

Draft June 13, 2022 (subject to modifications at the occasion of the Lisbon Conference)

RESOLUTION NO. 6/2022

INTERNATIONAL COMMERCIAL ARBITRATION

The 80th Conference of the International Law Association held in Lisbon, Portugal, 19-24 June, 2022

HAVING CONSIDERED the Report on Reasoning of Arbitral Decisions by the Committee on International Commercial Arbitration;

RECOGNISING that providing reasons for arbitral decisions is an important and very often essential part of arbitral adjudication in international commercial arbitration;

ADOPTS the Recommendations annexed to this Resolution;

COMMENDS the Recommendations to parties, arbitral tribunals, domestic courts and other reviewing bodies considering the reasoning of arbitral decisions.

ANNEX TO RESOLUTION

INTERNATIONAL LAW ASSOCIATION

COMMITTEE ON INTERNATIONAL COMMERCIAL ARBITRATION

REASONING OF ARBITRAL DECISIONS

RECOMMENDATIONS

A. KEY FINDINGS

Considering the following Findings of the Committee's Report:

1. In international commercial arbitration, the purpose of the reasons requirement is to enable the reader of an award, primarily the parties but also reviewing bodies, to understand the tribunal's reasoning and its decision. The content of the requirement, therefore, is focussed on the presence and coherence of the reasons, as opposed to their correctness or adequacy.
2. By and large, a reasons requirement applies irrespective of the basis of the decision *i.e.*, whether based on law, fact or equity. Awards on agreed terms or those rendered when the parties have waived the reasons requirement need not contain reasons.
3. A reasons requirement generally applies to decisions that finally dispose of an issue or claim. In some instances, the reasons requirement may also apply to decisions on interim measures of protection.
4. Procedural orders are not necessarily to be reasoned save for decisions on contested procedural issues that may affect the parties' due process rights where a less demanding reasons requirement may be appropriate.
5. Decisions on quantum and costs may also qualify for a reasons requirement, especially when a particular methodology or cost allocation principle is preferred over others and/or when these issues are contested.

6. The extent to which reasons are required depends on the specific circumstances of each case. It is sufficient that the reasoning meets the essential test of explaining why a particular arbitral decision was made.
8. While most legal systems provide that arbitral awards be reasoned unless the parties have waived that requirement, few identify the failure to provide reasons as an independent ground of annulment and/or refusal of recognition or enforcement. Subject to the applicable law, under certain circumstances such a failure might, be considered as reflective of different grounds for annulment and/or non-recognition or non-enforcement. There is a debate whether, when parties have adopted arbitration rules which include a reasons requirement, failure by the tribunal to comply with that requirement might lead to a defective award.

B. RECOMMENDATIONS

The Committee recommends as follows:

Subject to the applicable law and any agreement of the parties to the contrary,

1. Reasons should be provided irrespective of the basis of the decision *i.e.*, whether based on law, fact or equity. Awards on agreed terms need not contain reasons, other than in respect of the tribunal's authority to issue them.
2. Decisions that finally dispose of an issue or claim should be reasoned. In some instances, the reasons requirement may also apply to decisions on interim measures of protection.
3. Decisions on contested procedural issues that may affect the parties' due process rights should be reasoned at least summarily, primarily to inform the parties as to why an arbitral tribunal came to a certain procedural outcome.
4. Decisions on quantum and costs should also be reasoned, especially when a particular methodology or cost allocation principle is preferred over others and/or when these issues are contested.

5. The reasons requirement outlined in the above paragraphs does not deal with the extent of the reasoning required on specific issues. The extent to which reasons are required depends on the specific circumstances of each case. The reasoning should meet the essential test of explaining why a particular arbitral decision was made, as further elaborated upon in the Committee's Report.
6. While a complete absence of reasons will contravene the reasons requirement, other defects in reasoning as outlined in the Committee's Report may also not meet the parties' expectations and increase risks at the post-award stage. Arbitrators and, if applicable, arbitral institutions are thus encouraged to review drafts of awards against the background of the recommendations above and the analyses of the Committee's Report. Domestic courts are invited to review awards against the same background.