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Istanbul Arbitration Centre Opens its Doors

By Ayça Aydin

A new arbitration institution opened its doors and has already started to register its cases in Istanbul. The Istanbul Arbitration Centre (ISTAC) has been operational since the third quarter of 2015 and has published its set of arbitration and mediation rules, along with emergency arbitrator and Fast Track Arbitration rules. ISTAC is anticipated to fulfill needs in Eastern Europe, central Asia, Middle East and North Africa, while still attracting applications from elsewhere.

Increasing the awareness and knowledge of international and domestic arbitration is a priority in Turkey. These efforts include close contact with bar associations for vocational training of attorneys on arbitration, attempts to unify the Turkish Court of Appeal's chambers reviewing appeals of challenges to arbitral awards, and studies to unify the Turkish legislation on domestic and international arbitration for ease of reference and application. These are similar but regulated under two different pieces of legislation.

Young ISTAC

ISTAC also provides a forum for active and early involvement in the field of alternative dispute resolution for practitioners under 40: Young ISTAC. Young ISTAC, also established in 2015, is a platform that welcomes young individuals engaged in arbitration and mediation from Turkey and beyond. Young ISTAC, with over 1,400 members so far, attaches particular importance to creating an effective bridge between young and more experienced practitioners through the events it organizes and by encouraging and training members on the ISTAC Rules and other alternative dispute resolution procedures. Young ISTAC members gather monthly, in order to put into practice its initiatives and provide an opportunity for networking and the sharing of experiences among members. Each gathering encompasses a brief lecture, presentation or panel delivered or chaired by preeminent representatives of alternative dispute resolution practice from Turkey and abroad. Young ISTAC will organize moot arbitration competitions annually, at least one of which will be conducted in English, and will provide internship and secondment opportunities for members.

ISTAC Rules

The ISTAC Arbitration and Mediation Rules (the "Rules"), as well as Fast Track Arbitration Rules and Emergency Arbitrator Rules, may be obtained online at www.istac.org.tr. The Rules are available in English and Turkish. An effort is being made to provide the Rules in

several other languages, including French and German, in the near future. The Rules were developed carefully to be consistent with internationally accepted sets of arbitration and mediation rules utilized by established international arbitration institutions. Making the Rules easy to understand for the alternative dispute resolution community was a priority in drafting the Rules, and many prominent international practitioners participated.

The Rules offer parties choices. An arbitration can be started with a request for arbitration or a statement of claim. As to enforcement, if parties are not residents of Turkey they can exclude the jurisdiction of the Turkish courts. If one or both of the parties are residents, awards can be enforced as domestic awards, without an enforcement decision and without further court fees.

Since ISTAC is a new institution, it was possible to adopt innovations that have been adopted by other institutions such as fast track arbitration and emergency arbitrators.

Fast Track Arbitration Rules

Unless agreed otherwise by the parties, Fast Track Arbitration Rules apply to disputes where the total sum of the claims and any counterclaims do not exceed TRY 300,000 (approximately Eur 94,000 or approximately USD 101,000). The parties may also agree that the Fast Track Arbitration Rules shall apply where the amount in dispute exceeds this sum. Disputes subject to Fast Track Arbitration are in principle resolved by a sole arbitrator, within three months of the transmission of the file to the sole arbitrator.

Emergency Arbitrator Rules

Emergency arbitrator rules aim at providing provisional remedies (interim measures) to alleviate urgent needs of applicants. Parties to an arbitration agreement may opt out of the applicability of emergency arbitrator rules by so stating in their arbitration agreement. The requirement to submit a Request for Arbitration, Statement of Claim, Answer to the Request for Arbitration, or Statement of Defense is not required for the party requesting the appointment of an emergency arbitrator. An emergency arbitrator is appointed within two working days of the Secretariat's receipt of the application, and the interim measure decision is to be issued within seven days as of receipt of the file. An emergency arbitrator's interim measure decision is binding on the parties, but is not binding on the later constituted sole arbitrator or the arbitral tribunal.

Costs and Fees

The Appendix to the Rules deals with regulating the arbitrator's fees and the costs of arbitration conducted in accordance with the ISTAC Arbitration Rules or the costs of arbitration where ISTAC plays a role as the appointing authority, and the costs of mediation conducted in accordance with the ISTAC Mediation Rules. Scales of registration fees, administrative costs and arbitrator fees may be found within such Appendix and the website of ISTAC provides a cost calculator to enable users to anticipate costs and fees. The arbitrator's fees are based on the amount in dispute

Acceptance to Date

The rapid adoption of the Rules and of the new Istanbul Arbitration Centre as the administering institution has exceeded expectations. They have already been adopted for major projects. For example, the contract to construct Istanbul's third airport—set to be the biggest in the world—contains an ISTAC arbitration clause. Similarly, a new water supply agreement between Turkey

and Northern Cyprus formed in March includes such a clause. The ISTAC has also been included in the dispute resolution clause in an infrastructure tender agreement for a project for the greatest monetary value in the history of the Republic of Turkey.

It is hoped that the Centre will fulfill its objective of providing a sound and predictable avenue for the resolution of disputes in Eastern Europe, central Asia, Middle East and North Africa. It is well on its way to meeting that objective.

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