

Kluwer Arbitration Blog

Highlights from the Second Volume of the ICCA Awards Series

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ICCA is pleased to alert readers to the release of the 2024 volume of the ICCA Awards Series, now available [in print](#), as well as [online in the Kluwer Arbitration database](#). The volume contains 10 significant awards rendered in both ad hoc proceedings, as well as through institutional arbitrations administered by the Arbitration Foundation of Southern Africa (AFSA), the International Court of Arbitration of the International Chamber of Commerce (ICC), and the Milan Chamber of Arbitration (CAM). This second annual collection offers valuable insights into developing practices in international arbitration.

Highlights in awards

This year's volume includes cases that provide insights into the application of German law, Italian law, Mongolian law, Namibian law, Polish law, and Spanish law, as well as the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the UNIDROIT Principles of International Commercial Contracts.

The awards cover a wide range of issues, including the admissibility of claims, applicable law, arbitrability of disputes, validity and interpretation of arbitration agreements, breach of contract, costs and interest, and termination of contracts.

On **admissibility**, the arbitral tribunals have ruled on the admissibility of new claims, the admissibility of set-off under the ICC Arbitration Rules, and the admissibility of requests for negative declaratory relief.

As to **applicable law**, several awards dealt with the conflict-of-law rules utilized to determine the substantive law governing the dispute, including with reference to the Rome I and Rome II Regulations, particularly regarding the choice of law for claims concerning copyright infringement and violation of trade secrets. The determination of the law applicable to the arbitration agreement itself was also discussed by several arbitral tribunals, considering factors such as the law chosen to apply to the main contract, or the application of the *lex arbitri*, the law of the seat of the arbitration, for both formal and substantive validity. The interplay between the *lex contractus* (the law governing the contract) and the *lex arbitri* for the validity and scope of the arbitration clause was likewise addressed in some of the reported cases. Regarding procedural law, the awards indicate that it is often the law of the place of arbitration, citing examples like English law, Italian law, or

Spanish law, where parties have not made a choice. For the law applicable to the substance of the contract, possibilities mentioned in the awards include the law chosen by the parties, the law determined by the arbitral tribunal, or the application of the *lex mercatoria* (transnational commercial law). The volume also references choices for specific legal frameworks such as the CISG as governing law, or the UNIDROIT Principles of International Commercial Contracts. One arbitral tribunal has explicitly ruled that the CISG does not apply to distribution agreements, although parties retain the option to choose international commercial rules as their governing law. The interpretation of ambiguous choice-of-law clauses was also an issue featured in the reported cases.

Another key issue addressed in the awards was the **arbitrability of disputes**, with discussions on the arbitrability of claims seeking to cancel copyright registration. A fundamental principle highlighted in the reported cases was that arbitrability presupposes that the matter at hand is freely negotiable by the parties. Conversely, the reported awards indicate that under EU law, the validity or existence of registered intellectual property rights is not arbitrable. One case also touches upon whether sovereign immunity impacts the arbitrability of a dispute.

Extensive discussions in the awards relate to the **validity and scope** of arbitration agreements and arbitration clauses. The reported awards discuss formal validity requirements, such as the need for arbitration clauses to be made in writing and signed by the parties. The concepts of assignment of arbitration agreements and the separability of arbitration clauses from the main contract were also addressed by the arbitral tribunals. One case references a reported presumption of formal and substantive validity for the arbitration clause under the 1958 New York Convention and the Spanish Arbitration Act. The scope of arbitration agreements was also examined in the reported awards, including the interpretation of phrases referring to disputes ‘connected to’ the contract. In this respect, the interpretation of arbitration clauses by the tribunals focused on the intention of the parties, often favoring the submission of all disputes under a contract to arbitration. Furthermore, the reasonable interpretation of pathological arbitration clauses was addressed, as well as the binding effect of arbitration clauses on non-signatory parties, with one reported award finding a non-signatory not to be bound.

Breach of contract was a frequently litigated issue appearing in the reported awards. Specific instances include breach by failure to make payment and breaches related to limitations on site access and personnel, such as those implemented as COVID-19 safety measures. The concept of avoidance of contract under specific CISG articles (Articles 49(1)(a) and 49(1)(b)) was examined, alongside failure to supply being considered a fundamental breach of contract under CISG Article 25. The reported awards also touch upon the contractual determination of the effect of a breach of contract and the necessity of establishing a causal link between the breach and the resulting financial consequences.

The topic of **interest** was also comprehensively addressed in several reported cases. While the awards confirm the inherent power of arbitrators to award interest, the nature of this power as procedural versus substantive was discussed, as was its purpose, as well as the concept of post-award interest. Compound interest was also covered, along with the awarding of interest specifically under CISG Article 78. Details are also provided on the starting date of interest in the reported awards, such as from the due date of an invoice, when the final payment becomes due, or based on the UNIDROIT Principles.

Finally, the **termination of contract** is an issue covered in the reported awards. This includes

instances where there was no termination by agreement, termination due to a breach such as failure to deliver goods, termination due to an event of default, or termination for fundamental non-performance under Article 7.3.1 of the UNIDROIT Principles.

Acknowledgments

The General Editor of the ICCA Awards Series gratefully acknowledges the essential role that the arbitral institutions have played in selecting and providing awards for publication in the ICCA Awards Series. ICCA's partnerships with arbitral institutions ensure the ICCA Awards Series' relevant and comprehensive coverage and continued excellence as an authoritative resource for practitioners and academics studying the evolution of international commercial arbitration practice.

Research tools

The ICCA Awards Series' reporting on awards is complemented by two indexes, which consolidate the information extracted from each award, making navigation easier and offering different angles of consultation: first, a Table of Instruments, providing an overview of all legal instruments, and their individual provisions, discussed in the awards reported in the volume; and second, an Index by Subject Matter, detailing the different issues addressed in each decision.

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