



## **International Arbitration in Turkey: Selection and Challenge of Arbitrators**

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In the important phase of selecting arbitrators, which enables arbitration procedure to commence healthily and continue, The Turkish International Arbitration Law of 2001 (“TIAL”) confers freedom to parties as to qualifications, nationality, authority and the number of arbitrators, as long as it is an odd number. TIAL also allows parties to designate a specific person in the arbitration agreement. However, if that person does not accept their nomination, resigns or becomes unavailable for any legal or factual reason, and where parties did not consent on the appointment of a substitute arbitrator, TIAL states that the arbitration procedure is to be terminated and proceedings before a competent state court are to be initiated. In this vein, the Supreme Court further expressed that in such circumstances the validity of the arbitration agreement, in other words, parties’ will to arbitrate, is alive only if the specifically selected person acts as the arbitrator.

It must be added that if the appointment mechanism devised by the parties fails, upon request of a party, the commercial court of first instance is authorized to appoint an arbitrator or the tribunal, its decision being final.

Before accepting an appointment, TIAL articulates that a prospective arbitrator must disclose any circumstances which might raise justifiable doubts regarding the arbitrator’s impartiality or independence. Then, an arbitrator must also disclose any circumstances which arise after commencement of proceedings and which parties are unaware of.

Arbitrators may be challenged on the following grounds: if they do not meet with the qualifications that the parties have decided; if reasonable doubts emerge as to their independence and impartiality; or other grounds of challenge consented to by the parties take place.

TIAL allows parties to freely designate the procedure for challenging the arbitrators. If such agreement is absent, the challenging party must send a written statement including the reasons for the challenge to the other party within 30 days of the constitution of the tribunal or appointment of the arbitrator, or within 30 days of noticing circumstances that incite the challenge. Also, the party who seeks to challenge one or more arbitrators must initially notify the tribunal. If the tribunal rejects the challenge, the dissatisfied party may start proceedings before the competent court within 30 days of receipt of the decision, in order to have the decision annulled and challenge arbitrators. However, if a sole arbitrator, the tribunal or arbitrators who represent voting majority, is to be challenged, the commercial court of first instance is the only competent court. The latter's judgment on the matter shall be final and binding.

Under TIAL, unless otherwise agreed by the parties, an arbitrator is liable for the loss caused by his unjustifiable failure to perform duties assigned to him. Also, the succeeding subparagraph states that if existent legal conditions forestall an arbitrator to fulfil his duties, then his mandate can be terminated upon voluntary withdrawal of the arbitrator or agreement of the parties. While Turkish law reflects the prevailing stance by qualifying the relationship between the arbitrators and the parties as contractual, it requires an arbitrator to intentionally or negligently inflict damage on parties in order for him to be liable.

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