yourself* (1989), see Kylie Minogue, *Never Too Late*, YOUTUBE, <http://www.youtube.com/watch?v=gm2xdqEjB1I> (last visited Nov. 17, 2013).

ABSTRACT

A common (but not always justified) criticism of arbitration is that arbitral tribunals take too long to render awards. Indeed, there are cases where parties had to wait up to four years for an arbitral award after the close of proceedings. Any such significant delay will have a negative effect on the quality of the arbitral award. This article will analyze whether a significant delay could also affect the legal validity and enforceability of an arbitral award. Rarely do national arbitration laws and arbitration rules by arbitral institutions explicitly stipulate time limits for the making of an arbitral award. If such a time limit is set, often the consequences of non-compliance with such a time limit are set as well. However, in the absence of such an explicit time limit in a national arbitration law, the arbitration rules or party agreement, both the New York Convention as well as the UNCITRAL Model Law leave room for legal recourse against a late arbitral award. Thus, arbitrators are well advised to render an arbitral award within a reasonable period of time after the last hearing. Otherwise they risk the possibility that the award will not be enforceable (and that they might face not only reputational damages, but in the worst case even personal liability).

KEYWORDS: *delayed arbitral award, delay, New York Convention, UNCITRAL Model Law, enforceability of arbitral award, time limit, party agreement, personal liability, public policy, inability to present the case, quality of arbitral award*