

The early days of the Istanbul Arbitration Centre

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Arbitration analysis: The Istanbul Arbitration Centre (ISTAC) has been operational since October 2015. Okan Demirkan, partner at Kolcuođlu Demirkan Koçaklıy in Istanbul, explains that it is still early days for the institution and that a solid track record will play a significant role in convincing businesspeople throughout the region to embrace ISTAC arbitration as a sound method of dispute resolution.

What is the background of the ISTAC?

Until late 2009—early 2010, the idea of having an arbitration centre in Istanbul was not an agenda item in Turkey. Discussions surrounding the establishment of the Istanbul financial centre brought the issue to the fore when it was suggested that the financial centre should have an arbitration centre within it.

A draft law was subsequently prepared in 2010. This went through several changes until it entered into force on 1 January 2015. This law governs the purpose, structure and administration of ISTAC, and marks ISTAC's establishment. In May 2015, the first general assembly convened, ISTAC's board members were elected and Professor Ziya Akýncý became the institution's president. ISTAC officially started operating in October 2015.

Supported by all major Turkish professional bodies, chambers and regulatory authorities, ISTAC swiftly became the most widely discussed topic among Turkey's arbitration practitioners and, not long into ISTAC's tenure, in February 2016, the institution received its first arbitration. Reportedly, one of the parties to this dispute was from the Middle East. This has strengthened ISTAC's aspirations to compete with the Dubai International Arbitration Centre (DIAC) to become the Middle East's arbitration hub.

What are some of the key measures outlined in the ISTAC Arbitration Rules (ISTAC Rules)?

The ISTAC Rules have adopted types of procedures that can effectively speed-up an arbitration while decreasing costs. Furthermore, ISTAC has benefited from observing the experiences of the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA) and the Swiss Chambers' Arbitration Institution (SCAI) in crafting a set of rules for an efficient arbitration.

The ISTAC Rules were introduced on 26 October 2015. Some of the key provisions are as follows:

- the rights to a fair trial, cost-effective proceedings, confidentiality and good faith are the main principles of arbitration—arbitrators must abide by these principles while conducting the arbitration
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- unless otherwise agreed by the parties, if a party requires urgent legal protection and cannot wait for the appointment of arbitrators, that party can apply to the secretariat and request emergency arbitration in accordance with the emergency arbitrator rules
- arbitrators must render a decision on the merits of the case within six months of the secretariat's confirmation of the terms of reference, and
- an award must be rendered by a majority—parties are entitled to request amendment, interpretation or completion of an award within 30 days of its service

Keeping in line with modern arbitration practices and trends, ISTAC also offers the option of accelerated arbitration. According to the ISTAC Accelerated Arbitration Rules, unless otherwise agreed by the parties, accelerated arbitration is automatically available if the amount in dispute is less than TRY 300,000 (approximately US\$ 100,000) on the date of the request for arbitration. However, even if the amount in dispute exceeds TRY 300,000, the parties are still entitled to request accelerated arbitration proceedings.

In accelerated arbitration, a party's answer must be submitted within 15 days of receiving a request for arbitration. Unless otherwise agreed by the parties, one arbitrator handles the case and renders a decision within one month following either

the submission of the final petition or the hearing, whichever is later, and in any case, no later than three months after being assigned the case.

While these rules are a sign of ISTAC's commitment to providing a fair, cost-effective process, what ISTAC lacks at this stage is a solid track record. It has, after all, only been in operation since October 2015.

What is the likely impact of the institution/rules within the Middle East and more broadly within international arbitration?

It is too early to make a reliable forecast of ISTAC's impact internationally. In Turkey, however, the very fact of its existence has had an immediate impact—arbitration, as a method of dispute resolution, is becoming better known. Personally, I see ISTAC's establishment as a free marketing tool for the promotion of Turkish arbitration. Practitioners such as myself have welcomed the establishment of the institution as clients are now reading about arbitration and its possible advantages. Until recently, the concept of arbitration was only known to law firms and in-house counsel, but now more business people are becoming familiar with it.

Going forward, I would expect and hope that ISTAC will develop a reputation as a reliable institution in the Middle East. Needless to say, the extent to which this will be achieved will largely depend on the performances of Turkish lawyers and ISTAC itself. ISTAC's board is composed of very capable and reputable legal minds, who I know are dedicated to the institution's success.

At an international level, I hope that ISTAC's establishment will engender a more positive image of Turkey. In recent years, Turkey and the Turkish legal market have increasingly suffered from the poor image of the Turkish judiciary. The past few years, in particular, have worsened this image, thanks to a number of notorious decisions by local courts, both criminal and civil. It would be safe to say that a typical investor would not perceive Turkey as a country where justice is served to all. ISTAC's success will be a great tool towards at least diminishing that image of Turkey. There have been comments from ISTAC's board members proclaiming that ISTAC's mandate will be to 'distribute justice'. This is a bold stance to take, given Turkey's position in the world today, but one that creates a great challenge, which we can hopefully meet in the near future.

What does the future hold for ISTAC going forward?

Achieving an impressive track record will be crucial. I was recently informed that ISTAC has already received two pending arbitrations which is a great success, considering the institution's youth. It is expected that usage of ISTAC Rules is likely to become part of the template public tender contracts, governed by the public tender contracts law. This will pave the way for several disputes being resolved through ISTAC.

Furthermore, I heard that an ISTAC arbitration clause was already being used in a very important project contract in relation to the third airport of Istanbul, which is a multi-billion dollar project. This demonstrates the willingness of Turkish businesspeople to make use of ISTAC instead of other well-known institutions.

Thus far, the signs are good and the leadership of ISTAC, particularly Professor Akýncý as its president and General Secretary Dr Candan Yasan, have been doing a remarkable job in promoting the institution. However, we Turkish lawyers must encourage our clients to agree on ISTAC arbitration clauses if we want the institution to succeed.

Interviewed by Giverny Tattersfield.

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