

Russian Institute of Modern Arbitration and Istanbul Chamber of Commerce Arbitration and Mediation Center publish atypical model arbitration clause

by *Practical Law Arbitration*, with *Kulkov, Kolotilov & Partners*

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On 1 July 2024, the Russian Institute of Modern Arbitration announced the conclusion of a co-operation agreement with the Istanbul Chamber of Commerce Arbitration and Mediation Center, article 1 of which sets out an alternative model arbitration clause that, unusually, provides for a "floating" seat, arbitration institution and rules.

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On 1 July 2024, the Russian Institute of Modern Arbitration (RIMA) announced the conclusion of a *co-operation agreement* with the Istanbul Chamber of Commerce Arbitration and Mediation Center (ITOTAM). The main aim of the agreement is to establish an effective mechanism for alternative dispute resolution to meet the demands of Russian and Turkish businesses.

Article 1 of the agreement sets out the RIMA-ITOTAM model arbitration clause, which includes some novel provisions regarding a seat of arbitration and impartiality of arbitral proceedings.

First, the model arbitration clause provides for a "floating" seat of arbitration by providing that, unless the parties agree otherwise, "the place of arbitration shall be the respondent's country of residence". This is unusual as, in the absence of party agreement, most arbitral rules provide either that the tribunal will determine the seat or that the seat will be where the institution is headquartered.

The model clause then goes further by directly linking the seat of arbitration with the administration of the arbitration and the applicable rules:

"If the place of arbitration is Russia, the arbitral proceedings shall be conducted under the auspices of Russian Arbitration Centre in accordance with the Arbitration Rules of RAC. If the place of arbitration is Istanbul/Turkey, the arbitral proceedings shall be conducted under the auspices of Istanbul Chamber of Commerce Arbitration and Mediation Centre in accordance with the Arbitration Rules of ITOTAM."

The cumulative effect of these provisions, where no seat of arbitration has been agreed by the parties, gives a potentially significant advantage to the respondent to any claim. Not only will the arbitration be seated in the respondent's home jurisdiction, giving supervisory jurisdiction to the courts of the jurisdiction, but the proceedings will also be administered by, and conducted under the rules of, the respondent's "home" institution. This may deter some claimants from commencing proceedings.

However, with an apparent view to ensuring the impartiality of arbitral proceedings, the model clause provides that a sole or presiding arbitrator shall not be a citizen or resident of either Russia or Turkey.

According to RIMA, these provisions meet the current demands of Russian and Turkish businesses for an impartial forum for the effective resolution of their commercial disputes.

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