

Arbitration procedures and practice in Turkey: Overview

Pelin Baysal and Asena Aytuğ Keser
Gun + Partners

global.practicallaw.com/3-634-5848

USE OF ARBITRATION AND RECENT TRENDS

1. How is commercial arbitration used and what are the recent trends?

Use of commercial arbitration and current trends

Although the use of arbitration has increased significantly in Turkey in recent years, it is still underused when compared to litigation before state courts. Arbitration is used more frequently in large commercial disputes in areas such as construction, energy and infrastructure, and share purchase agreements, and especially for resolution of cross-border disputes.

However, with the establishment of the Istanbul Arbitration Centre (ISTAC) by Law 6570 on 1 January 2015, and the start of its operation on 26 October 2015 with the publication of the ISTAC Rules (which are very similar to the ICC Rules) an upward trend in the use of commercial arbitration is anticipated.

It is very common for disputes regarding international business transactions to be resolved before arbitral tribunals. Arbitral tribunals are often seen as a reliable forum and are especially favoured by foreign investors who engage in business in Turkey.

Advantages/disadvantages

Arbitration is significantly faster and more efficient, especially when it comes to large and complex disputes. State judges and court appointed experts are often insufficient for disputes which require special expertise. There is a common perception that arbitration is a more expensive method for resolution of commercial disputes. This can be accurate for small-sized disputes. However, for large-scale commercial disputes, litigation costs before state courts often exceed arbitration fees.

Confidentiality is another advantage of arbitration, as Turkish court proceedings are public. Enforceability of arbitral awards outside Turkey under the New York Convention is also an important advantage (see 34.).

LEGISLATIVE FRAMEWORK

Applicable legislation

2. What legislation applies to arbitration? To what extent has your jurisdiction adopted the UNCITRAL Model Law on International Commercial Arbitration 1985 (either with or without the amendments adopted in 2006) (UNCITRAL Model Law)?

The International Arbitration Code (No. 4686) applies to arbitrations with an international nature that are seated in Turkey or where its application is agreed to by the parties or arbitrators. Domestic arbitration is subject to the Civil Procedural Code (No.

6100), which only applies to arbitrations seated in Turkey with no international element.

Both laws are essentially based on the UNCITRAL Model Law. Where the provisions of the International Arbitration Code differ from the UNCITRAL Model Law, Swiss international arbitration law has mostly been taken as a model.

Mandatory legislative provisions

3. Are there any mandatory legislative provisions? What is their effect?

The provisions of the International Arbitration Code are based on the principle of party autonomy. The mandatory provisions for arbitration include:

- The right to a fair trial and the equal treatment of the parties.
- The number of arbitrators must be an uneven.
- If interim relief is requested from state courts before initiating arbitration proceedings, arbitration proceedings must be initiated within 30 days, or interim relief will be removed automatically.
- An action to vacate an arbitral award can be filed within 30 days.
- The arbitration award must include the elements listed in the law.

Failing to comply with mandatory legislative provisions can lead to cancellation of the arbitral award.

4. Does the law prohibit any types of disputes from being resolved via arbitration?

The International Arbitration Code prohibits:

- Disputes arising from or relating to rights *in rem* in immovable properties that are located in Turkey.
- Disputes that cannot be subject to the parties' determination, such as disputes relating to bankruptcy, criminal, administrative or family law.

LIMITATION

5. Does the law of limitation apply to arbitration proceedings?

Under Turkish law, limitation periods are governed by substantive rather than procedural law. Therefore, limitation periods are determined according to the law applicable to the merits of the case. If Turkish law is applicable, the general limitation period is ten years and is triggered when the claim becomes due.

The statute of limitation for tort claims is two years from when the claimant becomes aware of the tortious act, damage and the person committing it. This must be within the upper limitation of ten years from the date of the occurrence of the tortious act. For unjust enrichment, the two-year limitation runs from when the claimant becomes aware that he is entitled to raise a claim, again within the upper limitation of ten years from the date of unjust enrichment. As with proceedings before the state courts, these limitation periods must also be taken into consideration in starting arbitration proceedings. Initiating arbitration proceedings suspends/interrupts the limitation period.

ARBITRATION ORGANISATIONS

6. Which arbitration organisations are commonly used to resolve large commercial disputes?

The main arbitration organisations are the:

- Istanbul Arbitration Centre (ISTAC).
- Turkish Union of Chambers and Commodity Exchanges Court of Arbitration.
- Istanbul Chamber of Commerce Arbitration Institution.

The ICC International Court of Arbitration is often preferred, especially for cross-border transactions, even if the seat of arbitration is Turkey.

See box, *Main arbitration organisations*.

JURISDICTIONAL ISSUES

7. What remedies are available where one party denies that the tribunal has jurisdiction to determine the dispute(s)? Does your jurisdiction recognise the concept of kompetenz-kompetenz? Does the tribunal or the local court determine issues of jurisdiction?

The principle of kompetenz-kompetenz is expressly recognised under Article 7/(H) of the International Arbitration Code and under Article 422 of the Civil Procedure Code for domestic arbitration. An objection to a tribunal's jurisdiction must be raised in the first response petition at the latest.

ARBITRATION AGREEMENTS

Validity requirements

8. What are the requirements for an arbitration agreement to be enforceable?

Substantive/formal requirements

An arbitration agreement must be in writing. An arbitration agreement is deemed to exist where:

- The agreement to arbitrate is recorded with either:
 - a document signed by the parties;
 - a letter, fax, telegram or other means of telecommunication exchanged between the parties;
 - electronic means.
- The existence of an agreement has been alleged in a filed court petition and the counterparty has not objected.
- A document containing an arbitration agreement is referred to with the aim of making it an inseparable part of the main agreement.

If an arbitration agreement complies with the requirements of the law that the parties have chosen, or of Turkish law where no choice of law is made, it is deemed to be valid and enforceable.

Separate arbitration agreement

Under the doctrine of separability, the parties can choose either to include an arbitration clause in the main contract, or to sign a separate arbitration agreement.

It is also possible to conclude a valid arbitration agreement by reference to another document (agreement or convention and so on) containing an agreement to arbitrate (*Article 4/3, International Arbitration Code*).

Unilateral or optional clauses

9. Are unilateral or optional clauses, where one party has the right to choose arbitration, enforceable?

An arbitration agreement is enforceable under Turkish law if the mutual consent of the parties to settle the dispute by arbitration and to be bound by the arbitral award is explicit and clear. Therefore, unilateral or optional clauses, where one party has the right to choose arbitration are not enforceable under Turkish law.

10. In what circumstances can a party that is not a party to an arbitration agreement be joined to the arbitration proceedings?

The International Arbitration Code and Civil Procedure Code are silent on the involvement of a party that is not a party to the arbitration agreement in arbitration proceedings.

Academic opinion is divided on the extent to which involvement of a non-party in arbitration proceedings is compatible with the nature of arbitration as a mechanism based on party autonomy, confidentiality and equality of arms. A non-party can only be involved in arbitration proceedings if all parties to the dispute, including the non-party, give their consent.

Although it cannot be deemed as "joining" in technical terms, a party that was not a party to the arbitration agreement can appear as a party to the arbitration proceeding in case of a succession relation (such as under an insurance agreement) between the non-party (successor) and original party to the arbitration agreement (predecessor).

11. In what circumstances can a party that is not a party to an arbitration agreement compel a party to the

arbitration agreement to arbitrate disputes under the arbitration agreement?

It is not possible to compel a non-party to arbitrate, see 11..

Separability

12. Does the applicable law recognise the separability of arbitration agreements?

Turkish law recognises the separability of arbitration agreements. Accordingly, invalidity of the underlying contract does not render an arbitration agreement invalid (*Article 4, International Arbitration Code*).

BREACH OF AN ARBITRATION AGREEMENT

13. What remedies are available where a party starts court proceedings in breach of an arbitration agreement or initiates arbitration in breach of a valid jurisdiction clause?

Court proceedings in breach of an arbitration agreement

If a party starts court proceedings in breach of a valid arbitration agreement, the defendant can raise an arbitration objection. An arbitration objection must be made in the response petition (*Articles 116 and 117, Civil Procedure Code*).

Arbitration in breach of a valid jurisdiction clause

If a party requests arbitration despite a valid agreement on the jurisdiction of state/foreign courts, the objection to the tribunal's jurisdiction must be raised by the counterparty in the first response petition at the latest. See 7..

14. Will the local courts grant an injunction to restrain proceedings started overseas in breach of an arbitration agreement?

There is no particular provision in Turkish law allowing the Turkish courts to grant anti-suit injunctions. As the local courts have the perception that granting such injunction is an intervention to another state's sovereignty, they tend to have an unfavourable approach about anti-suit injunctions. In this respect, a respondent who has faced with a proceeding overseas despite a valid arbitration agreement can only challenge the enforcement and recognition of the foreign court's decision in Turkey.

Under the International Civil and Procedural Law, which regulates enforcement and recognition, a foreign award cannot be enforced if the foreign court had no relation with the disputed matter and the parties involved in the dispute, provided that the respondent had opposed its jurisdiction during the trial (*Article 54/1,B, International Civil and Procedural Law*).

In addition, the Turkish courts may find that a decision rendered by a foreign court despite a valid arbitration agreement is contrary to the public order, and consider that the respondent's right to a fair trial was violated (*Article 54/1, C, International Civil and Procedural Law*).

ARBITRATORS

Number and qualifications/characteristics

15. Are there any legal requirements relating to the number, qualifications and characteristics of arbitrators? Must an arbitrator be a national of, or licensed to practice in your jurisdiction in order to serve as an arbitrator there?

Except from sector specific arbitrations, such as insurance arbitration, there are no qualification requirements relating to nationality, licensing or education of arbitrators. The number of arbitrators must be uneven (*Article 7, International Arbitration Code*).

Independence/impartiality

16. Are there any requirements relating to arbitrators' independence and/or impartiality?

An arbitrator must disclose any facts or circumstances that might cast reasonable doubts on their impartiality and independence, both before accepting the duty and in the course of the arbitration proceedings. (*Article 7/C, International Arbitration Code*)

Article 12 of the ISTAC Rules also contains detailed provisions regarding the independence and impartiality of arbitrators.

Appointment/removal

17. Does the law contain default provisions relating to the appointment and/or removal of arbitrators?

The main default provisions are contained in Article 416 of the Civil Procedure Code and Article 7 of the International Arbitration Code.

Appointment of arbitrators

Article 7 of the International Arbitration Code sets out the default provisions to be applied in relation to arbitrators' number, appointment, removal, liability, end of duty and authority.

If the number of arbitrators is not decided by the parties, then the number of the arbitrators must be three.

If the parties fail to agree on appointment of a sole arbitrator, the civil court of first instance appoints the arbitrator at the request of a party.

If the number of arbitrators is three, each party appoints one arbitrator and then the two arbitrators determine the third arbitrator, who acts as the chairman. If one of the parties fails to appoint the arbitrator within 30 days as of receipt of notification, or the appointed two arbitrators fail to appoint the third arbitrator, the civil court of first instance appoints a third arbitrator at the request of a party.

Removal of arbitrators

Article 7/(C) of the International Arbitration Code contains detailed provisions for challenging arbitrators. The main grounds for challenging arbitrators are:

- Lack of the qualifications agreed between the parties.
- Existence of circumstances and facts that gives raise to doubts as to arbitrators' impartiality and independence.

-
- Existence of another ground of removal as agreed by the parties.

The parties are free to agree the procedure to challenge the arbitrators. If no procedure has been agreed, the party who wishes to challenge an arbitrator must submit its request within either:

- 30 days of the appointment of the arbitrator or the tribunal.
- 30 days as of the date when the party learns the facts and circumstances on which the challenge is based.

The party requesting the removal of the arbitrator can challenge a decision on that request before the civil court of first instance.

PROCEDURE

Commencement of arbitral proceedings

18. Does the law provide default rules governing the commencement of arbitral proceedings?

Article 10/(A) of the International Arbitration Code and Article 426 of the Civil Procedural Code provide default rules governing the commencement of arbitral proceedings. Arbitral proceedings are deemed to commence when either:

- The claimant notifies the respondent of the appointment of an arbitrator, if both parties are to appoint the arbitrators according to the agreement.
- The counter party receives the request for arbitration, if the names of the arbitrators are stated in the agreement.
- An appointment is made by the court or authority entitled to appoint arbitrators.

If one of the parties has obtained interim relief from state courts before initiating arbitration proceedings, arbitration proceedings must be initiated within 30 days or interim relief is automatically removed.

Article 10/(D) sets out mandatory minimum content requirements for the Request for Arbitration and Answer to Response submissions.

Applicable rules and powers

19. What procedural rules are arbitrators bound by? Can the parties determine the procedural rules that apply? Does the law provide any default rules governing procedure?

Applicable procedural rules

Both the International Arbitration Code and Civil Procedural Code contain default procedural rules. However, the majority of these rules are not mandatory and the parties are free to determine procedural rules in their arbitration agreement or after the arbitration procedure begins. It is also possible for the parties to determine the rules to be applied by referring to national procedural rules or institutional rules. Under Article 8 of the International Arbitration Code, the mandatory provisions of the code continue to apply even if the parties agree on the application of other procedural rules.

Default rules

See 3..

EVIDENCE AND DISCLOSURE

20. If there is no express agreement, can the arbitrator order disclosure of documents and attendance of witnesses (factual or expert)?

Under Article 12 of the International Arbitration Code, an arbitral tribunal can appoint an expert and conduct in-situ examinations. In addition, arbitral tribunals can order the parties to submit specific evidence to the appointed experts for their assessment. Otherwise, arbitral tribunals cannot compel a party or non-party to the arbitration to produce evidence or to appear at a hearing to give testimony.

Arbitral tribunals can also request assistance from local courts for collection of evidence, especially with regards to documents and information to be obtained from public authorities.

21. What documents must the parties disclose to the other parties and/or the arbitrator? How, in practice, does the scope of disclosure in arbitrations compare with disclosure in domestic court litigation? Can the parties set the rules on disclosure by agreement?

Scope of disclosure

There is no provision regarding the scope of disclosure for arbitration and domestic court litigation.

Parties can avoid disclosing evidence. If so, the arbitral tribunal can continue the proceedings and render an award according to the present evidence. Disclosure is also not obligatory in domestic court litigation. The Civil Procedure Code does not provide for any sanction for parties that do not comply with a request for evidence by the domestic court/arbitration tribunal. However, Article 220 of Civil Procedure Code provides that the court/arbitration tribunal is entitled to accept and rely on the other party's statements in such a scenario.

The state courts have wider powers in respect to witness testimony and the collection of evidence from third parties than arbitration tribunals. A state court can impose a monetary fine on third parties who do not appear as a witness or submit requested evidence without a satisfactory reason.

Validity of parties' agreement as to rules of disclosure

The parties can set the rules on disclosure in their agreement.

CONFIDENTIALITY

22. Is arbitration confidential? If so, what is the scope of that confidentiality and who is subject to the obligation (parties, arbitrators, institutions and so on)?

In principle, arbitration is confidential. Parties, as well as other attendees such as counsels, witnesses, experts and so on., are under an obligation of confidentiality.

The arbitration rules of the Turkish arbitration organizations expressly provide that arbitration proceedings are confidential.

COURTS AND ARBITRATION

23. Will a local court intervene to assist arbitration proceedings seated in its jurisdiction?

Under Article 3 of the International Arbitration Code, the court can only intervene in arbitration proceedings in accordance with relevant articles of the code.

Local courts assist arbitration proceedings by appointing arbitrators if the parties cannot agree on the arbitrator to be appointed, or for any other reasons, under Article 7 of the International Arbitration Code. The same provision also allows parties to resort to state courts to obtain the disqualification of arbitrators.

If the parties fail to agree on extension of the arbitration period of one year given under Article 10 of the International Arbitration Code, one of the parties can request the local court to grant an extension before the time limit for arbitration proceedings expires.

Parties can request interim injunctions enforceable on the counterparty and third parties from local courts during or before the arbitration proceedings. Parties can also seek the assistance of state courts if the counterparty does not comply with interim relief ordered by the tribunal.

The arbitral tribunal and parties to the dispute can seek the assistance of local courts to collect evidence and witness statements. Local courts can compel third parties to collect evidence and witness statements (see *Questions 20. and 21.*).

If the International Arbitration Code applies, the court of first instance where the defendant resides or has a place of business has jurisdiction over arbitration-related applications.

If the Civil Procedure Code applies, the regional appellate court of the place of arbitration has jurisdiction. If the place of arbitration is not determined, the regional appellate court where the defendant resides or has a place of business has jurisdiction.

24. What is the risk of a local court intervening to frustrate an arbitration seated in its jurisdiction? Can a party delay proceedings by frequent court applications?

Risk of court intervention

It is not common for a local court to intervene in arbitration proceedings, as Article 3 of the International Arbitration Code provides only a very limited number of grounds for a party to apply to the court.

Delaying proceedings

There is no specific provision that enables parties to delay arbitral proceedings by making court applications. The interventions permitted by the Civil Procedure Code or the International Arbitration Code are intended to facilitate the course of the arbitration proceedings and do not in practice cause a risk of frustration.

It is possible for a party to delay arbitration proceedings by challenging the arbitrator and requesting a state court to disqualify an arbitrator on the grounds of lack of impartiality or failure to fulfil his duties. However, the state court would take this issue as an urgent matter and apply an expedited procedure (*Article 316, Civil Procedure Code*). The court's decision is then final and cannot be appealed (*Article 7, International Arbitration Code*). Therefore, even if parties apply to the court in bad faith, it would not cause an excessive delay.

INSOLVENCY

25. What is the effect on the arbitration of pending insolvency of one or more of the parties to the arbitration?

Following insolvency, an insolvent company's power of disposition over its assets and rights is transferred to a bankruptcy trustee (composed of the insolvent company's rightful creditors) who pursues any pending arbitrations or claims in the state courts.

If one of the parties loses its capacity to pursue the proceeding, the arbitration tribunal must notify the interested parties to ascertain whether they intend to continue with the arbitration (*Article 11, International Arbitration Code*). In case of insolvency, if the trustee does not continue the arbitration proceeding within six months of notification, then the arbitration tribunal finalises the proceeding without rendering a decision on the merits of the dispute.

REMEDIES

26. What interim remedies are available from the tribunal?

Interim remedies

In arbitration proceedings, the arbitral tribunal can order preliminary injunctions or preliminary attachment, and require testimony at the request of a party, unless otherwise agreed. However, arbitral tribunals cannot grant interim remedies that bind third parties or that need to be executed by official authorities or execution offices.

The Istanbul Arbitration Centre (ISTAC) adopts the emergency arbitration procedure given in the ICC Rules. The applicant must submit its request for main arbitration within 15 days of the emergency arbitration.

An applicant can also request interim remedies from state courts. Parties can request all forms of interim relief to secure their rights before or during the arbitration proceedings, including binding third parties, and orders to be executed by official authorities or execution offices. However, if a request for interim relief is made before arbitration proceedings and the interim relief is granted by the court, then the party requesting that relief must request the commencement of arbitration within 30 days of the decision on the interim relief. Otherwise, the interim relief automatically becomes ineffective.

Ex parte

As the arbitral tribunal cannot render an interim remedy that binds third parties or that needs to be executed by official authorities or execution offices, even if the arbitral tribunal grants interim relief on an ex parte basis, it is not enforceable against third parties.

Security

An arbitral tribunal can **require** the claimant to provide an advance payment for costs (*Article 16/C, International Arbitration Code*).

An arbitral tribunal can also require security as a precondition to ordering a preliminary injunction or preliminary attachment (*Article 6, International Arbitration Code*).

27. What final remedies are available from the tribunal?

The remedies available to arbitrator(s) are limited to those compatible with Turkish public policy. Punitive damages are not permissible under Turkish law and the remedies available to the arbitrator(s) are limited to the remedies allowed, which are:

- Damages.
- Performance.
- Establishment, modification or termination of a legal relationship.
- Declaratory judgment.
- Costs.
- Interest.
- Publication of the judgment in newspapers.

APPEALS

28. Can arbitration proceedings and awards be appealed or challenged in the local courts? What are the grounds and procedure? Can parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitral clause itself)?

Rights of appeal/challenge

An action for cancellation (setting aside) of an arbitral award can be filed before local courts within 30 days from notification of the award or any revision of/interpretation on/addition to the award by the arbitral tribunal.

Grounds and procedure

Article 15 of the International Arbitration Code and Article 439 of the Civil Procedure Code provide identical grounds for cancellation of an award as follows:

- Lack of legal standing of a party.
- Invalidity of the arbitration clause.
- Procedural errors in the appointment of arbitrators.
- Failure to grant the arbitral award within the legal period.
- Incompetence by the arbitrator or arbitral tribunal, or an incompetent decision contrary to law.
- Failure to grant the arbitral award for part or all of the claim.
- Procedural errors in the conduct of the arbitration proceedings.
- Unfair treatment of the parties.
- The subject-matter of the dispute not being appropriate for arbitration under Turkish law.
- The award being contrary to public order.

Both the International Arbitration Code and Civil Procedure Code identically provide that such actions are considered urgent matters that are to be resolved by an expedited procedure in comparison with regular state court actions. Under this expedited procedure, the parties can submit all their arguments and evidence with their petitions and cannot submit rebuttal/rejoinder petitions. The court will then render its award without holding a hearing, if possible. If not, the court cannot schedule more than two hearings, except for sessions arranged for witness statements and expert examinations.

The decision of the state court can be appealed, although only on the grounds listed above.

Waiving rights of appeal

A party can waive its right to file an action to cancel an arbitral award in the arbitration agreement or during the procedure (*Article 15, International Arbitration Code*).

29. What is the limitation period applicable to actions to vacate or challenge an international arbitration award rendered?

An action to cancel (set aside) an international arbitration award can be filed within thirty days of the award being notified to the parties. That action automatically suspends the enforcement of the award (*Article 15, International Arbitration Code*).

30. What is the limitation period applicable to actions to enforce international arbitration awards rendered outside your jurisdiction?

The limitation period applicable for filing an action to enforce an international arbitration award is not determined in the procedural rules of Turkish law. However, the Execution and Bankruptcy Act foresees a ten-year limitation period for the enforcement of judgments. Although the relevant provision of the Execution and Bankruptcy Act does not refer to international arbitration awards directly, it is advisable to file actions to enforce international arbitration awards within ten years of the finalisation of the arbitration award.

COSTS

31. What legal fee structures can be used? Are fees fixed by law?

Under Article 16 of the International Arbitration Code, parties and the arbitral tribunal or the sole arbitrator can agree on the arbitrators' fees considering the amount of and/or nature of the dispute and duration of the arbitration.

Arbitrators' fees can also be determined according to international precedents or institutional arbitration rules. If parties cannot agree on the fees, they are determined in accordance with the yearly tariff prepared by the Ministry of Justice.

32. Does the unsuccessful party have to pay the successful party's costs? How does the tribunal usually calculate any costs award and what factors does it consider?

Cost allocation

Unless otherwise agreed, court expenses are paid by the unsuccessful party as per Article 442 al.4 of the Civil Procedure Code and Article 16D of the International Arbitration Code. If both parties are partially successful, the arbitration expenses are shared between both parties based on their degree of success. Official attorney fees are also born by the losing party.

Cost calculation

The calculation of costs is within the sole discretion of the arbitrators or the arbitrators' board. Arbitration costs include:

- Arbitrators' fees.
- Travel and other expenses of arbitrators.
- Fees to be paid to experts and other persons from whom arbitrators request assistance.
- Travel and other costs of witnesses to the extent approved by the arbitral tribunal.
- Attorney fees determined by the arbitral tribunal and calculated according to Minimum Attorney Fee Tariff for the successful party's attorney.
- Court fees for applications made before local courts under the International Arbitration Code.
- Notification expenses.

Factors considered

In calculating costs, the courts take into account the parties' success and other circumstances of the case such as the volume of translations and documentation, and the conduct of the parties.

ENFORCEMENT OF AN AWARD

Domestic awards

33. To what extent is an arbitration award made in your jurisdiction enforceable in the local courts?

An arbitral award rendered by a tribunal seated in Turkey is directly enforceable without any further need for an enforcement proceeding before the state courts.

Foreign awards

34. Is your jurisdiction party to international treaties relating to recognition and enforcement of foreign arbitration awards, such as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention)?

Turkey is party to the New York Convention. Other notable treaties to which Turkey is party include:

- European Convention on International Commercial Arbitration 1961 (Geneva Convention).
- The International Centre for Settlement of Investment Disputes Convention.

All international treaties to which Turkey is a party are considered as domestic law and *lex specialis* overriding other laws which only govern general matters (*lex generalis*).

Turkey has two reservations to the New York Convention, which provide that the Convention applies only to:

- Recognition and enforcement of awards made in the territory of another contracting state.
- Disputes arising out of legal relationships that are considered commercial under Turkish law.

Therefore, the New York Convention is not applied to recognition and enforcement of foreign arbitral awards that do not satisfy these criteria.

The International Civil and Procedural Law contains provisions for enforcement of foreign arbitral awards. Recognition and arbitral awards that do not fall within the scope of New York Convention are subject to the relevant provisions of the

International Civil and Procedural Law. These are very similar to the relevant provisions of the New York Convention.

35. To what extent is a foreign arbitration award enforceable?

A foreign arbitral award is enforceable if it satisfies the conditions stipulated under Article V of the New York Convention or the very similar conditions under Article 62 of the International Civil and Procedural Law. UK and US awards are enforceable in Turkey under the New York Convention

Unlike the New York Convention, the International Civil and Procedural Law requires an arbitral award to be rendered in a state which either:

- Is party to an agreement providing for reciprocity in enforcement and recognition of arbitral awards rendered in Turkey.
- Recognises and enforces awards rendered in Turkey as a part of its legal practice or national laws.

Among all the conditions of enforceability, Turkish courts give particular importance to public policy. The term "public policy" is not explicitly defined by Turkish law and therefore the standards for refusing recognition or enforcement on public policy grounds mostly depend on legal practice. The most common examples of a violation of public policy are:

- Violations of the right to be heard.
- Awards being against good morals.
- Awards violating foreign trade, customs or tax regulations.
- Awards given on non-arbitrable disputes.

However, the concept of public policy is changing over time, embracing a trend towards an enforcement-friendly approach.

The court where the defendant temporarily or permanently resides has jurisdiction over enforcement proceedings. In the absence of such a place, the claimant can file enforcement proceeding before the courts of Istanbul, Izmir or Ankara.

Length of enforcement proceedings

36. How long do enforcement proceedings in the local court take, from the date of filing the application to the date when the first instance court makes its final order? Is there an expedited procedure?

Enforcement proceedings are subject to expedited procedure. Accordingly, the parties are not allowed to file rejoinder/rebuttal petitions. Since the court does not examine the merits of the case and only conducts a procedural examination, the final order is expected to be given in six to eight months by the first instance court and in one year by the regional appeal court. However, especially for the cases where the conformity of the award with the public policy or right to fair trial is disputed, the proceedings take longer.

REFORM

37. Are any changes to the law currently under consideration or being proposed?

An omnibus bill which was enacted in August 2016 introduced an amendment to the Act of Fees. While arbitration awards were

subject to 50% of the judgment fee which is calculated pro ratio to the amount of the final award, they are exempt from any fee payment.

Currently, there are no pending proposals for changes to the applicable framework. However, the re-organisation of the

structure of the Court of Appeals to establish a separate circuit specialised on international arbitration law is being considered. This would avoid any incompatibility among state courts' evaluations of conditions for the recognition and enforcement of arbitral awards (such as in relation to public order).

MAIN ARBITRATION ORGANISATIONS

International Chambers of Commerce (ICC)

Main activities. Arbitration and ADR.

W www.iccwbo.org

International Centre for Settlement of Investment Disputes (ICSID)

Main activities. Arbitration and fact-finding proceedings.

W <https://icsid.worldbank.org/apps/ICSIDWEB/Pages/default.aspx>

Istanbul Arbitration Centre (ISTAC)

Main activities. Arbitration and ADR.

W <http://istac.org.tr>

Istanbul Chamber of Commerce

Main activities. Arbitration and ADR.

W www.ito.org.tr

Union of Chambers and Commodity Exchanges of Turkey

Main activities. Arbitration and ADR.

W www.tobb.org.tr

ONLINE RESOURCES

General Directorate of Legislation Development and Publication

W www.mevzuat.gov.tr

Description. The official website maintained by the General Directorate of Legislation Development and Publication, Prime Ministry of the Republic of Turkey. It contains up-to-date information on all kinds of applicable legislation together with the abrogated laws. All information provided on this website is in Turkish. There is no official or formal English language translations of the relevant legislation.

Practical Law Contributor profiles

Pelin Baysal, Partner Corporate and Commercial Law Department

Gun + Partners

T +90 212 354 00 53
E pepin.baysal@gun.av.tr
W www.gun.av.tr

Asena Aytuğ Keser, Senior Associate

Gun + Partners

T +90 212 354 00 05
E asena.keser@gun.av.tr
W www.gun.av.tr

Professional qualifications. Turkey, Solicitor; LL.M Ruprecht-Karls University; L.B Ankara University Faculty of Law.

Professional qualifications. Turkey, Solicitor; LLM Candidate Istanbul Bilgi University; LLB Istanbul Bilgi University Faculty of Law.

Areas of practice. Commercial and corporate law matters with a special focus on dispute resolution and arbitration, in addition to insurance and mergers acquisitions.

Recent transactions. Acting as party counsel in and advising on numerous commercial and corporate disputes before Turkish courts and ICC arbitration, involving M&A disputes, shareholders disputes, joint venture disputes, distribution agreements, compensation cases, white collar crimes, insurance disputes, directors' and officers' liability disputes and enforcement of foreign court judgments and arbitral awards.

Languages. Turkish, English, German

Professional associations/memberships. Istanbul Bar; Secretary of IBA Insurance Committee as the only Turkish member.

Publications.

- *The Insurance and Reinsurance Law Review, Turkey Chapter, 5th Edition, Law Business Research, Co-Author, 01 April 2017*
- *Litigation & Dispute Resolution 2017, Turkey Chapter, ICLG, Co-Author, 13 April 2017.*
- *Insurance Litigation 2017, Turkey Chapter, Getting the Deal Through, Co-Author, 28 March 2017.*
- *The International Arbitration Review, Turkey Chapter, 7th Edition, Law Business Research, Author, 08 September 2016.*
- *Litigation and Enforcement in Turkey: Overview, Practical Law, Co-Author, 1 September 2016.*
- *The Insurance and Reinsurance Law Review, Turkey Chapter, 4th Edition, Law Business Research, Co-Author, 26 July 2016.*
- *Outside Influence, Global Reinsurance Magazine, Co-Author, 10 March 2016.*
- *Dispute Resolution Guide 2015: Collection of Evidence, IFLR, Co-Author, 12 October 2015.*
- *Istanbul-Rising Star of International Arbitration, Corporate Disputes Magazine, Co-Author, 1 May 2015.*
- *The Insurance and Reinsurance Law Review, Turkey Chapter, 3rd Edition, Law Business Research, Co-Author, 13 April 2015.*
- *Insurance & Reinsurance 2015, Turkey Chapter, ICLG, Co-Author 27 February 2015.*

Areas of practice. Commercial litigation and arbitration, business crimes and labour law.

Recent transactions. Representing a client in a large-scale arbitration proceeding before the ICC with regards to a post M&A dispute, representing and advising a Korean engineering and construction company in a series of lawsuits including criminal actions..

Languages. Turkish, English.

Professional associations/memberships. Istanbul Bar Association.

Publications. -

- *Automatic enrolment in private pension plans system, ILO - Employment & Benefits Newsletter, Co-Author, 14 06, 2017*
- *Banking Law Amendment Provides Relief to Bank Officers and Company Executives, ILO - White Collar Crime Newsletter, Co-Author, 13 03, 2017*
- *Amendments to Postponement of Bankruptcy Rules, ILO – Insolvency & Restructuring Newsletter, Co-Author, 23 09, 2016*
- *Apples and Oranges: Uncontested Invoices and Binding Contracts, ILO – Litigation Newsletter, Co-Author, 16 02, 2016*
- *Specialised or General-Jurisdiction Courts for Enforcing Foreign Judgments and Arbitral Awards?, ILO - Litigation Newsletter, Co-Author, 22 12, 2015*