

TIME MANAGEMENT FOR ARBITRATION

AS PER ISTANBUL ARBITRATION CENTRE (ISTAC) RULES

1. Introduction

Istanbul Arbitration Centre (“**ISTAC**”) is an independent institution founded in 2015 in order to provide dispute resolution alternative for any international or domestic parties. ISTAC was founded to provide the parties a neutral, flexible and confidential setting for dispute resolution on an international scale, faster and with less expense comparing to the traditional dispute resolution organs such as courts. ISTAC Arbitration and Mediation Rules (“**Rules**”), prepared by the Centre with regard to modern institutional rules, entered into force on 26 October 2015. Within the scope of arbitration, fast track arbitration, emergency arbitrator and appointments of arbitrators in ad hoc procedures are available. The ISTAC arbitral awards are binding and subject to enforcement anywhere in the world.

The ISTAC consists of a boards of arbitration (“**Board**”) and a secretariat (“**Secretariat**”) and experts in the area of arbitration law. The role of the Board is to assist parties and arbitrators in ensuring that disputes are resolved as efficiently as possible. Ziya Akıncı, Jan Paulsson, Hamid Gharavi, Candan Yasan, Bernard Hanotiau are the members of International Board while Sabih Arkan, Cemile Demir Gökyayla, Ejder Yılmaz and also again Ziya Akıncı, and Candan Yasan are the members of National Arbitration Board. The Secretariat provides its services under the Rules and answers questions from parties, their counsels, arbitrators, and any other actors involved in the ISTAC dispute resolution process.

The members of the general assembly are The Union of Chambers and Commodity Exchanges of Turkey, Ministry of Justice, Capital Markets Board of Turkey, Union of Turkish Bar Associations, Banking Regulation and Supervision Agency, Banks Association of Turkey, Participation Banks Association of Turkey, Council of Higher Education, Turkish Capital Markets Association, Turkish Exporters Assembly, Borsa Istanbul, Confederation of Turkish Tradesmen and Craftsmen, Turkish Confederation of Employer Associations and Confederation of Turkish Trade Unions. The ISTAC’s dispute resolution services are available to all contracting parties, without any membership requirements.

Parties wishing to refer to the ISTAC arbitration or mediation are encouraged to include an appropriate clause in their contracts. Considering Turkey’s geographical location, the ISTAC expected to be an international center for the resolution of commercial disputes between European, Asian and Middle Eastern countries. (ISTAC)

2. Istanbul Arbitration Centre Rules

The most important expectation of the parties regarding arbitration is the rapid resolution of disputes. For this reason, a trial period of six months was provided in the proceedings to be made in accordance with the Rules.

The time of arbitration shall commence after the signatures of the task certificate (“**Terms of Reference**”) have been completed. If one of the parties does not participate in the preparation of the Terms of Reference or refuses to sign the prepared Terms of Reference, the Terms of Reference shall be submitted to the Board in order to be approved. In this circumstances, the period of arbitration shall commence from the time when the Secretariat has been notified of the approval of the mission document to the single arbitrator or arbitration committee. If the parties agree not to issue a Terms of Reference, the period of arbitration the process starts from the date on which the procedural timetable (“**Procedural Timetable**”) is sent to the Secretariat.

Although the period time is set for six months, it may not be possible for some disputes to be completed at this time. In such cases the time may be extended. During the drawing up of the Terms of Reference, the Sole Arbitrator or Arbitral Tribunal, in consultation with the parties, shall establish a procedural timetable; particularly establish the date of the submission of pleadings, the date of the hearing and dates of the other procedural issues it deems appropriate. In cases where it is deemed necessary, the Sole Arbitrator or Arbitral Tribunal, in consultation with the parties, may modify the dates and time limits stated in the Procedural Timetable. Therefore, it will be revealed that the arbitrator's decision can or cannot be given for a period of 6 months while the parties form the Procedural Timetable. The Board may extend the time period by ex-officio according to Procedural Timetable. Apart from this, the parties may extend the period of arbitration concurringly. The Board may extend any time limit which has been modified by the parties, if it decides that it is necessary to do so in order that the Sole Arbitrator or Arbitral Tribunal and the Board may comply with their mandates pursuant to the Rules.

3. Procedural Economy

Another important principle on the arbitration is procedural economy. The related issue is regulated in Article 20 of the Rules. It is declared in the related Article as: “*The parties and the Sole Arbitrator or Arbitral Tribunal, taking into consideration the nature and value of the dispute, shall make every effort to conduct the arbitration in an expeditious and cost-effective manner.*”

Issues of the parties in the arbitration proceedings are to avoid the repetition that will cause time loss in the number of petitions and documents that the parties will give; as low as possible trial but, functional and prepared for whole trials; time saving by maximizing communication and technology opportunities; instead of asking general and far-reaching questions to expert, to take the opinions of the parties and not to conduct expert, exploration even trial. (Pekcanitez, Atalay, & Özokes, 2011) The point to note here is time and cost-saving efforts must not violate the parties' right to a fair hearing.

The single arbitrator or arbitration committee shall take content from the parties to implement procedural economy and decisions will be taken after the parties have agreed.

4. Importance of Schedule of Arbitration According to ISTAC

These Rules, which give the parties the opportunity to take their disputes to an arbitration process to shape them in accordance with their own needs, keep the precautionary goal of keeping costs low, and regulate the series arbitration and emergency arbitrator, constitute a reliable, practical and incentive institution via ISTAC. Main targets of ISTAC are efficient and expeditious trial. There are two ways followed to serve this purpose. First one is fast track arbitration and the second one is standard clause about the time period.

As mentioned above, one of the most important reasons why arbitration is chosen as a way to resolve a conflict is to reach a quick result. Due to commercial concerns related to the cash flow, which is even more prevalent especially during periods of economic depression, the sooner an arbitration trial ends with an arbitral award, the better for the parties. Arbitration is more suitable to keep pace with the quickness of commercial transactions. It is also important that the costs of the dispute settlement method are predictable and manageable.

A number of institutional arbitration rules, such as the ISTAC Rules (Article 33) and the International Chamber of Commerce Arbitration Rules ("**ICC Rules**", Article 30), appear to have set the maximum periods for which the arbitral tribunal has to decide. Article 33 of the Rules is exactly as the following:

“(1) The Sole Arbitrator or Arbitral Tribunal shall render the award on the merits of the dispute, within 6 months from the date upon which the completion of the signatures on the terms of reference or, the date of notification to the Sole Arbitrator or Arbitral Tribunal by the Secretariat of the approval of the terms of reference pursuant to Article 26(4). If the Parties agreed not to draw up a terms of reference, the time limit for the award shall begin to run from the date of the submission of the procedural timetable to the Secretariat. The Board, using the procedural timetable as a base, may extend the time limit on its own initiative. (2) The time limit for the award may be extended, upon the agreement of the parties; if the parties fail to agree, the Board may extend the time limit upon the Sole Arbitrator or Arbitral Tribunal’s request or in cases where it deems necessary on its own initiative.”

The Board may, in accordance with the rules of institutional arbitration, extend these periods on the request of the parties or the arbitral committee, or request of parties or by ex-officio.

5. Scheduling According to ISTAC Rules

In ISTAC Rules, the periods foreseen in the arbitration proceedings have been arranged. In Article 8 of the Rules, the time for the parties to respond to the request for arbitration; in Article 14, the time for the selection of the referees and in Article 16, the deadline for rejection of the referees are regulated.

As mentioned above, there are 2 types of arbitration; fast track and standard arbitration. (Çelikboya, 2017) 6-month period was set for standard arbitration in Article 33 of Rules. The time for fast track arbitration has been regulated for 3 months. It is regulated in Article 33: “The Sole Arbitrator or Arbitral Tribunal shall render the award on the merits of the dispute, within 6 months from the date upon which the completion of the signatures on the Terms of Reference or, the date of notification to the Sole Arbitrator or Arbitral Tribunal by the Secretariat of the approval of the Terms of Reference pursuant to Article 26(4).” If the parties agreed not to draw up a Terms of Reference, the time limit for the award shall begin to run from the date of the submission of the Procedural Timetable to the Secretariat. The Board, using the Procedural Timetable as a base, may extend the time limit on its own initiative.

According to Article 27, arbitration committee has to prepare Terms of Reference and Procedural Timetable together. In contrast to the Terms of Reference, it is mandatory to prepare Procedural Timetable. In this Procedural Timetable main dates of exchanging petition and trial of the proceeding are regulated. Arbitration committee is authorized to change the dates of the related issues by getting consent of parties.

According to Article 33/2: *“The time limit for the award may be extended, upon the agreement of the parties; if the parties fail to agree, the Board may extend the time limit upon the Sole Arbitrator or Arbitral Tribunal’s request or in cases where it deems necessary on its own initiative.”* Those declared time periods can be changed and extended as said above.

In the Rules, if the referee's decision needs to be corrected, interpreted or completed, the process is to be terminated within a maximum of 150 days from the date of notification of the final arbitrator's decision. According to Article 43 of the Rules, parties may change the regulated time limits by consensus. Furthermore, the Board may extend any time limit which has been modified by the parties, if it decides that it is necessary to do so in order that the Sole Arbitrator or Arbitral Tribunal and the Board may comply with their mandates pursuant to the Rules.

6. Conclusion

In many cases, parties to a dispute intend to choose arbitration procedure due to its timewise efficiency. In this respect, it seems that ISTAC aims to use the time effectively during the arbitration process. Upon the evaluation carried out it is concluded that ISTAC Rules are prepared to provide effective resolution for the parties while watching the balance between fair trial and timewise issues.

References

1. Çelikboya, L. O. (2017). *Istac Kuralları Uyarınca Süreler*: Istac Bülten.
2. Pekcanitez, H., Atalay, O., & Özekes, M. (2011). *Medeni Usul Hukuku*. Ankara: Yetkin Basım Yayım ve Dağıtım.
3. ISTAC. *About Us*. <https://istac.org.tr>: <https://istac.org.tr/en/about-us/boards-of-arbitration/national-board/>