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Ministry of Justice Has Published the New Communiqué on International Arbitration Fee Tariffs

15th Edition of the Communiqué on International Arbitration Fee Tariffs has been published in the Official Gazette on 08.03.2016. Started to be published in 2001 on an annual basis, the Communiqué seems to reflect an identical outlook with the preceding edition.

The new Communiqué, which determines arbitrators' fees, is applicable where:

- The parties and sole arbitrator or arbitral tribunal cannot reach an agreement on the fees, or;
- The arbitration agreement does not contain any provision regarding determination of the fee, or;
- The parties have not made any referral to any established international guidelines or institutional rules.

Article 2 of the Communiqué states that arbitrators are entitled to be paid for the performance and works regarding the subject matter conducted between the dates of initiation of the arbitration until the making of the final award. However, correction, interpretation or completion of the award does not warrant an additional payment.

Then, Article 3 states that the fee for the president of the tribunal is to be calculated 10% more than each arbitrator's entitlement.

Also, Articles 4, 5, 6 and 7 regulate the reduction and deprivation of the arbitration fee. Accordingly;

Arbitrators will be entitled to only one fourth of the determined fee, if;

- The sole arbitrator or arbitral tribunal rules that it lacks jurisdiction, or;
- The claimant unjustifiably does not submit its statement of claim as per the consented schedule, or;
- The claimant's submission of statement of claim fails to include the essential information and yet it is not completed under the given time limit by the sole arbitrator or arbitral tribunal.

Arbitrators will be deprived of arbitration fee, if;

- The nomination of an arbitrator is not accepted by the parties due to said arbitrator's failure to satisfy agreed specifications by the parties, or;
- An arbitrator does unjustifiably not carry out the duties assigned to him or her, or;
- An arbitrator who resigns or is removed from the duty by the agreement of the parties due to his or her absolute or delayed performance to complete the assigned duties.

If the termination of arbitration proceedings occurs before an arbitrator or arbitral tribunal determines the period of time on which the parties are to submit their evidence, half of the fee; if it occurs after such determination, full fee is conferred on the arbitrators. Additionally, the Communiqué lists the following causes for termination by referring to Article 13 of the International Arbitration Law:

- If the claimant withdraws his claim, except where the arbitrator or arbitral tribunal determines that the claimant has an interest in the final solution of the dispute,
- If the parties agree to terminate the arbitration proceedings,

- The arbitrator or arbitral tribunal finds that the continuation of the arbitration proceedings is unnecessary or impossible for any other reason,
- If the competent court denies the request to extend the arbitration period pursuant to subsection two of Section B of Article 10,
- If the arbitration proceedings cannot be continued pursuant to subsection two of section B of Article 11,
- If advance payment for expenses have not been made pursuant to subsection two of section C of Article 16.

After that, Article 5 of the Communiqué states that, if a withdrawal, settlement or an incident which eliminates the subject matter of the dispute concludes the dispute before the arbitrator or arbitral tribunal determines the period of time on which the parties are to submit their evidence, half of the fee; if the abovementioned concludes the dispute before such determination, full fee is conferred on arbitrators.

In case of a partial award, Article 6 stipulates that, the fee is to be determined on the value of the partial award. However, if the partial award is issued as being the final award, then arbitrators are entitled to the full fee.

Importantly, if the award is set aside in accordance with the Article 15 of the International Arbitration Law and same arbitrators are appointed, Article 7 of the Communiqué underlines that arbitrators' will be entitled to one fourth of the fee, if the below mentioned occurs;

- If the arbitrator or arbitral tribunal was not composed in accordance with the procedure agreed by the parties or foreseen in this Act, or,
- If the arbitrator or arbitral tribunal's decision as to its jurisdiction was against the law, or,
- If the arbitrator or arbitral tribunal rendered an award for matters beyond the scope of the submission to arbitration or did not render an award for all of the request, or exceeded its competency, or,
- The arbitration proceeding was not conducted in accordance with the procedure as agreed by the parties or, failing such agreement, in accordance with the provisions of the International Arbitration Law, and this had an affect on the substance of the award, or,

- If the parties were not equally treated, or,
- If the award is against the public order.

Following these, the Communiqué reiterates that the arbitrators are entitled to the fee at the end of the arbitration proceedings and that arbitrators' fee shall be determined pursuant to the Communiqué that is in force at the time of the issuance of the award. It further provides the below Fee Chart;

VALUE OF THE SUBJECT MATTER	FEE FOR THE SOLE ARBITRATOR	FEE FOR THE ARBITRAL TRIBUNAL COMPOSED OF THREE OR MORE ARBITRATORS
For the first TRY 0.5 M	5%	8%
For the additional TRY 0.5 M	4%	7%
For the additional TRY 1 M	3%	6%
For the additional TRY 3 M	2%	4%
For the additional TRY 5 M	1%	2%
For the values over TRY 10 M	0.1%	0.2%

Should you require further information about Turkish international arbitration legislation and practice, please do not hesitate to contact Abdülkadir Güzeloğlu at abdulkadir@guzeloglu.legal or +902122881010.