ICLG

The International Comparative Legal Guide to:

# Litigation & Dispute Resolution 2018

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A practical cross-border insight into litigation and dispute resolution work

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## General Chapter:



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**Continued Overleaf** →

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## Country Question and Answer Chapters:



## EDITORIAL

Welcome to the eleventh edition of *The International Comparative Legal Guide to: Litigation & Dispute Resolution*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of litigation and dispute resolution.

It is divided into two main sections:

One general chapter. This chapter provides an overview of legal privilege in litigation, particularly from a UK perspective.

Country question and answer chapters. These provide a broad overview of common issues in litigation and dispute resolution in 40 jurisdictions, with the USA being sub-divided into eight separate state-specific chapters.

All chapters are written by leading litigation and dispute resolution lawyers and industry specialists, and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Greg Lascelles and Tom Jackson of Covington & Burling LLP for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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Chapter 31

# Turkey


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## I. LITIGATION

### 1 Preliminaries

**1.1 What type of legal system has your jurisdiction got? Are there any rules that govern civil procedure in your jurisdiction?**

Turkey's legal system is based on civil law. Civil procedure is governed by the Code of Civil Procedure ("the CCP") dated October 1, 2011 and numbered 6100.

Principal Law governing international arbitration is the International Arbitration Code ("IAC") numbered 4686.

The Code of International Private Law and Civil Procedure numbered 5718 provides certain procedural provisions applicable for international disputes.

There are also some specific procedural rules regulated by the Turkish Commercial Code and the Code of Labour Courts, etc.

**1.2 How is the civil court system in your jurisdiction structured? What are the various levels of appeal and are there any specialist courts?**

Civil courts of first instance and civil peace courts are the main courts for civil disputes for the first instance stage. However, for disputes requiring special expertise, there are also some specialist courts, such as: the commercial court; land registration court; labour court; enforcement court; consumer court; civil courts for intellectual and industrial property rights; and the family court.

The CCP introduces a three-tier court system: namely first instance courts; the regional court of appeal; and the Supreme Court. The regional courts of appeal became operational on July 20, 2016.

**1.3 What are the main stages in civil proceedings in your jurisdiction? What is their underlying timeframe (please include a brief description of any expedited trial procedures)?**

An action is filed with a petition by the plaintiff. Under Turkish law, there are two types of procedures. Written procedure is the main type, whereas the simple procedure, as the name suggests, is a simplified and expedited procedure. In the written procedure, there are two rounds of written submission (pleading, response, rebuttal and rejoinder). In the simple procedure, however, only pleading and response petitions can be filed by the parties and no further exchange of petitions can be carried out.

The main stages of the civil proceedings are: (i) exchange of petitions; (ii) preliminary proceedings; (iii) examination phase; and (iv) oral proceedings.

**1.4 What is your jurisdiction's local judiciary's approach to exclusive jurisdiction clauses?**

Merchants and/or public entities can agree on an exclusive jurisdiction clause unless the law grants mandatory jurisdiction to a specific court. A jurisdiction clause or agreement shall be deemed valid if it is clearly expressed and written.

**1.5 What are the costs of civil court proceedings in your jurisdiction? Who bears these costs? Are there any rules on costs budgeting?**

Application fees, litigation expenses (such as notification fees, expert fees and witness fees) and official attorney fees are the main costs of civil court proceedings. In principle, litigation costs should be paid by the plaintiff who initiates the proceedings. However, the court may also decide the party requesting a procedural transaction should bear the relevant expenses.

Litigation costs and official attorney fees determined as per the Minimum Attorney Fee Tariff are to be borne by the losing party. If both parties partially succeed, costs will be divided proportionally between the parties. It is noteworthy that the professional fee agreed between a party and its attorney is not reimbursable under Turkish Law.

With regard to costs budgeting, most of the litigation costs are determined by the Code of Fees and Charges and also the secondary tariffs.

**1.6 Are there any particular rules about funding litigation in your jurisdiction? Are contingency fee/conditional fee arrangements permissible?**

The CCP enables those who cannot afford litigation expenses to request legal aid from the court. It is permissible for the attorneys to enter into fee arrangements with their clients. However, the agreed fees cannot be lower than the minimum amounts set out by the Official Tariff. The attorney fees can also be determined over the value of the claim set forth with the proceedings. However, it cannot exceed 25% of the total value of the matter of the dispute.

**1.7 Are there any constraints to assigning a claim or cause of action in your jurisdiction? Is it permissible for a non-party to litigation proceedings to finance those proceedings?**

In principle, the parties can assign a claim or cause of action to a non-party before or during the proceedings if such assignment has not been restricted by the court through an injunction.

There is no provision regulating third-party funding in Turkey. A non-party can finance litigation proceedings pursuant to the liberty of contract principle and general provisions of the Code of Obligations.

**1.8 Can a party obtain security for/a guarantee over its legal costs?**

The defendant can request the court for an order that the plaintiff will provide security for litigation costs, provided that:

- the plaintiff is a Turkish citizen who does not have his habitual residence in Turkey; or
- the financial difficulty (such as, insolvency or party to proceedings initiated for restructuring its debts) of the plaintiff is documented by the defendant.

Furthermore, foreign plaintiffs are obliged to provide security for costs as well as for possible damages of the counterparty unless there is a contractual, *de facto* or legal reciprocity which enables Turkish plaintiffs to file lawsuits in the state of which the foreign plaintiff is a national, without providing security for costs.

## 2 Before Commencing Proceedings

**2.1 Is there any particular formality with which you must comply before you initiate proceedings?**

There is no particular formality to be followed before initiating proceedings. The plaintiff can initiate proceedings by filing a petition and depositing the application fee.

**2.2 What limitation periods apply to different classes of claim for the bringing of proceedings before your civil courts? How are they calculated? Are time limits treated as a substantive or procedural law issue?**

As per the Turkish Code of Obligations, the principle statute of limitation is 10 years, starting from the date of maturity of the obligation.

However, the statute of limitation is five years for some claims, such as: lease payments; principal interest; salary; claims arising out of attorney; agency, commission and brokerage agreements (except commercial brokerage); claims between a company or its shareholders and its managers, representatives or auditors; accommodation fees in hotels, pensions, etc.; catering costs in restaurants and similar places; claims arising out of minor artwork and small-scale retail sales; claims between the shareholders arising out of a shareholding agreement; and claims arising out of works contracts, except those that arise out of improper performance or non-performance due to a contractor's gross fault.

The statute of limitation for tort claims is two years as of the date on which the plaintiff becomes aware of the tortious act, the damage and the person committing it, within the upper limitation of 10 years.

Time limits are treated as a substantive law issue. Expiration of the statute of limitation as a plea should be raised by the defendant. In other words, the court cannot *ex officio* take into consideration time limitations.

## 3 Commencing Proceedings

**3.1 How are civil proceedings commenced (issued and served) in your jurisdiction? What various means of service are there? What is the deemed date of service? How is service effected outside your jurisdiction? Is there a preferred method of service of foreign proceedings in your jurisdiction?**

Civil proceedings commence with the submission of the plaint petition to the court. Subsequently, the court serves the plaint petition alongside the opening record on the defendant's residence address via the Official Postal Service.

The post officer notes the date when the addressee receives the notification and this date is deemed the date of service. However, the deemed date of service differs in some specific circumstances where the post officer is required to follow certain procedures, e.g., when the addressee refuses to receive the notification, the addressee cannot be found at the address or the address of the addressee is unknown.

Notifications outside Turkey are made with the help of foreign authorities in accordance with the international agreements on legal assistance such as the Hague Conventions of 1954 and 1965. In the absence of such agreement, the notifications are made according to domestic provisions.

Foreign proceedings are served via the Ministry of Justice and relevant prosecution office in accordance with the international agreements.

**3.2 Are any pre-action interim remedies available in your jurisdiction? How do you apply for them? What are the main criteria for obtaining these?**

As a pre-action interim remedy, for non-monetary claims, a party can apply for interim injunction and where it proves that the acquisition of a right can become significantly difficult or impossible due to delay, or the delay is likely to cause serious damage, the court accepts the application in return for a security for compensation of the possible losses of the counterparty, which is generally 15% of the claimed amount in practice.

**3.3 What are the main elements of the claimant's pleadings?**

Plaint petition should include the following: the name of the court; the names and addresses of the parties; the ID number of the plaintiff; the names and addresses of the parties' attorneys; the subject of the litigation; factual grounds; evidence; legal reasons; claims; and the signature of the plaintiff or the attorney.

**3.4 Can the pleadings be amended? If so, are there any restrictions?**

Parties can amend their pleadings until the exchange of petitions stage is completed. However, with the explicit consent of the counterparty, it is possible to amend the pleadings in all stages of the proceedings.

In addition, during the same course of the proceedings, each party is entitled to amend their pleadings only once by an oral or written statement of amendment even after the exchange of petition stage and without consent of the defendant.

For the claims where the total amount is hard to calculate and determine prior to the proceedings, the plaintiff can file an unspecified claim and determination case. In such a case, the plaintiff can increase the claim amount without any restriction when it becomes possible to determine the claim amount during the proceedings.

**3.5 Can the pleadings be withdrawn? If so, at what stage and are there any consequences?**

Pleadings can be withdrawn until the decision is finalised with the explicit consent of the counterparty.

If neither party attend a hearing or one of the parties does not attend and the other one declares that he/she will not pursue the proceedings, the proceedings will be halted and the action will be deemed not to have been filed unless it is renewed by either one of the parties within three months.

Finally a plaintiff can withdraw the pleadings by waiving his/her rights on which the action is grounding. However, in this case it is not possible to file an action grounding on the same right in the future.

## 4 Defending a Claim

**4.1 What are the main elements of a statement of defence? Can the defendant bring a counterclaim(s) or defence of set-off?**

The response petition should include the same main elements as the plaint petition (please see question 3.3 above). The preliminary objections, namely objection to jurisdiction, objection of arbitration and objection on judicial division of work, should also be filed with the statement of defence.

The defendant can bring a counterclaim by filing a counter action in the scope of the same proceedings provided that: (i) principal action is pending; and (ii) there is a connection between the principal and counter action; or (iii) there is a set-off relation between the claims of the parties. However, where the defendant's grounds of defence are set-off, they can also choose to file it as a plea with their response petition.

**4.2 What is the time limit within which the statement of defence has to be served?**

The defendant shall submit their response petition to the court within two weeks as of the service of the plaint petition. However, upon request, the court may grant a time extension, up to two weeks for the simple procedure and up to one month for the written procedure.

**4.3 Is there a mechanism in your civil justice system whereby a defendant can pass on or share liability by bringing an action against a third party?**

The defendant is not entitled to share liability by bringing an action against a third party during ongoing proceedings. However, as explained below in question 5.1, the defendant can request the court to notify the third party in order to ask it to intervene in the proceedings.

**4.4 What happens if the defendant does not defend the claim?**

Where the defendant fails to file a defence statement (response petition) in due time (see question 4.2), it is deemed as if it has denied all claims of the plaintiff.

**4.5 Can the defendant dispute the court's jurisdiction?**

Pursuant to the general provision regulating court's jurisdiction, the defendant can dispute the court's jurisdiction with its response petition as a preliminary objection. However, if there is exclusive jurisdiction provided by the law for the subject of the case, the court shall *ex officio* examine its jurisdiction and the defendant can dispute the court's jurisdiction in any phase of the proceedings.

## 5 Joinder & Consolidation

**5.1 Is there a mechanism in your civil justice system whereby a third party can be joined into ongoing proceedings in appropriate circumstances? If so, what are those circumstances?**

A party to the case, considering a subsequent recourse action to be filed by or against a third party, may request the court to notify the proceedings to that third party. Even if there is no notification, a third party may request from the court to join to ongoing proceedings as an intervenor if the decision to be rendered may affect its rights and/or lead to a recourse action. An intervenor can choose the party whom he will take sides with. The intervenor is bound by the actions performed, claims, defences and evidence submitted by that party. In any case, the court shall render its decision for the main parties of the case. The effect of the intervention occurs between the intervenor and the related party in the case of a recourse action. In such a recourse action, the intervenor cannot challenge the decision rendered for the main case.

**5.2 Does your civil justice system allow for the consolidation of two sets of proceedings in appropriate circumstances? If so, what are those circumstances?**

Connected cases filed before civil courts of the same level and require the same specialisation can be consolidated upon the request of the parties or *ex officio* during all stages of the proceedings. Decision of consolidation can be given by the court hearing the latter filed case and consolidated case shall be heard before the court where the first case was filed. A connection exists if both cases are based on similar grounds or if a decision rendered in one case would affect the other.

**5.3 Do you have split trials/bifurcation of proceedings?**

The court may decide, *ex officio* or upon request of the parties, to split the cases in any phase of the proceedings.

## 6 Duties & Powers of the Courts

### 6.1 Is there any particular case allocation system before the civil courts in your jurisdiction? How are cases allocated?

As explained under question 1.2 above, civil courts of first instance have jurisdiction for all civil disputes except those that fall under the jurisdiction of civil courts of peace and disputes that are allocated to specialist courts by law due to the requirement of special expertise.

### 6.2 Do the courts in your jurisdiction have any particular case management powers? What interim applications can the parties make? What are the cost consequences?

The courts have the power to take any measures for management and conduct of the case and along with the parties of the case, third parties and other public authorities must comply with and respond to the court's orders and requests. As interim applications, the parties can request procedural steps such as hearing witnesses or conducting expert examination, apply for temporary legal protections referred to under question 3.2 above or request the necessary correspondence to be made for collecting documents/evidence. In principle, the party making the interim application shall pay the relevant expenses and the court can take a measure using the court expenses paid in advance.

### 6.3 What sanctions are the courts in your jurisdiction empowered to impose on a party that disobeys the court's orders or directions?

In the case of non-compliance with the court's orders or directions, a judge can expel the parties from the courtroom, impose fines, order disciplinary detention or decide a witness to be brought to the court by force. Attorneys of the parties can neither be expelled from the court nor detained; instead, the court can notify the Bar Association or prosecution office if necessary.

### 6.4 Do the courts in your jurisdiction have the power to strike out part of a statement of case or dismiss a case entirely? If so, at what stage and in what circumstances?

The courts in Turkey do not have the power to strike out a statement of case. However, the court can partially accept or dismiss a claim at the end of the proceedings with its decision on the merits.

On the other hand, if conditions for filing an action are not met in the first place, the court shall grant the relevant party with a definite period to complete the conditions if possible and shall refuse the case if the conditions are not completed.

### 6.5 Can the civil courts in your jurisdiction enter summary judgment?

If conditions for filing an action are not met and if it is not possible to complete the lacking condition for the relevant party, the court can form a decision without holding a trial. They can also render a decision in relation to the preliminary objections without holding a trial. In addition to the above, for cases subject to simple procedure, the court can form a decision on the merits of the case without holding a trial.

### 6.6 Do the courts in your jurisdiction have any powers to discontinue or stay the proceedings? If so, in what circumstances?

Courts shall discontinue the proceedings if:

- the plaintiff waives the case;
- the defendant accepts the case;
- the parties settle;
- the legal interest of the plaintiff or subject of the case disappears; or
- neither party attend a hearing or one of the parties does not attend and the other one declares that he/she will not pursue the proceedings.

If there are matters which should be resolved by another court or authority in order to continue the proceedings and render a decision, the court can stay the proceedings until the preliminary question is resolved. In case the preliminary question should be resolved by the Constitutional Court or the Court of Jurisdictional Disputes, the court shall stay the proceedings.

## 7 Disclosure

### 7.1 What are the basic rules of disclosure in civil proceedings in your jurisdiction? Is it possible to obtain disclosure pre-action? Are there any classes of documents that do not require disclosure? Are there any special rules concerning the disclosure of electronic documents or acceptable practices for conducting e-disclosure, such as predictive coding?

There is no full disclosure mechanism under Turkish law. In principle, disclosure obligation is limited to the evidence on which either one of the parties base their allegations on. However, parties are entitled to request the court to collect evidence from the counter party or from third parties and institutions. Pre-action disclosure is limited to requesting the court to collect evidence such as examination, on-site expert examination or witness testimonies. There is no obligation of disclosure specified according to different classes of documents.

For submitting electronic data as evidence, it shall be printed out and also recorded electronically so that it can be examined when requested.

### 7.2 What are the rules on privilege in civil proceedings in your jurisdiction?

If the court orders disclosure of a document that a party possesses, that party shall submit said document to the court or state a reasonable excuse for not submitting it. Otherwise the court may accept the other party's statement with regards to the content of said document. There are special provisions with respect to disclosure of commercial books.

### 7.3 What are the rules in your jurisdiction with respect to disclosure by third parties?

If any document constituting evidence is under possession of a third party, the court can order the disclosure of such evidence which is deemed mandatory to prove the allegations of the parties. If ordered by the court, third parties are obliged to disclose such documents and if not, explain the reason for failure to disclose. If the court does

not find the explanations sufficient, the court can hear the third party as a witness. Third parties may refuse to provide documents or testify in case he/she has the right of exemption from testifying such as: family privilege; privilege against self-incrimination; attorney client privilege; and privilege of trade secrets.

**7.4 What is the court's role in disclosure in civil proceedings in your jurisdiction?**

Only the court can order the disclosure of documents by parties of the dispute or third parties. In principle, courts are obliged to clarify the dispute where there are mistakes of fact or legal ambiguities or contradictions. In this regard, the court is entitled to question the parties and demand explanations from them.

**7.5 Are there any restrictions on the use of documents obtained by disclosure in your jurisdiction?**

There are no restrictions as to the use of documents obtained upon disclosure. However, parties may request that the documents and information submitted to the court be kept confidential.

## 8 Evidence

**8.1 What are the basic rules of evidence in your jurisdiction?**

In principle, evidence must be submitted by the party having the burden of proof. The parties are not allowed to withdraw evidence they have submitted without the express consent of the counter party. The parties should list and submit all their evidence or at least the information as to evidence that is not under their possession within the period of exchange of petitions. A peremptory term of two weeks is granted to the parties in the preliminary examination hearing, to submit the evidence listed in petitions or at least to provide information for the collection of evidence which is not under their possession. If deficiencies regarding submission of evidence are not completed within this period, the court shall decide that the relevant party is deemed to have renounced its right to rely on relevant evidence.

**8.2 What types of evidence are admissible, which ones are not? What about expert evidence in particular?**

All means of proof can be accepted as evidence unless they are provided unlawfully. Under Turkish law, the court is bound by some means of proof such as final judgments; and cannot make an assessment whether or not they reflect the truth as long as they are valid. On the other hand, witness testimony, expert opinion, onsite examination, professional opinion and also evidence that is not listed by the law are not binding and is left to the court's discretion. Voice records and electronic records such as e-mail correspondences are defined as a "document" but they are not binding and are also left to the court's discretion. In cases specified by the law, the means of proof can only be in the form of a "deed", which is an instrument created for the purpose of representing a legal record of a status or an action. In this regard, claims against a deed can only be proven with another deed. The court can decide to conduct an expert examination either *ex officio* or upon request of either party in cases where special and technical knowledge is required to solve disputes. In principle, expert evidence is inadmissible on subjects that may be solved with general and legal knowledge of judge(s). Apart from the the expert examinaton conducted by court appointed experts, it is also possible for a party to submit an opinion prepared by private experts.

**8.3 Are there any particular rules regarding the calling of witnesses of fact? The making of witness statements or depositions?**

A party who wants to call witnesses of a fact should inform the court about the facts that are aimed to be proven and submit the list of witnesses, including their names and addresses. If a witness is not residing in the province where the hearings are held, then the court may issue an order to the judge in the province where the witness resides to take that witness's testimony. In principle, witnesses are not allowed to use written notes during their depositions. Other witnesses cannot be present in the court room while one of the witnesses is heard by the court.

**8.4 Are there any particular rules regarding instructing expert witnesses, preparing expert reports and giving expert evidence in court? Are there any particular rules regarding concurrent expert evidence? Does the expert owe his/her duties to the client or to the court?**

The court can appoint experts either *ex officio* or upon request of either party. Experts owe their duties to the court. Rather than being heard as a witness, experts submit their opinions to the court in writing. However, it is also possible, yet rare in practice, for the court to rule that the experts shall provide their opinions orally before the court. Experts are chosen from the expert list prepared by each civil jurisdiction commission in the relevant judicial locality. In principle, the court chooses a sole expert, however, assigning an expert committee is also possible. The court determines the limits of the examination subject, questions which the expert is required to answer and the timeframe in which the report should be submitted. On the other hand, parties may also submit professional opinions as evidence. Such professionals owe their duties to the party that is their client. There is no particular rule regarding concurrent expert evidence.

## 9 Judgments & Orders

**9.1 What different types of judgments and orders are the civil courts in your jurisdiction empowered to issue and in what circumstances?**

Courts may issue interim decisions and final decisions. Final decisions may be in the form of: (i) declaratory decisions determining the existence or absence of a right or a relationship between the parties; (ii) orders to give something, perform or refrain from doing something; and (iii) constitutive decisions which are changing, revoking or creating a legal status or position. Additionally, courts may also order preliminary injunctions. The court may order a preliminary injunction if there is a concern that an inconvenience or serious damage would occur as a result of a delay or a change in the current situation, which would result in difficulty or impossibility regarding acquisition of a right (see question 4.2).

**9.2 What powers do your local courts have to make rulings on damages/interests/costs of the litigation?**

The court may order pecuniary damages and non-pecuniary damages in the amount of the incurred loss. Turkish courts cannot

award punitive damages. The court is bound by the request of the parties and cannot decide anything exceeding or differing from the request. Similarly, the collection of the interest cannot be ordered by the court *ex officio*; the interest should be claimed by the parties.

### 9.3 How can a domestic/foreign judgment be recognised and enforced?

The party whose rights were recognised by a domestic court decision can apply to any enforcement office in Turkey in order to enforce the decision. In case of recognition/enforcement of foreign judgments, the following requirements must be met:

- The decision must be final and binding according to the law of the state where the decision was rendered.
- The subject matter of the decision must be out of the scope of the Turkish courts' exclusive jurisdiction.
- The decision must not be in evident contradiction with the Turkish public order.
- The counter party's right of defence must be respected and complied with.

In addition, for the enforcement of foreign decisions there must be reciprocity between Turkey and the state where the decision was rendered in terms of recognition and enforcement of foreign judgments. In principle, the courts *ex officio* examine the existence of the recognition and/or enforcement requirements.

### 9.4 What are the rules of appeal against a judgment of a civil court of your jurisdiction?

In principle, all final decisions of the courts of first instance can be appealed before the regional court of appeal. It should be noted that decisions concerning pecuniary matters amounting to less than TRY 3,110.00 are final and cannot be appealed.

Aside from exceptional time limits set by area-specific legislations such as the Labour Code, the time limit to file an appeal is two weeks from the notification of the decision for decisions rendered by the courts of first instance, and eight days for decisions rendered by labour courts.

The grounds for an appeal before the regional court of appeal are not limited and any wrong application of procedural or substantive law or factual error may be a ground for appeal. Regional appellate courts will also take into consideration any breach of public order, even if said breach is not challenged by the parties.

In principle, decisions rendered by regional appellate courts can be appealed before the supreme court. It should be noted that decisions concerning pecuniary matters amounting to less than TRY 41,530.00 cannot be appealed before the supreme court.

The grounds for appeal before the supreme court are: (i) wrongful application of the law or the agreement between the parties; (ii) absence of preliminary requirements to file an action; (iii) unlawful dismissal of evidence; and (iv) the existence of procedural mistakes or deficiencies affecting the judgment.

Aside from exceptional time limits set by area-specific legislations such as the Labour Code, the time limit to file an appeal before the supreme court is also two weeks from the notification of the decisions of regional court of appeal, and eight days for decisions rendered by labour courts.

## 10 Settlement

### 10.1 Are there any formal mechanisms in your jurisdiction by which parties are encouraged to settle claims or which facilitate the settlement process?

At the preliminary examination hearing, which is the first hearing of the proceedings, the judge shall encourage the parties to make a settlement or resort to mediation. However, in practice, this rule is seen as a formality and the judge only asks the parties whether they consider making a settlement.

# II. ALTERNATIVE DISPUTE RESOLUTION

## 1 General

### 1.1 What methods of alternative dispute resolution are available and frequently used in your jurisdiction? Arbitration/Mediation/Expert Determination/Tribunals (or other specialist courts)/Ombudsman? (Please provide a brief overview of each available method.)

Methods of alternative dispute resolution such as arbitration and mediation are available. Arbitration is the most frequently used method of ADR in Turkey.

### 1.2 What are the laws or rules governing the different methods of alternative dispute resolution?

The main legislation regulating international arbitration is the International Arbitration Code numbered 4686, which is essentially based on the UNCITRAL Model Law. The CCP regulates domestic arbitration but it is not applicable to international arbitration unless stated otherwise in the International Arbitration Law. Turkey is also a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, the ICSID Convention and the European Convention on International Commercial Arbitration of 1961. Mediation is regulated under the Code on Mediation in the Civil Disputes numbered 6325 and dated June 22, 2012.

### 1.3 Are there any areas of law in your jurisdiction that cannot use Arbitration/Mediation/Expert Determination/Tribunals/Ombudsman as a means of alternative dispute resolution?

Disputes arising from or relating to rights *in rem* in immovable properties that are located in Turkey, and disputes that cannot be subject to the parties' will, such as disputes relating to criminal, administrative or family law, are not arbitrable or subject to mediation. In terms of labour law, only re-instatement cases can be arbitrable, provided that the parties execute the arbitration agreement after the termination of employment.

**1.4 Can local courts provide any assistance to parties that wish to invoke the available methods of alternative dispute resolution? For example, will a court – pre or post the constitution of an arbitral tribunal – issue interim or provisional measures of protection (i.e. holding orders pending the final outcome) in support of arbitration proceedings, will the court force parties to arbitrate when they have so agreed, or will the court order parties to mediate or seek expert determination? Is there anything that is particular to your jurisdiction in this context?**

Parties can apply to local courts for interim measures and attachments prior to or during the arbitration proceedings, provided that such application does not constitute a contradiction to the arbitration agreement between the parties.

Local courts may provide assistance with appointment and removal of arbitrators and extension of arbitration period.

The arbitrator or arbitral tribunal may also decide to grant an interim measure or attachment upon the request of either party during the arbitration proceedings, unless otherwise agreed. If a party fails to abide by the restrictions imposed by an interim measure or attachment, the other party may request the assistance of the competent court.

If either party files a lawsuit before the local court despite the presence of an arbitration agreement, the court can only dismiss the case based on the arbitration agreement if it is invoked by the parties.

The parties may agree to apply for mediation prior to or during the litigation process. The court may encourage but cannot order the parties to mediate.

**1.5 How binding are the available methods of alternative dispute resolution in nature? For example, are there any rights of appeal from arbitration awards and expert determination decisions, are there any sanctions for refusing to mediate, and do settlement agreements reached at mediation need to be sanctioned by the court? Is there anything that is particular to your jurisdiction in this context?**

Arbitral awards become binding and enforceable at the moment they are rendered. Arbitral awards cannot be appealed for a review of the dispute on the merits; they can only be set aside with an application to the competent court of first instance. For international arbitration awards (disputes containing foreign element, subject to International Arbitration Code), filing an action to set aside an arbitral award automatically puts a stay of execution on the arbitral award. However, for domestic arbitration awards (disputes that do not contain any foreign element, subject to CCP), filing an action to set aside does not prevent or stop the execution of the award. The decision on setting the award aside can be appealed.

The agreement that the parties reach at the end of the mediation process is binding. The parties may request that the court gives an annotation on the enforceability of the agreement and request the enforcement of the agreement with this annotation.

## 2 Alternative Dispute Resolution Institutions

**2.1 What are the major alternative dispute resolution institutions in your jurisdiction?**

The Istanbul Arbitration Centre (ISTAC) is a major dispute resolution institution: It was established with the law numbered 6570 on January 1, 2015 and it has been operational since October 2015. ISTAC provides arbitration and mediation services for both international and domestic parties. The ISTAC Arbitration and Mediation Rules, prepared in accordance with modern institutional rules, entered into force on October 26, 2015.

Besides the Istanbul Arbitration Centre, there are two major bodies that currently provide services for domestic arbitration in Turkey: the Istanbul Chamber of Commerce; and the Union of Chambers of Commerce, Industry, Maritime Trade and Commodity Exchanges of Turkey.

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