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International Arbitration

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I. Our Law Firm in Arbitration

Our law firm, in the person of Attorney at Law Prof. Dr. Christian Rumpf, provides experienced services in international arbitration both as counsel, expert and arbitrator. Most of our cases were related to Turkey, including cases of Turkish companies against the Turkish State or conflicts between German, American or other enterprises on the one hand and Turkish enterprises on the other hand, in the fields of telecommunication, energy, construction and commercial activities.

II. Introduction

Arbitration is an alternative kind of dispute resolution with the same purpose as state court procedures: to obtain a title which can be enforced with the support of the state where the enforcement shall take place.

Whereas state courts are strictly bound to procedures under their domestic law, arbitration leaves to the parties a larger area for setting their own rules and getting control over the appointment of the arbitrators, who replace the "natural judge". In addition, the Parties keep control over the rules under which the arbitrators shall work. Arbitration is said to be less time wasting, but more expensive than state courts. However, in most cases, the calculation of costs and risks ends in favor of arbitration.

III. Agreement of the Parties

Arbitration needs a clear agreement between the Parties, which should leave no doubt as to what the Parties wish. What Parties wish depends on what the Parties know about arbitration. In practice, most Parties have difficulties to comprehend and understand the meaning of core issues such as:

- How to make the proper choice of law?
- What does "place of arbitration" mean?
- What does the involvement of an "arbitration institution" mean?
- Which rules govern the arbitration?
- How is an arbitral award enforced?

An arbitration clause must make clear that the Parties wish to settle their disputes related to a specific contract or all of their legal agreements by arbitration. Further, it should contain procedures for appointment of the arbitrators, place of arbitration and language. Instead of setting individual rules, the Parties may also insert an arbitration clause directing to one of the multiple arbitration institutions (see below), who provide model clauses and precise explanations as to how to implement them in the contractual relationship. English is the most common language of arbitration; however, most institutions are able to administrate arbitrations in other languages.

IV. Choice of Law

The choice of law which is to govern a contract is often made following considerations such as "where do I feel at home". Such consideration bears more risks than advantages. The agreement on a certain law to be applicable should take into account, whether the law is accessible not only to the parties but also to the judge and if one may count on the judge's being able to apply it. A national judge cannot be expected to be able to read and apply a foreign legislation. He/she will need expertise, where access may be difficult and bring along the risk of additional high costs.

In arbitration, the Parties have the possibility to chose their Tribunal in a manner that the arbitrators can be expected to be able to read, understand and apply the applicable law. In other words, in such a system the method to resolve disputes can be optimized.

V. Place of Arbitration

Parties often wish to choose a "neutral" place of arbitration. However, the place of arbitration does not say anything about possible neutrality or partiality. Arbitration is "neutral" by its essence. Neutrality is preserved by the proper choice of the arbitrators. The importance of the place of arbitration depends on totally different issues.

Where the Parties do not agree on the procedure they wish to be observed by the Arbitral Tribunal, the local procedure law enters the game. The only important issue in this respect is the possibility to challenge an award. If the local law allows an "appeal", the meaning of arbitration is deteriorated. In such case, the Parties must make clear in their arbitration clause that they wish to have a "final" award, which cannot be challenged by appeal. If the local law allows an application of "setting aside", the Parties may exclude this in their arbitration clause. In some countries (i.e. at some places of arbitration) this makes sense, because the state courts when handling the application, interfere with the arbitration as if the application was an appeal. In Switzerland, the Federal Court is very restrictive: only in cases where the award violates most important principles of justice, the Court sets aside an award. In Turkey, the Court of Cassation often goes much further. This having in mind, our law office often prefers an arbitration clause where the place of arbitration is a Swiss or German city.

VI. Arbitration Institution

Arbitration as a method of "private" dispute resolution may cause problems when Parties and arbitrators try to set the rules for the proceedings. Arbitration without the support of

institutions, the so-called "ad-hoc arbitration" often lead to internal disputes not only on the rules but more often on the fees.

Therefore, it may be advisable to choose an institution which provides not only its own rules but administrative support, too. When a Party wishes to have "Paris" as the place of arbitration, it often confuses the place of arbitration (France) with the International Chamber of Commerce (ICC), which is seated in Paris and provides both rules and support. Cases are administrated by the International Court of Arbitration at the Chamber, which is not a court in the proper sense.

Under the ICC Rules, Parties can arbitrate anywhere. Many cases between international Parties are arbitrated in Switzerland under the Rules and administration of the ICC, though Switzerland has institutionalized arbitration with rules of their own.

The "German Institution of Arbitration" (DIS) is effectively seating in Bonn but is a neutral institution providing support and rules for international arbitration.

The difference between the ICC and the DIS consists in the support. Whereas the so-called "ICC Court of Arbitration" and its Secretariat use to interfere very far into the work of the arbitrators, the DIS administration is more restrained.

The London Court of International Arbitration, which is not a Court in its proper sense, but an institution resembling Institutions such as ICC, DIS or many others.

In Switzerland the Chambers of Commerce have unified the Swiss system under the Swiss Rules.

The Vienna International Arbitral Center is the Austrian counterpart of the DIS.

Before making the choice of a specific institution, the Parties should have a look at the Rules of that institution, the practice of its administration and, of course, the costs. Because one of the advantages of an arbitration institution is that the rules contain regulations on the costs. ICC also takes care of the payments to be made by the Parties.

There are many other institutions around the world (Stockholm, Helsinki, Edinburgh, Istanbul, Singapore, Hongkong, Dubai, Milano etc.).

In our practice, the most common institutions are the DIS, ICC and VIAC. We often recommend the DIS and the Istanbul Arbitration Centre.

VII. Rules of Arbitration

Arbitral Tribunals have to apply the law, including the procedure law at the place of arbitration. Many countries have adopted the UN Model Law on International Arbitration or similar regulations in their national civil procedure codes. Parties who make a certain choice of the place of arbitration should have some idea about the legal setting in that country.

The rules provided by the arbitration institutions are made to facilitate the work of the arbitrators. By following the small texts of such rules, arbitrators will have a guide through the main principles of procedure and ensure that their award will be enforced in the most countries of our world.

VIII. Enforcement of Awards

International arbitral awards are enforced in more or less the same way as foreign judgments. An arbitral award is considered in countries, which have ratified the New York Convention on

the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (most of the countries in the world have ratified this convention), as a foreign judgment. If the award complies with the most eminent principles of the rule of law, such as the right to be heard, compliance with the applications of the Parties, compliance with principles of jurisdiction etc., it must be enforced in the country. The compliance with such rules is examined by a national court, who either denies enforcement if the principles are violated or issues a title, which is the basis for the activities of the national execution offices. However, recognition of foreign awards may turn into a tricky issue if the country where enforcement is to be effected requires certain formalities which are not in line with international practice, or if defendant is a State entity.