

Security for Costs

ICC YAF

Budapest, 19 May 2017

Outline

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4. Pitfalls
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1. Introduction

«A respondent sued in arbitration by a claimant that has no money stands to lose in any event» (Pierre Karrer)

2. Legal qualification

- Interim measure?
- Article 183.1 SPILA
- Requirements?

3. Legal requirements (1/2)

- Fumus boni iuris: valid potential claim, and
- Periculum in mora: imminent danger of the applicant for being deprived of its claim for reimbursement

3. Legal requirements (2/2)

Periculum in mora:

- Behaving in bad faith to frustrate future cost claim, or
- Serious deterioration in financial situation since conclusion of the arbitration agreement (insolvency, no liquid assets)

4. Pitfalls

- Depending on which arbitral procedural rules apply (e.g. under the ICC Rules)
- if respondent does not comply with an order to advance on costs
- then he/she will be considered to have «dirty hands»
- and therefore not granted a SfC order

5. Tips for counsel

- Use it as a tool for strategic decisions
- Look in detail into the applicable legal framework
- Do not underestimate the burden of proof

Thank you.

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