

Choosing the Arbitral Institution

Inside Arbitration | Vardar Şanlı



In international commercial agreements providing for institutional arbitration, the choice of arbitral institution goes beyond the administrative question of who will administer the proceedings; it directly shapes the procedural framework of the arbitration. Indeed, the arbitration rules of institutions such as the International Chamber of Commerce (the “ICC”), the London Court of International Arbitration (the “LCIA”) and the Istanbul Arbitration Centre (the “ISTAC”) regulate key aspects of the arbitral process differently, including the seat of arbitration, the number of arbitrators, the language of the proceedings, costs, expedited procedures, interim measures, the rendering and scrutiny of awards and confidentiality. Moreover, matters not expressly addressed in the arbitration clause are often governed by the applicable institutional rules. Accordingly, these differences should be taken into account when drafting the arbitration clause.

The Institutional Rules Differ as to the Seat of Arbitration, Number of Arbitrators and Language of Arbitration.

Where the parties have not agreed on the arbitral seat, Article 19(1) of the ICC Rules provides that the ICC Court shall fix the place of arbitration, whereas under Article 16(2) of the LCIA Rules and Article 23(1) of the ISTAC Rules, the default seats are London and Istanbul, respectively. The institutions also differ as to the number of arbitrators. Under Article 13(2) of the ICC Rules and Article 5(8) of the LCIA Rules, a sole arbitrator will generally be appointed unless the circumstances warrant a three-member tribunal. By contrast, ISTAC Rules do not establish a predetermined preference; the number is determined by the ISTAC Board of Arbitration having regard to all the circumstances of the dispute.

As regards the language of the arbitration, the ICC Rules and the ISTAC Rules provide that, in the absence of an agreement between the parties, the language of the arbitration shall be determined by the arbitral tribunal. However, under the LCIA Rules, the language or prevailing language of the arbitration agreement constitutes the initial language of the arbitration until the formation of the arbitral tribunal, after which the language of the arbitration is determined by the arbitral tribunal.

The Method for Calculating Arbitration Costs Differs Across Institutions.

Arbitral institutions adopt different approaches to the calculation of arbitrators’ fees and administrative expenses. Under Appendix III and the Schedule of Fees to the 2026 ICC Rules, both are calculated primarily by reference to the amount in dispute. In determining arbitrators’ fees, Article 6(2) of Appendix III also requires consideration of factors including the arbitrators’ diligence and efficiency, the time spent, the complexity of the dispute and the quality of the draft award. ISTAC likewise calculates arbitrators’ fees and administrative expenses by reference to the amount in dispute under its applicable fee schedule.

By contrast, the LCIA follows a predominantly time-based approach under Article 28 and its Schedule of Costs, rather than a fee scale based on the amount in dispute. Arbitrators’ fees are calculated by reference to time spent and applicable hourly rates, while the LCIA Secretariat’s time administering the arbitration is charged on the same basis. Accordingly, the choice of institution may affect both the overall cost of the arbitration and its predictability, depending on the value and complexity of the dispute and the duration of the proceedings.

Mechanisms for Expedited Proceedings and Interim Measures Differ Across Institutions.

Institutional arbitration rules provide different mechanisms for expediting proceedings and obtaining urgent relief before the arbitral tribunal is constituted. Under Article 32 and Appendix V of the ICC Rules, the Expedited Procedure Provisions apply where the amount in dispute does not exceed the applicable threshold based on the date of the arbitration agreement, or where the parties agree to their application. The ICC Rules also provide for a Highly Expedited Arbitration Procedure by party agreement, regardless of the amount in dispute. Under the ISTAC Fast Track Arbitration Rules, as a rule, disputes not exceeding TRY 5 million are decided by a sole arbitrator within three months. By contrast, the LCIA Rules provide for expedited formation of the arbitral tribunal, measures for the efficient and expeditious conduct of the proceedings, and early determination of certain claims and defences under Articles 9(1), 14(6) and 22(1)(viii), respectively. Where urgent interim measures are required before the arbitral tribunal is constituted, all three institutions provide for an emergency arbitrator. Under the ICC Rules, the emergency arbitrator is appointed within two days and must issue an order within fifteen days; the corresponding periods are two and seven business days under ISTAC and three days and fourteen days under the LCIA Rules. Recourse to an emergency arbitrator does not preclude a party from seeking interim measures from the courts. Under Article 29(2) of the ICC Rules and Article 31(4) of the ISTAC Rules, such measures may be sought before or after transmission of the file, subject to the conditions set out in those provisions. By contrast, Article 25.3 of the LCIA Rules limits applications to state courts after constitution of the Arbitral Tribunal to exceptional cases and with the tribunal's authorisation.



Procedures and Time Limits for the Terms of Reference and Final Award Differ Across Institutions.

Under the 2026 ICC Rules, the Terms of Reference is no longer mandatory in standard ICC arbitrations. Instead, Article 24(1) requires the initial Case Management Conference to be held within 30 days of the file being transmitted to the arbitral tribunal. Under Article 34, the time limit for rendering the final award is fixed by the President of the ICC Court, taking into account the procedural timetable or a reasoned request from the tribunal. By contrast, Article 26 of the ISTAC Rules requires Terms of Reference unless otherwise agreed by the parties, with the signed document to be submitted to the Secretariat within thirty days of transmission of the file. Under Article 33(1), the six-month time limit for rendering an award on the merits generally runs from completion of the signatures on the Terms of Reference or notification of its approval. The LCIA Rules do not provide for an equivalent Terms of Reference stage; Article 15(10) instead requires the tribunal to make its final award as soon as reasonably possible, with a target of no later than three months after the parties' last submission. Therefore, the choice of institution may affect both the procedural stages of the arbitration and the point from which the time limit for the final award is calculated.

Institutional Approaches Differ as to the Scrutiny of Awards and Confidentiality.

Under the ICC Rules, the arbitral tribunal must submit its draft award to the ICC Court before signing it. The Court may propose modifications as to form and draw the tribunal's attention to points of substance without affecting its freedom of decision; no award may be rendered until approved by the Court as to its form. To the extent practicable, the Court also considers the validity and enforceability of the award. Under the LCIA Rules, draft awards are reviewed for compliance with the formal requirements of Article 26, but are not subject to the same institutional scrutiny and approval as under the ICC Rules. By contrast, the ISTAC Rules provides for the deposit of the award with the Secretariat and its notification to the parties, without providing for a comparable pre-award scrutiny and approval mechanism. As regards confidentiality, ISTAC Rules provides that the arbitration proceedings are confidential unless otherwise agreed by the parties. LCIA Rules also imposes an express confidentiality obligation on the parties in respect of awards and non-public materials created or produced in the arbitration. Under the ICC Rules, Article 12(8) imposes a confidentiality obligation on arbitrators, while Article 23(3) empowers the arbitral tribunal, at the request of a party, to order measures concerning confidentiality. However, the ICC Rules do not impose a general confidentiality obligation on the parties comparable to that under the LCIA and ISTAC Rules. These differences mean that the choice of institution may affect both the scope of institutional scrutiny of the award and the confidentiality regime applicable to the arbitration.

