

Ad Hoc or Institutional Arbitration?

Inside Arbitration | Vardar Şanlı



In arbitration clauses, parties often merely state that disputes will be resolved through arbitration. In practice, however, the structure under which the arbitration will be conducted is just as important as the choice of arbitration itself. When entering into an arbitration agreement, parties are faced with two different structures: institutional arbitration and ad hoc arbitration. The choice between these two structures may have a significant practical impact, from the appointment of arbitrators and the management of costs to the procedural timetable and the way procedural uncertainties are addressed.

Institutional Arbitration

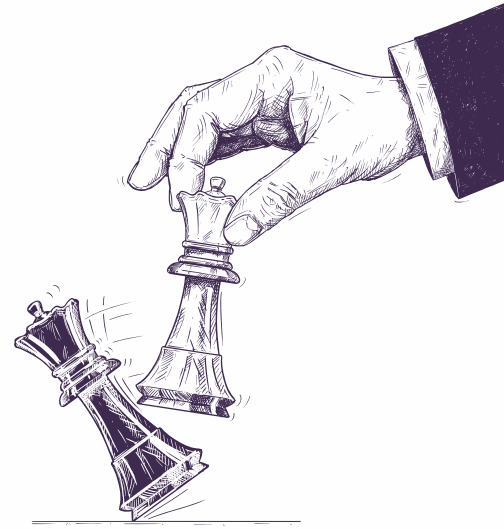
Institutional arbitration is a type of arbitration in which the dispute is conducted under the rules and administrative support of an arbitral institution. In this structure, the arbitral institution manages the administrative aspects of the proceedings, such as communications, the arbitrator appointment mechanism, advances on costs and procedural timetables. The main advantage of institutional arbitration is that it provides the parties with a pre-established and more predictable procedural framework. As a result, the parties' need to regulate all procedural details separately in the arbitration clause is reduced. Arbitral institutions such as the ICC (International Chamber of Commerce), LCIA (London Court of International Arbitration), ISTAC (Istanbul Arbitration Centre) and ICDR (International Centre for Dispute Resolution) may be cited as examples.

Ad Hoc Arbitration

Ad hoc arbitration is a type of arbitration that is not administered by an arbitral institution and in which the proceedings are primarily organized by the parties and the arbitral tribunal. Under this method, the parties may determine the arbitration procedure themselves or rely on pre-established rules, such as the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). While ad hoc arbitration provides the parties with a broad degree of autonomy and flexibility, the effective use of this flexibility depends on establishing a clear procedural framework from the outset. In the absence of institutional support, matters such as the method of appointing arbitrators, the applicable procedure, the management of costs, procedural timelines and the way potential deadlocks will be resolved should be carefully regulated.

What Does Each Type of Arbitration Offer?

Institutional arbitration allows the proceedings to progress in a more structured, predictable and controlled manner. In particular, where there is a lack of trust between the parties, the dispute is complex or high-value or there is a risk that the process may be delayed, the support of an arbitral institution may provide an important safeguard. Pre-established rules and institutional mechanisms help reduce uncertainty, while proceedings conducted under well-recognized arbitral institutions may also provide additional comfort in terms of international recognition and enforcement. On the other hand, ad hoc arbitration, offers the parties a more flexible process that can be tailored to the needs of the dispute. It may be advantageous where the parties seek a simpler, faster and more cost-conscious solution. Since the process is conducted more directly between the parties, it may also allow for more private proceedings and reduce the risk of information leakage. However, for ad hoc arbitration to work effectively, the parties must be willing to cooperate, the arbitral tribunal must be able to manage the process efficiently, and the arbitration clause must be clear from the outset. Accordingly, there is no absolute hierarchy between institutional arbitration and ad hoc arbitration. The right choice depends on the nature of the dispute, experience of the parties, the complexity of the proceedings and the level of administrative support needed.



Why Does Clarity in the Arbitration Clause Matter?

In institutional arbitration, many procedural matters are addressed through the rules and administrative mechanisms of the relevant arbitral institution. However, in ad hoc arbitration, the efficiency of the process depends to a greater extent on the clarity of the arbitration clause and the tribunal's ability to manage the proceedings effectively. For this reason, particularly where ad hoc arbitration is preferred, key procedural issues should be addressed from the outset. These include the method of appointing arbitrators, the applicable procedural rules, advances on costs, procedural timelines, challenges to or replacement of arbitrators, and the course to be followed if one party attempts to delay the proceedings. Otherwise, procedural uncertainties may cause the arbitration to stall before the tribunal even turns to the merits of the dispute.

Is There a Middle Ground?

In practice, certain arbitral institutions may provide administrative support in ad hoc arbitration proceedings. Where the parties agree, it may also be possible to obtain institutional support during ongoing arbitral proceedings. This approach allows parties to preserve the flexibility of ad hoc arbitration while benefiting from institutional support in specific areas. In particular, where the parties have limited arbitration experience or the dispute becomes more complex, such support may contribute to a more efficient conduct of the proceedings.

A Brief Note on Türkiye

Under Turkish law, arbitration is regulated under the Turkish Code of Civil Procedure (Law No. 6100) and the International Arbitration (Law No. 4686). As regards institutional arbitration, institutions such as ISTAC and the Arbitration Court of the Union of Chambers and Commodity Exchanges of Türkiye are among the key examples in Türkiye. On the other hand, ad hoc arbitration, may arise particularly in construction, infrastructure, energy and investment projects, where parties may prefer to design the procedural framework more flexibly. Arbitral awards rendered in both institutional and ad hoc arbitration may be subject to recognition and enforcement under the New York Convention, provided that the applicable requirements are met.



The Bottom Line

Institutional arbitration offers a more structured and predictable process, while ad hoc arbitration provides the parties with greater flexibility. However, since ad hoc arbitration generally does not involve institutional support, it is particularly important for the arbitration clause to be drafted clearly and in a way that anticipates potential procedural deadlocks. For this reason, the choice between institutional arbitration and ad hoc arbitration is not merely an organizational preference; it directly affects the extent to which the arbitral process will be manageable, flexible and predictable. The right choice should be made by taking into account criteria such as the nature of the dispute, the likelihood of cooperation between the parties, cost expectations, the complexity of the process and the level of support required.