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International Arbitration

Turkey – Trends & Developments

Contributed by
Hergüner Bilgen Özeke
Attorney Partnership

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TURKEY

TRENDS AND DEVELOPMENTS:

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The ‘Trends & Developments’ sections give an overview of current trends and developments in local legal markets. Leading lawyers analyse particular trends or provide a broader discussion of key developments in the jurisdiction.

Trends and Developments

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Hergüner Bilgen Özeke Attorney Partnership is one of the largest, full-service independent business law firms in Turkey, representing major multinational and local corporations and clientele, and international and multilateral financial institutions and agencies. The team is comprised of 11 partners and nearly 100 lawyers, most of whom com-

pleted their education abroad. The firm's main practice groups are dispute resolution and commercial, corporate, M&A, finance and projects. Clients are sourced from a wide range of industries including telecommunications; oil, gas and energy; media and technology; automotive; aviation; and transportation.

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involving sovereign states and foreign investors.

The last decade has witnessed a significant growth in cross-border transactions and an increase in the number of investment treaties, leading to a notable growth in the number of international arbitrations and an increase in the diversity of stakeholders involved in arbitration disputes. In order to keep up with the latest developments in the world, Turkey has also taken notable steps towards becoming an investor-friendly state, such as actively seeking to increase its bilateral investment treaties and introducing new local arbitration institutions, along with their own rules. As part of this effort, Turkey has adopted new arbitration rules to create a more favourable legislative framework for investors who are willing to resolve their disputes through arbitration, with significantly lower arbitration fees in comparison to foreign arbitration institutions. As an investor-friendly state, Turkey has been a party to 114 BITs, with 32 of them still in force. (<http://investmentpolicyhub.unctad.org/IIA/CountryBits/214>)

Aiming to facilitate and encourage investors and foreign investment in Turkey, the Turkish International Arbitration Law No 4686 (the "Arbitration Law") was adopted in 2001. It is modelled on the UNCITRAL Model Law, with the same principles, such as equal treatment of parties, party autonomy, non-intervention by courts, and impartiality and independence of arbitrators.

A Hub for International Arbitration

Seeking to develop and promote itself as a hub for international arbitration, Turkey established the Istanbul Arbitration Centre ("ISTAC"), an independent and autonomous institutional arbitration centre in Istanbul, through the Law on the ISTAC (6570), which entered into force on 1 January 2015. Shortly thereafter, the ISTAC approved its Rules of Arbitration (the ISTAC Rules), which also include fast-track arbitration rules. The ISTAC Rules are heavily influenced by the ICC Arbitration Rules and are fairly similar, except for the fast-track arbitration provisions available under the ISTAC Rules. This similarity might be rooted in investors'

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and practitioners' familiarity with and preference for the ICC rules, which are considered to be among the most preferred arbitration rules. The ISTAC Rules' scope of application includes cases where the parties have agreed to submit their disputes to arbitration under the ISTAC Rules. ISTAC basically offers an emergency arbitration mechanism; fast-track arbitration rules aimed at shortening the procedures of arbitration; professional and less bureaucratic supervision as an arbitration institution; and lower fees compared with other institutions.

Istanbul Arbitration Centre

The emergence of ISTAC will almost certainly help Istanbul to become an arbitration hub, benefiting from a location that enables it to serve as an access point between Europe and Asia, as well as the Middle East and North Africa. ISTAC's duties are set out under Article 4 of the Law on the ISTAC as follows:

- to set the rules regarding arbitration and alternative dispute resolution methods and to carry out related services;
- to provide advertisement and publications, and to promote, support and realise scientific research on this matter; and
- to co-operate with local and foreign persons and entities regarding arbitration and alternative dispute resolution methods.

Istanbul Chamber of Commerce Arbitration Centre

Apart from ISTAC, the Istanbul Chamber of Commerce Arbitration Centre ("ITOTAM") has been a fully functional institution since 2015, with newly amended ITOTAM Arbitration Rules that came into force on 9 April 2015 and were revised on 14 April 2016 by the introduction of emergency

arbitration rules and expedited arbitration rules, to bring them in line with the ISTAC Rules. The introduction of expedited arbitration is particularly aimed at generating a forum for the resolution of disputes at a lower cost and in a shorter period of time when compared to litigation, which might take at least a few years to finalise, and in certain circumstances up to ten years. Again, emergency arbitration enables the prompt resolution of urgent issues in an efficient and timely manner, and makes arbitration a more encouraging option for the parties.

The Reduction of Fees

The Turkish legislature has also taken affirmative steps to encourage arbitration by reducing the fees payable for enforcing arbitral awards. These were calculated at a rate of 6.831% of the amount at stake if the award had been resolved in court. In an act passed in February 2014, the Turkish legislature offered to discount this fee by half, and completely removed it in August 2016 and the Communiqué No 77 entered into force on 4 October 2016 in this respect. This financial incentive can be expected to increase ISTAC and ITOTAM's international competitiveness, and also to encourage domestic parties to seek to resolve their disputes through arbitration rather than in court.

Conclusion

Turkey's prospects of becoming a major financial hub and international arbitration centre look promising. By establishing the ISTAC and introducing the ISTAC and ITOTAM Rules, Turkey has shown its serious intention of taking its place among its peers in the very near future. The upcoming years may very well witness the revitalisation of Turkish institutional arbitration practice by ISTAC and ITOTAM.

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