



# Checklist for Arbitration Reasoned Awards

## INTRODUCTION

The following "checklist" is intended to be helpful, not to define all of the necessary components of a reasoned award for any particular case. Thus, the list is neither exhaustive nor prescriptive. Indeed, the concept of a "reasoned award" in a reinsurance arbitration may mean distinctly different things to different people.

At its most elementary level, the phrase means that the arbitration award provides some explanation for the outcome. To determine a more precise meaning in a given case, it is necessary to review the parties' agreement(s) and advisable to consult with the parties themselves. The contours of a "reasoned award" may also depend on many other factors, including the specific issues and facts in dispute, the parties' respective positions, and the arbitrators' analysis.

Accordingly, the following checklist provides a starting point, rather than a conclusion, for determining the elements of a reasoned award in a given case.

1. The award should be in writing, dated, and signed by a majority of the panel members. In the event that a member of the panel dissents, the award may include a dissenting opinion, including any reasons that the dissenting member provides.
2. The language of the award should be grammatically correct, and the authors should strive to make clear, concise, and precise statements.
3. The opening of the award may include a statement similar to the following: "The panel has taken into consideration the parties' briefs and exhibits, the testimony and evidence presented at the hearing, arguments during the hearing, and final arguments of the parties and their counsel."
4. The award should identify each issue necessary to the decision, state the panel's determination of each issue, and provide the reason(s) for the panel's resolution of each issue. If the parties have put in dispute any issue that is not necessary for the decision, it generally is advisable to identify the issue and to indicate that the panel (or a majority of the panel) did not view it as necessary to reach the issue. The award may describe the position of each party with respect to each issue, fact, or conclusion in dispute, but it is not required to include these descriptions.
5. The award may include a statement or outline of the operative facts (although some arbitrators feel it is required). To the extent any factual finding presents a significant reason for the panel's resolution of a contested issue, however, the finding should be included in the award. Any statement of the facts should be accurate and find support in at least some evidence that was presented at the hearing, even if conflicting evidence exists.
6. The award may also include conclusions of law. It is not necessary, however, to use the labels "findings of fact" or "conclusions of law."
7. Depending on the issues in the arbitration, the final award may include a specific amount of damages to be paid by one party to the other, disposition of any escrowed assets, disposition of any counterclaims, and, if appropriate, an award of attorney fees and costs, all consistent with the nature of the award and its bases. The panel may also grant declaratory relief, where appropriate and consistent with the terms of the parties' agreement.