

Abstract

Set-off is meant to be one of the most important defences in arbitration proceedings. About 15 – 20 per cent of all international arbitrations involve set-off defence. There is not much dispute about the possibility to virtually extinguish mutual claims of the parties however national concepts of set-off differ dramatically. Moreover, in contrast to most other legal mechanisms set-off is always formed by no less than two obligations. These obligations may be regarded differently and be subject to different laws which can lead to a series of difficult questions regarding not only choice-of-law but also judicial competence. The centrum of the controversy lays in the situation when the defendant raises his cross-claim, which falls outside the scope of an arbitration agreement, to be mutually offset. Arbitrators can be in a very difficult position as they have to find, in the absence of any clear rule, reasonable limits of the adjudication of set-off. This work aims to find out what should be the limits of the adjudication of set-off with the cross-claim over which the tribunal normally wouldn't be competent to decide. There is offered a legal framework with a set of good practices which should be followed in order to strengthen legal certainty, procedural efficiency and effective functioning of set-off in international commercial arbitration.