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The Tehran Regional Arbitration Centre Rules: Is There a Need for a Revision?

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As all eyes are focused on the changing political scene in Iran, and notably the lifting of international sanctions in relation to economic activities, thoughts also shift to the legal environment. In particular, what is required to ensure a stable, predictable framework, and one that will give comfort to the business community desirous to have their rights protected? In this regard, the 2016 Report on The AALCO's Regional Arbitration Centers has highlighted the necessity of revising the Tehran Regional Arbitration Centre ("TRAC") Rules, in order to maintain or develop a competitive advantage vis-à-vis other regional arbitration centres. Furthermore, the revisions are envisaged in order to take into consideration the institutional character of the arbitration cases conducted under the Rules. This post will consider the TRAC Rules, and suggests improvements thereto.

Institutional arbitration in Iran is administered by three different arbitration centers: the Arbitration Center of the Iran Chamber ("ACIC"), TRAC, and Iran's Bar Association Arbitration Center, amongst which TRAC is the most developed to address the demands of the international arbitration market. TRAC was established in 2005, following an agreement between the Iranian Government and the Asian-African Legal Consultative Organization ("AALCO") in 1997. Based on TRAC's annual reports of its activities, it chiefly focuses on administering arbitration in accordance with its Rules and the promotion of international arbitration in the Middle East region.

The current TRAC Rules of 2005 are modelled on the 1976 UNCITRAL Rules, with certain modifications to enable such arbitrations to be administered by an institution. Consistent with the UNCITRAL Rules, the TRAC Rules emphasize the importance of party-autonomy in arbitration, which was previously not largely practised or encouraged in Iranian arbitrations. Moreover, in comparison to other arbitration rules in Iran, the TRAC Rules (Article 4) provide for a comprehensive framework to protect confidentiality in arbitration proceedings. Parties can nonetheless agree that the final award be published. Confidentiality is also reiterated under Article 4 TRAC Internal Regulations, by emphasizing that the documents and information submitted in

connection to the cases administered before the TRAC shall not be disclosed. The TRAC Rules require arbitrators be independent, impartial and neutral, in particular with respect to their nationalities, a fundamental issue generally in Iranian legal proceedings. Where TRAC is to appoint an arbitrator, Article 9.3 TRAC Rules provides that the president is not to be a nationality of either party, and the appointment of a co-arbitrator for a defaulting party is not to be the same nationality as the opposing party. Such an emphasis on neutrality is provided under some rules (e.g. Article 13, ICC Rules), but is silent in other rules such as the Swiss Rules, which by contrast provides that arbitrators shall be impartial and independent of the parties, without any considerations of their respective nationality. Against this background, the TRAC Rules were welcomed by arbitration practitioners in Iran as a modern framework to promote arbitration in Iran and the region.

Although TRAC endeavours to uphold and promote the efficiency of arbitrations conducted pursuant to its Rules, however and despite the revision of the UNCITRAL Rules in 2010, TRAC has not revised its Rules since its establishment 11 years ago. TRAC has therefore not adopted recent developments in international arbitration practice. For example, TRAC Rules do not include provisions for an emergency arbitrator or expedited arbitration, dealing with complex arbitration proceedings with multiple parties and/or multiple contracts, consolidation, joinder and arbitrators' liability.

In addition, some of the existing Articles do not promote speed and efficiency in the proceedings. For example, TRAC case studies illustrate that the procedure for appointing arbitrators is not sufficiently swift. Article 9.1 (a) TRAC Rules outlines the timing requirements for the constitution of the arbitral tribunal. Based on this Article, the arbitrator of the defaulting party or the President shall be appointed by the Centre if (i) the Respondent fails to appoint an arbitrator within 30 days, or (ii) in the absence of a previous agreement between the parties on the number of arbitrators, the parties fail to agree within 15 days that there shall be one arbitrator, and a party fails to appoint an arbitrator within 30 days, or (iii) the appointed arbitrators fail to agree on the appointment of the President within 30 days. These deadlines are relatively long in comparison to other arbitration rules. For example, Article 12 of the ICC Rules provides two periods of 15 days for the parties to nominate the arbitrators. The long process of appointing the panel of arbitrators under the TRAC Rules can delay the constitution of the arbitral tribunal, thereby slowing down the arbitration. Thus, the revision of the TRAC Rules can ensure their consistency with the recent developments in international arbitration practice and will increase the speed and minimize the costs of the arbitration proceedings under its auspices.

Moreover, considering the trigger of the post-sanction era in Iran, it is open for TRAC to play a central role in promoting its Rules and arbitration in the Middle East region by revising its Rules. With a population of 80 million, for years banned from trading with major world economies, Iran is now an interesting hub for investors. Accordingly, the adoption of investment protection provisions in TRAC Rules is needed. In this regard, the 2013 UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration could form a strong framework to encourage investors to adopt such rules to their transactions and benefit from investment protection.

If a revision of the TRAC Rules were to be considered, the 2015 Rules of the Nairobi Centre for International Arbitration (“NCIA”) could be taken into account, as both TRAC and NCIA were constituted under the auspices of the AALCO, and NCIA Rules are modelled on the UNCITRAL Rules. The new NCIA Rules therefore can be seen to protect the AALCO members’ interests.

The 2005 TRAC Arbitration Rules, in comparison with other Iranian arbitration rules and in spite of their current shortcomings, provide a more efficient and globally-accepted set of Rules. However, in light of the developments in international arbitration over the past decade, and the start of a new era for international arbitration in Iran after the lifting of sanctions, a revision of the TRAC Rules could help TRAC successfully cement itself as a central, reliable and efficient institution to administer arbitration in the region.

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