

Abstract

This diploma thesis is about the instrument of security for costs in international arbitration and the purpose it serves, for which it aims at answering two essential questions. The first issue the thesis focuses on is determination of circumstances that may lead arbitrators to the conclusion that they have power to order a claimant to post security for costs. The second task of this thesis is to analyse under what conditions it is justified for the arbitrators to use the power and issue such an order. The thesis compares and construes arbitration laws and rules of procedure which are significant for the scrutinized issues or diversifies possible conclusions. The thesis also relies on interpretation embraced by various arbitral bodies and tribunals and is inspired by approaches adopted by the international community. Eventually, the research shows that there is an overwhelming consensus in both international arbitration practice and doctrine with regard to the powers of arbitrators to issue an order for security for costs. Generally, arbitrators are entrusted with such powers and where doubted, they may draw the powers from the applicable laws or the status of the arbitral body itself by means of interpretation. On the other hand, the analysis indicates that there is no unanimity regarding circumstances under which the arbitrators should order the security for costs as justified. The only commonly accepted requirement is broadly defined, providing that an order for security for costs is justified where it would not be just, fair and equitable to ask the respondent to defend itself in arbitration without the benefit of security for costs because there is a very high probability that the claimant would not reimburse the respondent for its incurred costs (virtually equalling to impossibility). Circumstances which may fulfil the criterion relates to claimant's financial difficulties, presence of a third party funder, lack of available assets and bad faith of the claimant. However, there is no harmonised, let alone uniform, test thanks to which it would be possible to assess security for costs as justified or unjustified, as the case may be. To the contrary, international arbitration encompasses contradictory views and various approaches. Nonetheless, for the sake of predictability and coherence of law and with regard to consequences security for costs might have, it would be appropriate for the international community to come to an agreement on certain minimal standards holding security for costs justified.