

Arbitration & ADR - Turkey

Istanbul Chamber of Commerce introduces new Arbitration Centre Rules

Contributed by **Cerrahoğlu Law Firm**

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Introduction

The Istanbul Chamber of Commerce (ICOC) has been acting as an arbitration institution since 1979. It had previously adopted the arbitration rules in Chapter 3 of the ICOC Regulation Pertaining to Arbitration, Conciliation and Expert Witnesses.⁽¹⁾ On March 8 2012 these rules were amended⁽²⁾ to modernise and adapt them to the domestic arbitration provisions of the new Turkish Civil Procedure Code.⁽³⁾

As a new project, the ICOC is setting up an arbitration centre in an effort to make Istanbul-based arbitration more attractive and to provide arbitration services in accordance with international standards. Accordingly, it has adopted a new set of rules (the ICOC Arbitration Centre Rules). The rules have been in force since October 16 2014. They apply to all arbitration proceedings initiated after that date, unless the parties have agreed to submit their arbitration to the rules in effect on the date of their arbitration agreement.⁽⁴⁾

ICOC Arbitration Centre Rules

The ICOC Arbitration Centre Rules are based on the 2010 United Nations Commission on International Trade Law Arbitration Rules and are also inspired by other modern arbitration statutes (eg, the 2012 International Chamber of Commerce Rules of Arbitration, the Swiss Rules, the Vienna Rules and the Austrian Rules).

The ICOC Arbitration Centre Rules set down procedural rules that are applicable to arbitration proceedings. They also include two appendices:

- an appendix on internal rules pertaining to the Court of Arbitration and the secretariat of the court; and
- an appendix setting out arbitration costs and fees.

The Court of Arbitration is a body independent from the ICOC. Its duty is to administer the resolution of commercial disputes by arbitral tribunals in accordance with the ICOC Arbitration Centre Rules. It does not resolve disputes itself.⁽⁵⁾ The Court of Arbitration is assisted in its work by the secretariat of the court under the direction of its secretary general.⁽⁶⁾

The ICOC Arbitration Centre Rules are applicable if:

- the parties agree to submit to arbitration under the rules or the arbitral tribunal decides that these rules shall be applied;
- at least one of the parties to the dispute is a member of the ICOC; and
- the matter to be resolved through arbitration is a commercial dispute.⁽⁷⁾

The party wishing to have recourse to arbitration under the ICOC Arbitration Centre Rules can initiate arbitration proceedings by submitting a request to the secretariat.⁽⁸⁾ The filing fee for such a request is TRY300 for national arbitration and TRY400 for international arbitration⁽⁹⁾ – that is, a case which has a foreign element as defined in the Turkish International Arbitration Code.⁽¹⁰⁾

Unlike the general rule under other institutional arbitrations,⁽¹¹⁾ the court – and not the arbitral tribunal – will be primarily referred to if the party against which a claim has been made does not submit an answer or if one of the parties raises a plea concerning the existence, validity or scope of the arbitration agreement. If the court is satisfied on a *prima facie* basis that an arbitration agreement exists, it can decide that the arbitration shall proceed. In that case, the arbitral tribunal will rule on its jurisdiction. If the court is not satisfied on a *prima facie* basis that an arbitration agreement exists, the

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secretariat will notify the parties that the arbitration cannot proceed and each party will retain the right to ask any court having jurisdiction whether there is a binding arbitration agreement.(12)

The parties can decide whether their disputes shall be resolved by a sole arbitrator or by an arbitral tribunal composed of three arbitrators.(13) The parties are entitled to designate their arbitrators freely. Under the ICOC Arbitration Centre Rules, there is no requirement that at least one of the arbitrators be included in the list of arbitrators announced by the ICOC, as was the case under the ICOC Regulation Pertaining to Arbitration, Conciliation and Expert Witnesses as amended in 2012.(14)

In proceedings with multiple claimants or multiple respondents and where the dispute is to be referred to three arbitrators, the multiple claimants respectively and the multiple respondents respectively will nominate their arbitrator for confirmation.(15)

As a general rule, the seat of arbitration is Istanbul,(16) but the parties are free to choose the language of the arbitration.(17)

The proceedings before the arbitral tribunal will be governed by the ICOC Arbitration Centre Rules. Where the rules are silent, the arbitration proceedings will be governed by the procedural rules agreed upon by the parties or failing that, the arbitral tribunal.(18) Regarding the rules applicable to the merits of the case, the arbitral tribunal will resolve the dispute by applying the rules of law agreed upon by the parties. If the parties have expressly authorised it to do so, the tribunal can also decide *ex aequo et bono* or act as *amiable compositeur* (where the arbitral tribunal is not bound by strict rules of law, but will resolve the dispute on the basis of equity and fairness).(19)

As is usual with institutional arbitrations, the ICOC Arbitration Centre Rules give the parties the possibility to request the arbitral tribunal to order interim or conservatory measures. Interim or conservatory measures can also be requested from any competent judicial authority and such a request will not be an infringement or a waiver of the arbitration agreement nor affect the powers reserved to the arbitral tribunal.(20) The possibility to request interim or conservatory measures from the arbitral tribunal also exists under the ICOC Regulation Pertaining to Arbitration, Conciliation and Expert Witnesses as amended in 2012. However, while the possibility to request interim or conservatory measures from a judicial authority is not limited under the ICOC Arbitration Centre Rules, under the ICOC Regulation Pertaining to Arbitration, Conciliation and Expert Witnesses the parties can request such measures from a judicial authority only if the arbitral tribunal will not be able to order the measures in time or efficiently, or upon authorisation of the arbitral tribunal or upon written agreement of the parties.(21)

Unless the parties request in writing that a hearing be held, the arbitral tribunal may decide the case based solely on the documents submitted by the parties.(22)

If the parties reach a settlement after the file has been transmitted to the arbitral tribunal, the settlement shall be recorded in the form of an award made by the consent of the parties, provided that the parties request so and that the arbitral tribunal agrees to do so.(23)

The arbitral tribunal must render its final award within one year. This time limit starts to run, in proceedings with a sole arbitrator, from the date on which the arbitrator communicates the acceptance of its nomination to the secretariat. In proceedings with more than one arbitrator, the time limit runs from the date on which the arbitral tribunal prepares the minutes of the first procedural hearing.(24)

The arbitration award may be published only with the written permission of the parties and the court. Under no circumstances will this publication contain the identity of the parties, their legal representatives or the arbitrators or specific information about the arbitration.(25)

Comment

Arbitration proceedings under the ICOC Arbitration Centre Rules are similar to proceedings under the rules of other institutional arbitrations. Although they introduce no drastic changes to the existing system under the ICOC Regulation Pertaining to Arbitration, Conciliation and Expert Witnesses, the new rules provide for a more flexible and up-to-date arbitration system.

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Endnotes

(1) Articles 13 to 34 of the ICOC Regulation Pertaining to Arbitration, Conciliation and Expert Witnesses.

(2) For further details please see "[Chamber of Commerce forms working group to amend arbitration rules](#)".

(3) Civil Procedure Code 6100 published in the *Official Gazette* on February 4 2011, 27836. See Section 11, Articles 407 to 444 pertaining to arbitration. For further details on the provisions of the Civil Procedure Code on domestic arbitration please see "[New Code of Civil Procedure regulates domestic arbitration](#)".

- (4) Article 49(2) of the ICOC Arbitration Centre Rules.
- (5) Article 3 of the ICOC Arbitration Centre Rules, Appendix I.
- (6) Article 12ff of the ICOC Arbitration Centre Rules, Appendix I.
- (7) Article 1 of the ICOC Arbitration Centre Rules.
- (8) Article 7ff of the ICOC Arbitration Centre Rules.
- (9) ICOC Arbitration Centre Rules, Appendix II.
- (10) See Article 2 of the Turkish International Arbitration Code 4686, published in the *Official Gazette* on July 5 2001, 24453.
- (11) See for example Article 6(3) of the International Chamber of Commerce Rules of Arbitration 2012.
- (12) Article 12(1) of the ICOC Arbitration Centre Rules.
- (13) Article 16(1) of the ICOC Arbitration Centre Rules.
- (14) Article 17 of the ICOC Regulation Pertaining to Arbitration, Conciliation and Expert Witnesses.
- (15) Article 17(1) of the ICOC Arbitration Centre Rules.
- (16) Article 22(1) of the ICOC Arbitration Centre Rules.
- (17) Article 23(1) of the ICOC Arbitration Centre Rules.
- (18) Article 20 of the ICOC Arbitration Centre Rules.
- (19) Article 24 of the ICOC Arbitration Centre Rules.
- (20) Article 31 of the ICOC Arbitration Centre Rules.
- (21) Article 26/A of the ICOC Regulation Pertaining to Arbitration, Conciliation and Expert Witnesses.
- (22) Article 32 of the ICOC Arbitration Centre Rules.
- (23) Article 35 of the ICOC Arbitration Centre Rules.
- (24) Article 36 of the ICOC Arbitration Centre Rules.
- (25) Article 47 of the ICOC Arbitration Centre Rules.

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