Esin Attorney Partnership.

Esin Arbitration Quarterly

June 2022 - Fourth Issue

2022 is shaping up to be another busy and interesting year in the world of international arbitration, with many attractive and exciting updates and developments. With arbitral institutions' efforts to make arbitration a more efficient and preferable alternative dispute resolution method for practitioners, the world of arbitration is becoming more and more exciting every day.

In this fourth issue of Esin Arbitration Quarterly, we provide insight on some of the most significant court decisions and developments regarding arbitration; in the spring of 2022.

1. Significant court decisions in the last trimester concerning arbitration

1.1 Decision of the General Assembly of Civil Chambers of the Court of Cassation of Republic of Turkey regarding arbitrability of bankruptcy lawsuits

The General Assembly of Civil Chambers of the Court of Cassation ("**General Assembly**") ruled that even if there is an arbitration agreement between parties, the creditor does not need to first file an arbitration to obtain an award on the existence of its receivables before initiating a bankruptcy lawsuit as this would go against the principle of procedural economy.

The dispute arose out of a construction contract in return for land share (*arsa payı karşılığı inşaat sözleşmesi*) ("**Agreement**"). The plaintiffs, who are the creditors, claimed that the defendant, who is the debtor, failed to complete and deliver the turnkey construction in due time, and they initiated execution proceedings with bankruptcy request (*genel iflas yoluyla icra takibi*) against the defendant for a total of TRY 2 million for the loss of rent revenue. The defendant objected to the execution proceedings that were made with a bankruptcy request. Thereupon, the plaintiffs initiated a bankruptcy lawsuit to dismiss the defendant's objection and requested a depot order (*depo emri*) to be given and for the defendant to be declared bankrupt if it failed to pay the loss amount subject to the proceedings. The defendant opposed the plaintiffs' allegations in two main fronts: firstly, they argued that there is an arbitration clause in the Agreement so the court is therefore not authorized to hear the dispute; secondly, they argued that the defendant is not in default as claimed by the plaintiffs. The defendant further argued that it was the plaintiffs who were in default due to their failure to fulfill their obligations under the Agreement. As such, the defendant requested that the lawsuit be dismissed on procedural

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grounds due to the existence of the arbitration agreement or on merits due to the plaintiffs' default.

The Court of First Instance held that bankruptcy lawsuits with dismissal of the objection requests are a special type of proceedings consisting of multiple stages. It also emphasized that it should first be determined whether the receivables subject to the depot order exist, along with their amount, and then the bankruptcy decision should come. Even if the bankruptcy is not arbitrable, the first stage may be heard by the arbitral tribunal. Accordingly, the lawsuit was dismissed by the Court of First Instance on procedural grounds due to the existence of an arbitration clause in the Agreement between the parties. The plaintiffs appealed the decision and the 11th Civil Chamber of Gaziantep Regional Court ("**Regional Court**") upheld the decision by stating that there is an arbitration clause in the Agreement between the parties and as such, the plaintiffs should first turn to arbitration to obtain a decision on the existence of their receivables. The plaintiffs appealed the Regional Court's decision as well. The 15th Civil Chamber of the Court of Cassation ("**15th Chamber**") reversed the decision of the Court of First Instance by holding that even if arbitration is an exception to the principle that the judicial power of a state is exercised by the courts, raising an arbitration objection when the counterparty has resorted to bankruptcy proceedings before the courts in order to swiftly acquire its receivables would not be compatible with the principle of good faith and would limit the related party's right to legal remedies. Upon the 15th Chamber's ruling, the Court of First Instance insisted on its initial decision, and it is also appealed by the plaintiffs to the General Assembly.

The General Assembly reiterated that the dispute between the parties was essentially based on whether the dismissal of the plaintiffs' bankruptcy lawsuit on procedural grounds due to arbitration objection is correct. The General Assembly emphasized that bankruptcy lawsuits bear consequences that affect public order and not just the plaintiff requesting the defendant to be declared bankrupt but all other creditors of the defendant as well. The General Assembly highlighted that execution proceedings with bankruptcy request and request for dismissal of the defendant's objection and declaration of bankruptcy are inseparable and required to be heard together. As such, obtaining a decision on the dismissal of the objection in arbitration and then proceeding with the bankruptcy lawsuit before the Turkish courts would go against procedural economy and cannot be justified. The General Assembly also stated that Articles 154 and 155 of the Execution and Bankruptcy Law No. 2004, which regulate execution proceedings with bankruptcy request, do not provide for resort to arbitration for the evaluation regarding whether the receivables exist, or an arbitration objection against such proceedings. Moreover, the arbitration clause itself does not provide that the parties cannot initiate execution proceedings with bankruptcy request in case of a dispute. After stating the foregoing, the General Assembly reiterated the same reasoning as the 15th Chamber and reversed the reinstatement decision of the Court of First Instance.

The dissenting opinion in the General Assembly decision reiterated that arbitration is not possible for disputes that are not subject to the will of the parties. However, it was stated in the dissenting opinion that the existence and validity of the arbitration clause is undisputed between the parties. It was further held that the nature of the receivable subject to the dispute is arbitrable. Moreover, the dissenting opinion pointed out that there are also opinions in favor of first initiating an arbitration to determine the existence and amount of the receivables, since this phase is not characteristic to bankruptcy proceedings and must, therefore, be resolved before an arbitral tribunal if there is an arbitration agreement between the parties, and then proceeding with the Turkish courts for the depot order and bankruptcy decision. It was then emphasized in the dissenting opinion that by initiating execution proceedings with bankruptcy request instead of resorting to arbitration to resolve the dispute, despite the existence of an arbitration agreement and the arbitrable nature of the dispute, the plaintiffs rendered the arbitration clause inapplicable for the defendant. According to the dissenting opinion, this went against the principle of pacta sunt servanda and was a clear abuse of right, aiming to override the arbitration clause in the Agreement. Finally, it was further emphasized in the dissenting opinion that accepting the majority decision and expecting the parties to expressly state in their arbitration agreement that none of the parties will resort to bankruptcy proceedings bears the risk of rendering arbitration agreements practically inapplicable in similar cases. (General Assembly of Civil Chambers of the Court of Cassation, File No. 2019/574, Decision No. 2021/1710).

While we do not wish to comment on the decision of the General Assembly as we wanted to reflect the legal developments without any personal input; we still wanted to mention that this decision has the potential of substantially damaging and prejudicing the arbitration-friendly developments that have been taking place in Turkey since the last decade.

1.2 ICSID tribunal award's effects on Spain's policies on renewable energy

The tribunal in the Renergy S.a.r.l. ("**Renergy**") v. Kingdom of Spain case[1] rendered its award on 6 May 2022. The Kingdom of Spain was ordered to pay nearly EUR 33,000,000 to Renergy since Spain decided to roll back clean-energy subsidies.

In 2014, Renergy, a Luxembourgish investor, initiated an investment arbitration against Spain to claim compensation for its investments in Spain, which amounted to EUR 151,000,000 plus interest. Renergy's claims arose out of a series of energy reforms undertaken by the government of Spain affecting the renewables sector, including a 7% tax on power generators' revenues and a reduction in subsidies for renewable energy producers. Renergy asserted their claims under the Energy Charter Treaty (ECT), which is an international investment agreement providing a multilateral framework for energy cooperation that is unique under international law. Spain raised an intra-EU objection in the arbitration proceedings, i.e. they claimed that the EU law must be applicable to the dispute since both parties are from the European Union, and not the ECT.

1 ICSID Case No. ARB/14/18.

However, the tribunal rejected this objection and held that the merits of the case did not require the application of EU law, and that the tribunal would focus on violations of the ECT. The tribunal also made clear that as the ECT and ICSID Convention were clear and specific enough, there was no need to resort to the EU law.

The merits of the case concerned the violation of Renergy's expectation of relative stability under the ECT's treatment standard of fairness and equity. The reforms undertaken by the government of Spain following the 2008 financial crisis left a "severe adverse economic impact" on the investments of Renergy. The tribunal held that the additional claims of Renergy regarding security, full protection, unlawful expropriation and non-impairment were either not established or do not add anything to the breach of the fair and equitable treatment standard. The tribunal held in majority that Spain materially changed its understanding of the reasonable rate of return and "switched the remunerative paradigm by transforming a system in which investors were incentivized to maximize production to a system in which the production level was much less important." The arbitrator appointed by Spain issued a dissenting opinion, by which he held that Renergy was not successful in proving that its reasonable expectations had been breached. According to the dissenting opinion, the reforms undertaken by the government of Spain did not deprive Renergy of its investments and fell within "the acceptable margin of change."

The case had been pending since 2014, and after eight long years, it finally came to an end.

2. Developments in arbitration practice

2.1 Recently published statistics of the arbitral institutions

(a) The ICC registered its 27,000th case!

On 6 May 2022, the International Chamber of Commerce (ICC) issued a statement that it registered its 27,000th case. According to the statement, the parties to the dispute are from Africa and they are active in the energy sector.

Alexander G. Fessas, the Secretary General of the ICC Court, stated:

> "Case 27.000 is a very important milestone for the ICC Court, as it fast approaches its centenary year. I am pleased that the case showcases the true diversity of our caseload but also exemplifies why we care for the development of arbitration and ADR in Africa - the continent of origin of 193 parties from 35 countries in our 2021 case filings."

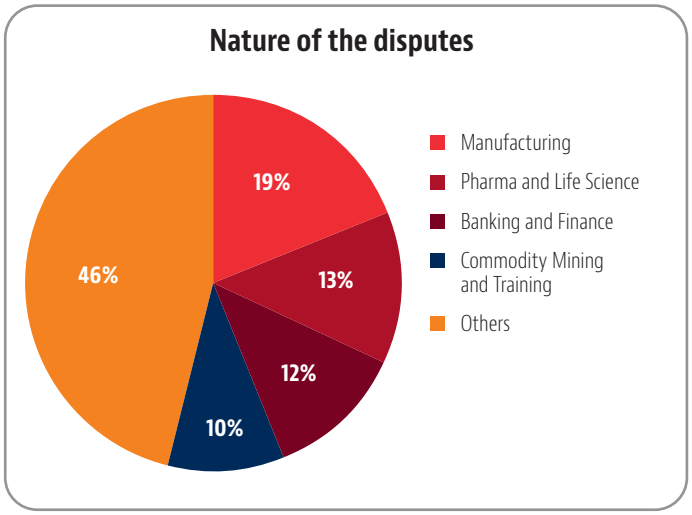
The ICC also stated that the full 2021 statistical report will be published in June 2022.[2]

(b) ASA published 2021 caseload statistics

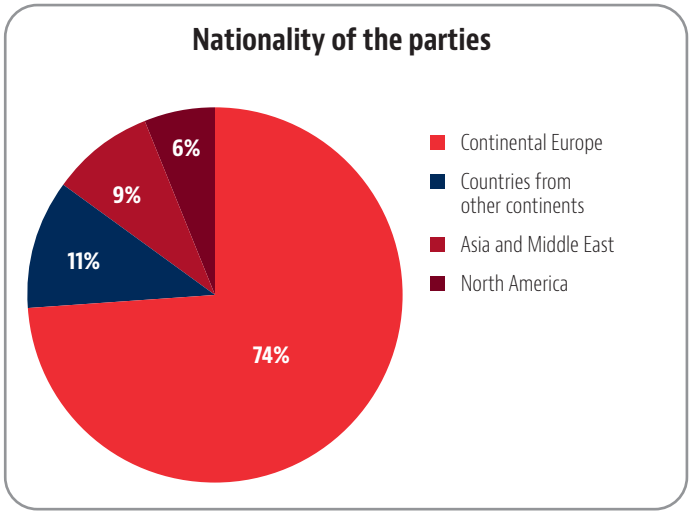
On 26 April 2022, the Swiss Arbitration Association (ASA) released its dispute resolution statistics for 2021, which show that the ASA remains a much-in-demand arbitral institution.[3]

According to the statistics, in 2021:

- A total of 113 cases were referred to arbitration under the ASA Rules. This is a record-breaking statistic as the year 2021 holds the highest number of the newly registered cases in the history of the ASA.
- The statistics shows that ASA arbitration is known in various sectors. The key industry sectors were:



- 81% of the cases under the ASA Rules were international cases and involved at least one foreign party.



- Like in 2020, English was again the most chosen language of arbitration in the proceedings conducted under ASA Rules, followed by French and German.

2 If you would like to review our analysis regarding the 2020 ICC Statistics, you may access the First Issue of Esin Arbitration Quarterly **here**; for the 2021 ICC Statistics you may review the Third Issue of Esin Arbitration Quarterly, please click **here**.

3 You may find the 2020 ASA Statistics in the Second Issue of Esin Arbitration Quarterly **here**.

- Gender-balanced arbitral tribunals were on the rise in 2021. In 20% of the arbitrations, the arbitrators were appointed by the arbitration court and 77% of them were women arbitrators.
- The simplified and cost-friendly expedited procedures were referred to in 32% of the new cases.
- In 2021, the highest amount in dispute was CHF 446,751,000, while the lowest was CHF 15,000. This shows that the ASA administered arbitrations at any level of value and complexity in 2021.

The statistics show that each year the ASA continues to attract more people who are seeking to settle their disputes through arbitration. Xavier Favre-Buller, the President of the ASA Court stated,

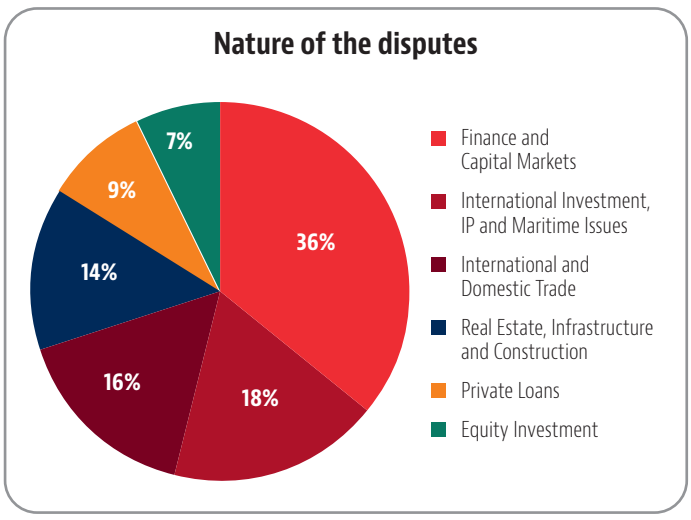
> "We are proud to be an independent, highly reliable and efficient institution. Our record figures for 2021 demonstrate that users and arbitration practitioners trust our services. We are very pleased with the increasing caseload of the Centre and look towards the future with confidence."

(c) The SCIA published caseload statistics for the first time

The Shenzhen Court of International Arbitration (SCIA), for the first time in its 37 year history, published its annual report, which includes caseload statistics.

According to the report:

- A total number of 7,036 cases were recorded in 2021. The overall value in dispute was CNY 85.6 billion, which is equal to approximately USD 13.2 billion. The striking figures in the report is that about 68% of the cases had over CNY 100 million in dispute, which shows that the SCIA administered arbitrations of very high value.
- The nature of the cases were as follows:



- The parties were from 25 countries and regions around the world. However, both parties were from overseas in only 28 of the cases.
- Almost 5,500 of the cases were concluded through awards and nearly 2,000 cases were concluded through settlement or withdrawal.
- It took only 167 days on average to conclude a case. A total number of 1,549 arbitrators are included in the latest SCIA panel of arbitrators. Among the arbitrators on the panel, 981 were from Mainland China, 149 from Hong Kong, 18 from Macao, 17 from Taiwan and 384 from other countries.

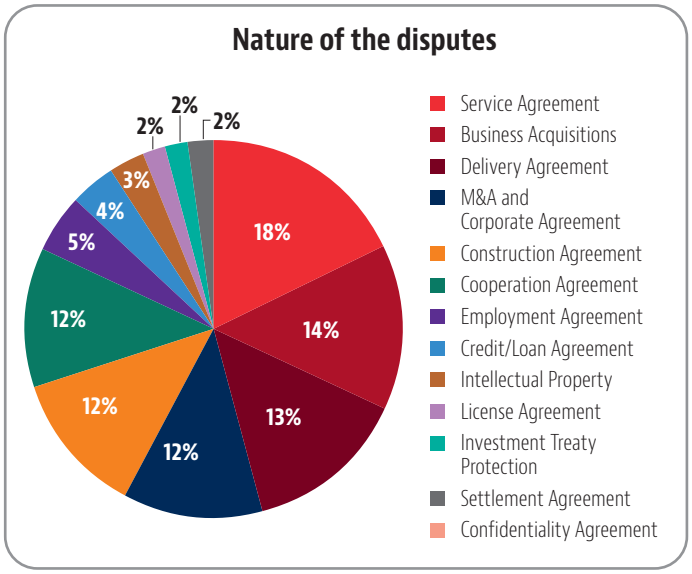
It is great to see that SCIA published its statistics so that practitioners can get information on how many cases have been administered, the nature of the cases and how much time it took from request to award.

(d) The SCC published 2021 caseload statistics

The Stockholm Chamber of Commerce (SCC) published its 2021 caseload statistics. The statistics provide detailed data on the developments of the last year.[4]

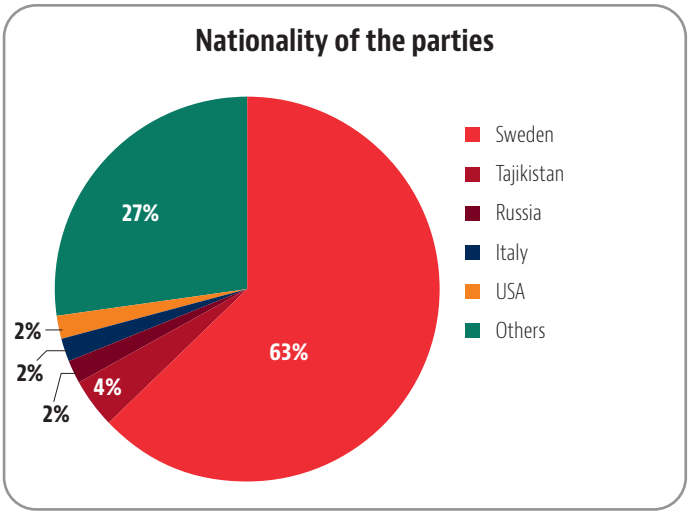
According to the statistics:

- The SCC registered a total number of 165 cases in 2021. From these cases, 87 were domestic disputes and 78 were international disputes.
- The parties chose the SCC Rules for Expedited Arbitrations in 30% of the cases. While 49 cases were registered under the expedited rules, the SCC also registered seven emergency arbitrator proceedings.
- The disputes arose from many different types of agreements. From among 165 cases, 31 disputes stemmed from service agreements; 25 from business acquisitions; 24 from delivery agreements; 20 from M&A and corporate agreements; 20 from construction agreements; 12 from cooperation agreements; nine from employment agreements; seven from credit/loan agreements; six from intellectual property; four from license agreements; three from investment treaty protections; three from settlement agreements; and one from a confidentiality agreement.



4 You may access the 2021 SCC Statistics **here**.

- The nationality of the parties differed between 42 countries. While Sweden had the highest number with 245, it was followed by Tajikistan (14), Russia (10), Italy (9) and USA (9).



- The SCC proved to be an attractive arbitral institution in terms of speed as well. About 19% of the awards rendered under the SCC Arbitration Rules in 2021 were rendered within six months from when the case was referred to the arbitrator or tribunal. Nearly 56% of the awards were rendered between 6 to 12 months from the date of referral.
- The awards under the SCC Rules for Expedited Arbitration in 2021 were rendered within three months from the date of referral. Another 29% of the awards were rendered between three to six months from referral.
- The most frequent applicable law was Swedish law (113 cases), followed by Tajikistan law (7 cases) and English law (4 cases).
- The total amount in dispute in cases administered by the SCC was EUR 840,000,000. The number includes cases under the SCC Rules, Expedited Rules, Emergency Arbitrations and cases administered under the UNCITRAL Rules where the information was available.
- The cases registered in 2021 did not include many language choices. The cases were in either Swedish (94 cases) or English (71 cases).
- Stockholm was the most chosen seat of arbitration. In 122 cases registered in 2021, Stockholm was the seat of arbitration. It was followed by Gothenburg, which was the seat of arbitration in 15 cases. There were also cases which included seats outside of Sweden, such as Paris, Kiev and Berlin, but they remained relatively rare in the arbitrations conducted under the SCC.
- In 2021, the SCC also showed how fast they can administer the emergency arbitrator proceedings. In all cases, an emergency arbitrator was appointed within 24 hours and the decisions were rendered in 6.6 days on average.
- In 2021, while 60 cases were decided by a three member tribunal, 37 cases were decided by a sole arbitrator.

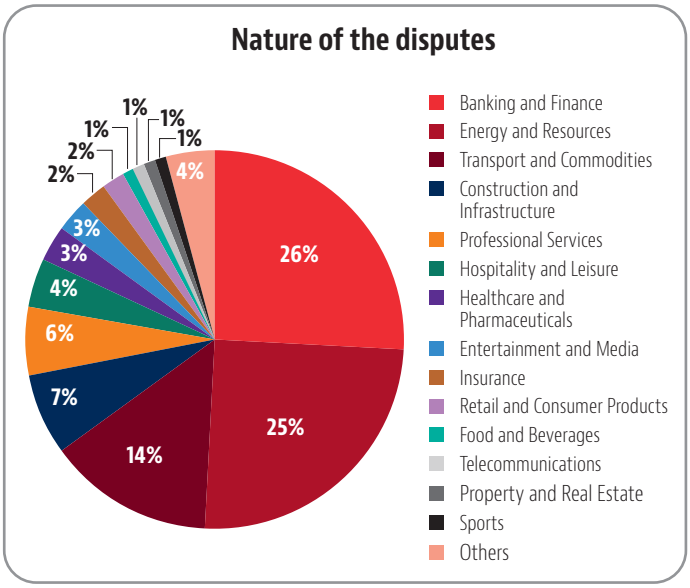
The statistics show a busy year with cases from various sectors for the SCC in 2021.

(e) LCIA published its 2021 Annual Casework Report

On 17 May 2022, the London Court of International Arbitration (LCIA) published its 2021 annual casework report ("**Annual Casework Report**").[5]

According to the Annual Casework Report:

- The LCIA received 387 referrals for its services, including 322 referrals for arbitration pursuant to LCIA Rules. The figures show a return to 2019 numbers, which means that the effect of the COVID-19 pandemic has started to dissipate.
- The effects of the ongoing war in Ukraine have had an immediate impact due to the sanctions on the ongoing cases. Nevertheless, the longer-term impact of the sanctions and the war is not predictable for the time being.
- In accordance with Decree No. 34, LCIA is administrating approximately 130 pending DIFC-LCIA cases due to the abolition of the DIFC-LCIA Arbitration Center in March 2022.[6]
- In 2021, the percentage of parties from the UAE rose from 4.3% to 9.5%. It is anticipated that the LCIA will be receiving more cases from this region.
- In 2021, 5.7% of the parties were a state body or state-owned entity.
- More applications for the expedited formation of the tribunal were made, which showed that parties are leveraging all the opportunities and tools that the LCIA offers.
- The nature of the disputes in 2021 were as follows:



5 You may download the LCIA 2021 Annual Casework Report **here**.

6 For more information on the abolition of DIFC-LCIA Arbitration Center and Emirates Maritime Arbitration Center (EMAC), you may refer to the Second Issue of Esin Arbitration Quarterly **here**.

In accordance with the 2021 Annual Casework Report, it can be inferred that 2021 was a busy year for the LCIA in terms of caseload. The LCIA remained one of the much in-demand institutions in 2021.

2.2 Recent developments on the rules of the arbitral institutions

(a) ISTAC updated the rules on costs and fees scales

With its board decision dated 21 March 2022, the Istanbul Arbitration Center (ISTAC) updated its rules on costs and fees scales. In the statement published by ISTAC, three reasons were provided for the revisions:

- One of the goals of the revisions is to make ISTAC arbitration cheaper in comparison with court litigation. Until the date of the revisions, in arbitrations before ISTAC with three arbitrators, the cost of the proceedings were higher than court litigation in some cases according to the value of the dispute. The updated rules on costs and fees scales made ISTAC arbitration cheaper by reducing the legal costs for the disputes whose value are less than TRY 1,000,000.
- Because of the economic instability in Turkey, TRY has lost its value substantially since 18 April 2017, the date when ISTAC Arbitration Rules were come into effect. This affected international arbitration cases before ISTAC and made these changes to the rules on costs and fees scale essential.
- The ISTAC Fast Track Arbitration Rules has proven to be a very effective way of simplified and expeditious arbitration.

The updated rules on costs and fees scales made ISTAC arbitration a more cost-friendly and faster way of dispute resolution method for those who want to settle their disputes through arbitration.

(b) The DIAC launched DIAC Arbitration Rules 2022

After the abolition of the DIFC-LCIA Arbitration Center and Emirates Maritime Arbitration Center on 14 September 2021, with Decree No. 34 of 2021, Dubai International Arbitration Center (DIAC) became the only arbitral institution in Dubai.[7] Following the abolition, the DIAC Arbitration Rules 2022 ("2022 Rules") have come into effect on 21 March 2022.[8]

The 2022 Rules significantly modernize the DIAC Arbitration Rules 2007 and aim to reinforce the DIAC's prominent position as a global arbitration institution and establish Dubai as a leading global center for arbitration. The Rules bring significant amendments aimed at increasing efficiency and include provisions reflecting contemporary practices in international arbitration, such as virtual hearings. As such, the Rules have been brought up to the standard of rules of leading arbitration centers, offering flexible and efficient proceedings.[9]

(c) The SCIAHK arbitration rules come into force

A newly established arbitral institution, South China International Arbitration Center (SCIAHK) approved the SCIAHK Arbitration Rules on 1 May 2022.[10] The SCIAHK is affiliated with the South China International Arbitration Center, but it is an independent arbitral institution.

The SCIAHK Arbitration Rules are based on 2013 UNCITRAL Arbitration Rules with some modifications specified under Appendix 5. These modifications include single arbitrations under multiple contracts, consolidation, parallel proceedings as well as incorporating emergency arbitration, med-arb procedure and expedited arbitration procedure.

The SCIAHK Arbitration Rules provide practitioners, especially those who are familiar with UNCITRAL Arbitration Rules, a brand new rules to settle their disputes.

2.3 Other developments

(a) The ICC published a statement on the launch of the Declaration for the Future of the Internet

The Declaration for the Future of the Internet ("**Declaration**"), which is a political commitment among partners to advance an affirmative vision for the internet and digital technologies, was launched on 28 April 2022.[11] The Declaration sets out the vision and principles of a trusted internet. The Declaration strongly supports an online environment which reinforces core democratic principles, fundamental freedoms and human rights. ICC's statement explains this visions as follows:

> "An open, stable and trusted Internet that is global and interoperable is vital for business operations worldwide and a prerequisite to the effective functioning of public services such as education and health care as well as to the way citizens interact with their government.
>
> [...]
>
> The principles set out in the Declaration for the Future of the Internet are the right steps in this direction. They promote (i) a stable legal and regulatory environment for human-centric connectivity, (ii) open markets and trusted free flows of data that enable innovation and growth, (iii) a holistic approach to policymaking and (iv) multi-stakeholder Internet governance – the four building blocks ICC identifies as crucial for sustainable digitalization"

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7 For more information on the abolition of DIFC-LCIA Arbitration Center and Emirates Maritime Arbitration Center (EMAC), you may refer to the Second Issue of Esin Arbitration Quarterly **here**.

8 You may find the DIAC Arbitration Rules 2022 **here**.

9 You may access a detailed examination of the significant provisions of the DIAC Rules from our legal alert "The DIAC Arbitration Rules 2022: A Step to Cement the DIAC's Position as a Prominent Arbitral Institution" by clicking **here**.

10 You may access the SCIAHK Arbitration Rules **here**.

11 You may find the Declaration for the Future of the Internet **here**.

(b) Kyrgyzstan joins the ICSID Convention

In the course of the second quarter of 2022, Kyrgyzstan joined the ICSID Convention.

Kyrgyzstan deposited its Instrument of Ratification of the ICSID Convention with the World Bank on 21 April 2022. Kyrgyzstan actually signed the ICSID Convention in 1995, but could not ratify it as the ratification instrument signed by the Kyrgyz president at that time was lost on its way to the Kyrgyz embassy in Washington D.C. in 1997. Meg Kinnear, Secretary-General of ICSID stated:

> "ICSID membership builds and strengthens the international legal architecture that underpins the flow of international investments. I am delighted that the Kyrgyz Republic has taken this important step to further foster a business environment that is conducive to attracting, retaining, and expanding foreign investment. ICSID looks forward to supporting the Kyrgyz Republic as it continues to build its capacity in the field of international investment law and dispute settlement."

This way, the Kyrgyz Republic completed the process of joining the ICSID Convention, making Kyrgyzstan a more attractive place for foreign investors. Following the ratification, the ICSID Convention entered into force as per Article 68/2 of the convention in Kyrgyzstan on 21 May 2022, making it the 157th state ratifying the ICSID Convention.

(c) Turkmenistan joins the New York Convention

On 4 May 2022, Turkmenistan acceded to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("**New York Convention**"). The convention is expected to enter into force on 2 August 2022 in Turkmenistan. Turkmenistan has become the 170th country and the last former Soviet state to be a party to the New York Convention.

On acceding to the New York Convention, Turkmenistan made three permitted reservations and declarations:

- Reciprocity reservation: The New York Convention will only ensure the recognition and enforcement of foreign arbitral awards made in the territory of another contracting state.
- Commerciality reservation: The New York Convention will apply for disputes which are considered commercial disputes under Turkmen law.
- The New York Convention will be applicable for the awards which are rendered after the implementation of the convention in Turkmenistan, i.e. after 2 August 2022.

Turkmenistan's accession to the New York Convention is hoped to create safety for all who need to have their award recognized and enforced in the country.

(d) Administrative council approves amendment of the ICSID Rules

On 21 March 2022, the member states of ICSID approved a comprehensive set of amendments to the ICSID Rules. ICSID had been working for a long time on the new set of rules and released six working papers regarding the new amendments.[12] The center had submitted the amended rules to the administrative council for a vote on 20 January 2022.[13]

David Malpass, the President of the World Bank Group and Chair of the ICSID Administrative Council stated,

> "The amendment of the ICSID rules is a key achievement for improving international dispute resolution. The amended rules streamline procedures to enable greater access and speed, increase transparency and enhance disclosures, with the ultimate goal of facilitating foreign investment for economic growth."

With the new rules — which consist of administrative rules and regulations, institution rules, arbitration and conciliation rules, fact-finding rules and mediation rules — ICSID hopes to bring a new perspective to ICSID arbitration. The amendments under arbitration rules include changes such as bringing greater transparency to the proceedings through increased publication of awards, decisions and orders; providing an obligation for the parties to disclose the name and address of any third-party funder; and providing the non-disputing party with an opportunity to access relevant documents and expedited proceedings.

Following the approval, the amendments will enter into force on 1 July 2022.

(e) Romania is to face another ECT claim at ICSID

During the course of the last few years, Romania has faced many ECT-based claims, regarding its renewable energy incentives scheme. A recent claim was brought by Aderlyne Limited, a Cypriot company, who is an investor in solar energy projects in Romania. Aderlyne Limited's claims are related to the "unexpected cutbacks" to incentives granted to investors. Aderlyne Limited argues that their claim differed from the ECT claims that Spain has faced so far due to the reforms in a renewable subsidy program, since the government of Romania ruined the request for the incentives mechanism.

Following the European Court of Justice's Komstroy decision,[14] Aderlyne Limited became the second investor to bring an intra-EU ECT claim against Romania.

12 You may find information on the working papers in our previous issues **here** and **here**.

13 You may see the Third Issue of Esin Arbitration Quarterly **here** for more information.

14 You may see the Second Issue of Esin Arbitration Quarterly for detailed information on this decision **here**.

(f) Government actions to stop global warming may prompt claims of USD 340 billion in total, according to a study of Global Development Policy Center at Boston University

In a study published by academics from the Global Development Policy Center at Boston University, the imminence of investor-state dispute settlement claims were argued within the scope of global green energy transition.

The 2015 Paris Agreement sets a goal of limiting global warming to below 1.5 °C, and according to the study, the governments' efforts to achieve this goal may bring many investor-state dispute settlement claims. As a result, government actions on battling the global warming may be delayed because of the "regulatory chill" caused by investors' claims. The study further states that the governments should take the necessary steps to prevent fossil fuel investors from accessing such claims, as these will delay them from phasing out fossil fuels.

The study also makes references to many arbitration cases, while highlighting that "*despite a growing body of research, there is a lack of understanding on the part of many states that the treaties do not live up to their purported benefit of facilitating investment.*"

According to the study, the countries that will suffer the most from investor-state dispute settlement claims are as follows:

- Mozambique (approximately USD 31 billion)
- Guyana (USD 21 billion)
- Venezuela (USD 21 billion)
- Russia (USD 16 billion)
- United Kingdom (USD 14 billion)

The study also estimates that 33 countries may face additional investor-state dispute settlement claims; most notably Russia, Mozambique, Kazakhstan, Guyana and Indonesia.

(g) Arbitration Lunch Match achieves second place at the GAR Awards 2022!

Arbitration Lunch Match, which is an international event that brings female arbitration practitioners from all around the world together, has achieved second place at the GAR Awards 2022. Arbitration Lunch Match started in Germany in the midst of the first COVID-19 wave in spring 2020, and has since gone global with lunches taking place in locations outside Germany. Now, in 2022, it is really hard not to be captivated by this event considering that it has spread all over the world, with so many event locations. In May 2022, it took place in 32 different cities around the world at the same time!

In Turkey, Arbitration Lunch Match has been organized by Esin Attorney Partnership and led by Demet Kaşarcıoğlu in Istanbul with the support of Ceyda Sıla Çetinkaya and Tuğçe Şengezer since 2021 to ensure that female arbitration practitioners as well as women who are interested in arbitration are brought together.

Conclusion

The developments show that 2022 has been going at full speed in the world of international arbitration. However, not all of the developments are promising to have a more arbitration-friendly environment. Unfortunately, some of the court decisions have the potential of substantially damaging and prejudicing arbitration as can be seen under section 1.1. Despite the existence of some disappointing court decisions, arbitration is growing rapidly with the establishment of new rules of various arbitration centers and is adapting to the new challenges. Different countries accepting international agreements, which are very important for arbitration, is one of the developments that reveals the progress of arbitration worldwide. And numbers don't lie: statistics also reveal that arbitration is steadily gaining acceptance in various sectors. In particular, it is clear that we have entered into an era where we are likely to see more and more arbitration, especially disputes arising out of energy investments due to the changing politics of states regarding energy regimes.

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Arbitration Courses and Events Calendar

June 2022

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1 6th ICC Africa Conference on International Arbitration LAGOS, NIGERIA/ONLINE	2 Swiss Arbitration: A Multi-purpose Dispute Resolution Tool for Users in the Gulf States ONLINE	3	4	5
6	7	8 The First 100 Days in a Dispute SINGAPORE GAR Live: BITs 2022 LONDON, ENGLAND	9 ICC Institute Training: Production of Documents SAO PAULO, BRAZIL	10 10th ICC Brazilian Arbitration Day SAO PAULO, BRAZIL	11	12
13	14 Arbitration in French-speaking Countries ONLINE	15 ICC Americas Regional Economic Forum: Promoting Peace and Prosperity for the 21st Century MEXICO CITY, MEXICO	16 100 Years of ICC: Past, Present, and Future - ICC Arbitration Conference MEXICO CITY, MEXICO	17	18	19
20	21 7th ICC Asia Pacific Conference on International Arbitration SINGAPORE	22	23 GAR Live: Istanbul 2022 ISTANBUL, TURKEY Energy Disputes in Benelux and Germany ONLINE	24 ASA Arbitration Practice Seminar KRONBERG IM TAUNUS, GERMANY	25	26
27	28	29	30 Swiss Arbitration for Turkey ISTANBUL, TURKEY	31		

July 2022

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1	2
3	4	5	6 Specialist Arbitration Series: Part 2: Energy, Oil & Gas Arbitrations ONLINE	7 What You Need to Know about the Amended ICSID Arbitration Rules ONLINE	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22 Lessons from Successful Challenges to Arbitral Awards in Hong Kong TAIPEI, TAIWAN/ONLINE	23
24	25	26	27	28	29	30

August 2022

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23 GAR Live: Vienna (VIENNA, AUSTRIA)	24	25	26	27	28
29 SIAC Symposium 2022 SINGAPORE/ONLINE	30	31				

Organized by: ASA ICC GAR IBA GAR & Lexology SIAC ICSID ICC YAF