

GAR KNOW HOW CHALLENGING AND ENFORCING ARBITRATION AWARDS

Türkiye

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Form of awards

1. Must an award take any particular form?

Article 14(A) of the International Arbitration Law (IAL) provides that an award must include:

- the names, surnames, titles and addresses of the parties, their representatives and lawyers;
- the legal grounds on which the award is based and, if there is a claim for compensation, the amount of compensation;
- the place of arbitration and the date of the award;
- the name, signature and a dissenting opinion, if any, of the arbitral tribunal; and
- a notice informing the parties that an action to set aside the award could be filed.

The above also applies in terms of domestic awards that are regulated under article 436(1) of the Civil Procedural Law (CPL). Article 436(1) also requires the award to include the rights and obligations attributed to the parties and the costs of arbitration.

Procedural law for recourse against an award (other than applications for setting aside)

2. Are there provisions governing modification, clarification or correction of an award? Are there provisions governing retraction or revision of an award? Under what circumstances may an award be retracted or revised (for fraud or other reasons)? What are the time limits?

Article 14(B) of the IAL and article 437 of the CPL regulate the correction, interpretation and clarification of an award.

According to article 14(B) of the IAL, each party can apply to the arbitral tribunal for correction of the errors of fact or calculation or for interpretation of an award partially or in full, within 30 days of the service of the award (two weeks for domestic arbitration). The tribunal has 30 days to correct or interpret the award as of the date of the request (one month for domestic arbitration). The tribunal can also make the corrections *ex officio* within 30 days of the date of the award (two weeks for domestic arbitration).

Each party is also entitled to request a supplementary arbitral award for the matters raised during the proceedings but that were not decided within 30 days (one month for domestic arbitration) of the service of the award. The tribunal has 60 days (one month for domestic arbitration) to issue the supplementary arbitral award if it deems the request rightful. For domestic arbitration, the arbitral tribunal can extend this period once, by a month.

There is not any way of revising or retracting the award. The only recourse that the parties can initiate is to file an action to set aside the award.

3. May an award be appealed to or set aside by the courts? What are the differences between appeals and applications to set aside awards?

Appealing an award is not possible under Turkish law as the courts are not allowed to review the merits of the case; therefore, setting aside an award is the only recourse available under Turkish law for both international and domestic arbitration (IAL, article 15(A); CPL, article 439(1))

Setting aside of arbitral awards

4. Is there a time limit for applying for the setting-aside of an arbitral award?

The time limit for instigating a setting-aside action is regulated under article 15(A)(4) of the IAL and article 439(4) of the CPL.

The setting-aside action must be filed within 30 days of the service date (one month for domestic arbitration). If there is an application for correction, interpretation or supplementation of the award, this period starts running from the service of the correction, interpretation or supplementation of the arbitral award.

5. What kind of arbitral decision can be set aside in your jurisdiction? What are the criteria to distinguish between arbitral awards and procedural orders in your jurisdiction? Can courts set aside partial or interim awards?

Regional appellate courts can only set aside final and partial awards under Turkish law and not procedural orders. Although Turkish law does not clearly define arbitral awards and procedural orders, the main differentiation is that arbitral awards are related to the merits of the case, whereas procedural orders are not.

6. Which court has jurisdiction over an application for the setting aside of an arbitral award? Is there a specific court or chamber in place with specific sets of rules applicable to international arbitral awards?

The court that has the jurisdiction to hear the setting-aside proceeding is the regional appellate court at the respondent's domicile, habitual residence or place of business (IAL, article 15(A); CPL, article 439(1)). If the respondent does not have any of these in Türkiye, the Istanbul Regional Appellate Court has jurisdiction (IAL, article 3).

Although it is highly recommended and proposed by scholars, there is currently no specific court or chamber in place with specific sets of rules or expertise applicable to international arbitral awards.

7. What documentation is required when applying for the setting aside of an arbitral award?

The IAL does not foresee a specific form of application for the setting aside of an arbitral award. In contrast, the party applying for domestic arbitration must include the mandatory elements of a plaint petition as listed in article 119 of the CPL.

In domestic arbitration, the application must contain, among other things, the subject matter of the claim, a summary of material facts, legal grounds and prayers for relief. The courts do not require an original or duly certified copy of the arbitral award. The applicant must submit copies of the briefs and exhibits with copies for each defendant.

8. If the required documentation is drafted in a language other than the official language of your jurisdiction, is it necessary to submit a translation with the application for the setting aside of an arbitral award? If yes, in what form must the translation be?

A Turkish translation certified by a sworn translator must be submitted (CPL, article 223). Turkish courts generally request a full translation.

9. What are the other practical requirements relating to the setting aside of an arbitral award? Are there any limitations on the language and length of the submissions and of the documentation filed by the parties?

According to article 15(1) of the IAL, setting-aside actions must be heard as a primary and urgent matter.

The procedure of the setting-aside action is governed by the CPL. The defendant has two weeks to file its response petition as of the service of the plaintiff petition. It is possible to request an extension for two weeks. A Turkish translation of the documents must be submitted.

Whether the application fee is fixed or proportionate varies depending on the court; however, most courts apply a fixed application fee.

10. What are the different steps of the proceedings?

Setting-aside actions are subject to the simplified procedure, meaning that each party will submit one brief, plaintiff petition and defence petition (CPL, article 316(1)(f)); however, the parties can make further submissions.

Although the courts prefer holding a hearing, it has the discretion not to do so.

11. May an arbitral award be recognised or enforced pending the setting-aside proceedings in your jurisdiction? Do setting-aside proceedings have suspensive effect?

It is not possible to successfully complete the recognition or enforcement proceedings when there is a pending setting-aside action. In other words, setting-aside actions have suspensive effect. Only if one of the following three conditions is met can a recognition, enforcement or execution proceeding be successful (International Private and Procedural Law (IPPL), article 62; IAL, article 15(A)); otherwise, it would be rejected:

- the setting-aside proceeding is rejected, and the decision has been finalised;
- the setting-aside proceeding is not filed within the time limit; or
- the parties waived their right to file setting-aside proceedings (waiver is only possible if both parties are not residents in Turkey).

For domestic arbitration, setting-aside proceedings do not have suspensive effect; however, the respondent can request a stay of execution in return for security that would suffice to cover the amount of the receivable in the award (CPL, article 439(4)).

Article 439 of CPL does not specify the competent court to render a stay of execution decision. Although some are of the view that the regional appellate courts must have jurisdiction over an application to stay the execution of an award, most scholars opine that the enforcement courts are competent, in accordance with article 36 of the Execution and Bankruptcy Law (EBL).

12. What are the grounds on which an arbitral award may be set aside?

The grounds for setting aside arbitral awards of domestic and international arbitration are identical as both are adopted from the UNCITRAL Model Law on International Commercial Arbitration (CPL, article 439; IAL, article 15).

Accordingly, the parties can assert that:

- a party to the arbitration agreement did not have the capacity to agree on arbitration, or the arbitration agreement is invalid;
- the composition of the arbitral tribunal was not in compliance with the parties' agreement or with the IAL (where applicable);
- the final award was not rendered within the required period;
- the arbitrator or the arbitral tribunal unlawfully decided their competence or incompetence;
- the arbitrator or the arbitral tribunal decided beyond the scope of the arbitration agreement or did not decide on the entire claim or decided beyond their competence;
- the arbitral proceedings were not in compliance with the parties' agreements, or with the IAL if there is no agreement, and the non-compliance affected the substance of the award; and
- the parties were not treated equally.

The court can examine ex officio whether the dispute subject to the arbitration is arbitrable and whether the award violates public policy.

13. When assessing the grounds for setting aside, may the judge conduct a full review and reconsider factual or legal findings from the arbitral tribunal in the award? Is the judge bound by the tribunal's findings? If not, what degree of deference will the judge give to the tribunal's findings?

The courts can only examine setting-aside applications based on limited grounds, such as the violation of public policy and other grounds specified in article 15 of the IAL. That said, in practice, Court of Cassation has certain decisions that made an assessment on the merits of the arbitral award under Turkish law, particularly in the scope of the violation of public policy.

14. Is it possible for an applicant in setting-aside proceedings to be considered to have waived its right to invoke a particular ground for setting aside? Under what conditions?

The parties can waive the right to file setting-aside proceedings in full or in part or to invoke particular grounds for setting aside. The waiver must be explicit and made by a party whose domicile or usual place of residence is outside Turkey. The waiver does not have to be in the arbitration agreement; it can be made later (IAL, article 15(A)).

15. What is the effect of the decision on the setting-aside application in your jurisdiction? What challenges or appeals are available?

The regional appellate court's decision on the setting-aside application can be appealed before the Court of Cassation within two weeks of the service of the reasoned decision (IAL, article 15(A); CPL, article 439).

16. Will courts take into consideration decisions rendered in relation to the same arbitral award in other jurisdictions or give effect to them?

The courts will consider the court decisions of other jurisdictions before rendering a recognition or enforcement decision. For example, if the award has been set aside by the competent court of the country in which it was made, the enforcement or recognition request in Turkey must be rejected (IPPL, article 62(1)(h)).

Procedural law for recognition and enforcement of arbitral awards

17. What is the applicable procedural law for recognition and enforcement of an arbitral award in your jurisdiction?

While domestic arbitral awards are directly enforceable under the CPL, arbitral awards within the scope of the IAL (where the seat is in Turkey and the matter has a foreign element) are enforced by obtaining a certificate of enforceability from the competent civil court of first instance. The certificate must be obtained on finalisation of the decision rejecting the setting aside of the award; if there is no application to set aside the award, on expiry of the time limit to file the application; or if the parties have waived the right to file setting-aside proceedings.

Foreign arbitral awards (ie, those rendered in a seat outside Turkey) must be recognised and enforced to have legal effect. Recognition and enforcement of foreign arbitral awards are primarily governed by the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention). Where the Convention is silent or not applicable, the IPPL, which contains rules that are similar to those in the Convention, applies.

Turkey is a party to the New York Convention, the European Convention on International Commercial Arbitration and the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

18. Is your jurisdiction a party to treaties facilitating recognition and enforcement of arbitral awards (eg, the ICSID Convention or bilateral treaties)? (In particular, is your state a party to the 1958 New York Convention? If yes, what is the date of entry into force of the Convention? Was there any reservation made under article I(3) of the Convention?)

Türkiye is a party to the 1958 New York Convention, which entered into force on 25 September 1992. Türkiye has made both reciprocity and commercial relationship reservations.

Recognition proceedings

19. Is there a time limit for applying for the recognition and enforcement of an arbitral award?

The IPPL, the IAL or other relevant laws do not contain any specific time limit for applying for the recognition and enforcement of an arbitral award. However, there is a general time limit of 10 years for enforcement of judgments under the EBL; therefore, it is advisable to initiate the proceedings for the recognition and enforcement of a foreign arbitral award within 10 years as of the finalisation of the arbitral award.

20. Which court has jurisdiction over an application for recognition and enforcement of an arbitral award? Is there a specific court or chamber in place with specific sets of rules applicable to international arbitral awards?

The civil or commercial court of first instance located where the parties agreed or, in the absence of an agreement, where the defendant permanently or temporarily resides has jurisdiction over an application for recognition and enforcement of an arbitral award. If the defendant does not reside in Türkiye, the competent court is where the defendant's assets that could be the subject of attachment are located (IPPL, article 60). There is no specific court or chamber with specific sets of rules applicable to foreign arbitral awards.

Whether to file the action to the competent civil or commercial court must be decided based on the subject matter of the underlying dispute.

21. What are the requirements for the court to have jurisdiction over an application for recognition and enforcement and for the application to be admissible?

The civil or commercial court of first instance located where the parties agreed or, in the absence of an agreement, where the defendant permanently or temporarily resides has jurisdiction over an application for recognition and enforcement of an arbitral award. If the defendant does not reside in Türkiye, the competent court is where the defendant's assets that could be the subject of attachment are located (IPPL, article 60).

In terms of the admissibility of the application, the arbitral award must be final, enforceable and binding. The general procedural rules under the CPL must also be followed when filing the action for recognition and enforcement of an arbitral award.

Whether to file the action to the competent civil or commercial court must be decided based on the subject matter of the underlying dispute.

If the jurisdiction of the court is established over the assets, the applicant must prove that the assets are located in the jurisdiction of the court.

22. Are the recognition proceedings in your jurisdiction adversarial or ex parte? What are the different steps of the proceedings?

The proceedings for recognition and enforcement of arbitral awards are adversarial. As the proceedings are subject to a simplified procedure, the written phase is completed by exchanging plaint and response petitions; however, in practice, the parties could make further submissions, provided that such submissions do

not breach the prohibition on expansion of the claims and defences. The court then sets the hearing date, and the oral phase will start.

23. What documentation is required to obtain recognition?

Along with the application for recognition and enforcement of an arbitral award, the applicant must submit:

- the original or a duly certified copy of the arbitration agreement;
- the original or a duly certified copy of the arbitral award; and
- the certified translations of the documents in points (1) and (2).

The applicant must prepare a copy for the court and a copy for each defendant (IPPL, article 61).

24. If the required documentation is drafted in a language other than the official language of your jurisdiction, is it necessary to submit a translation with an application to obtain recognition? If yes, in what form must the translation be?

Article 61 of the IPPL requires the submission of certified translations of the arbitration agreement and the arbitral award. The translations should be certified by a sworn translator. Turkish courts generally request full translations.

25. What are the other practical requirements relating to recognition and enforcement? Are there any limitations on the language and length of the submissions and of the documentation filed by the parties?

As the CPL governs the procedure of the proceedings, on service of the plaintiff petition, the defendant has two weeks to file its responses, with an opportunity to request a two-week time extension (CPL, article 317).

26. Do courts recognise and enforce partial or interim awards?

Although partial awards can be recognised by Turkish courts, this does not apply to interim awards in most cases as they are not deemed final and binding.

27. What are the grounds on which an arbitral award may be refused recognition? Are the grounds applied by the courts different from the ones provided under article V of the New York Convention?

Article V of the New York Convention is directly applicable to the recognition and enforcement of foreign arbitral awards. Regarding cases where the IPPL applies, the grounds for refusal listed under article 62 of the IPPL are very similar to those in article V of the New York Convention.

Among the grounds for refusal, Turkish courts give particular importance to public policy, the standards and scope of which are set by court precedents. The concept of public policy has changed over time, embracing a trend towards a more enforcement-friendly approach.

28. When assessing the grounds for refusing recognition, may the recognition judge conduct a full review and reconsider factual or legal findings from the arbitral tribunal in the award? Is the judge bound by the tribunal's findings? If not, what degree of deference will the judge give to the tribunal's findings?

The courts do not have the power to conduct a full review. They may only review a case based on limited grounds, such as violating public policy and other grounds specified in article 62 of the IPPL and article V of the New York Convention.

29. Is it possible for a party to be considered to have waived its right to invoke a particular ground for refusing recognition of an arbitral award?

The parties or courts have no discretion in limiting, extending or varying the grounds for recognising and enforcing arbitral awards; however, although there is no provision, it is accepted that the parties can waive their rights to invoke a particular ground for refusing recognition of an arbitral award if it is explicit.

30. What is the effect of a decision recognising an arbitral award in your jurisdiction?

Recognition and enforcement are separate mechanisms under Turkish law. Although the scope of enforcement covers recognition, recognition of an award can also be sought separately. While recognition would give the award the effect of *res judicata* or final evidence, enforcement would enable the execution of the award. A foreign arbitral award which is not recognised by Turkish courts would only be deemed *prima facie* evidence before the recognition.

31. What challenges are available against a decision refusing recognition in your jurisdiction?

The first instance court's decision on the recognition and enforcement of an arbitral award is subject to appeal before the competent regional appellate court, and the regional appellate court's decision can be appealed before the Court of Cassation. These appeals have a suspensive effect. There are no remedies available to third parties.

32. What are the effects of annulment proceedings at the seat of the arbitration on recognition or enforcement proceedings in your jurisdiction?

As provided under article VI of the New York Convention, the court can adjourn the recognition and enforcement proceedings pending the outcome of annulment proceedings at the seat of the arbitration. The party seeking adjournment of the proceedings must establish on a *prima facie* basis that the award is likely to be annulled, and its adjournment request is not merely to delay the recognition and enforcement of the award. Cases requiring the application of article VI of the New York Convention are not common in practice, but there is a decision of Istanbul 14th Civil Chamber dated 11 October 2018 and numbered 2018/130 E., 2018/1042 K., ruling that awaiting the annulment proceedings at the seat of the arbitration is at the discretion of the enforcement judge, so an annulment proceeding would not prevent enforcement.

33. If the courts adjourn the recognition or enforcement proceedings pending annulment proceedings, will the defendant to the recognition or enforcement proceedings be ordered to post security?

Under article VI of the New York Convention, Turkish courts have the discretion to order security on the applicant's request to preserve its chances for the successful execution of an award; however, there is no published case law specific to this matter.

Based on the general practice of Turkish courts, the court can grant provisional attachment to secure the successful enforcement of the award; therefore, the party seeking enforcement may (separately or from the court hearing the enforcement action) ask for an interim attachment if the court adjourns the enforcement action pending annulment proceedings.

34. Is it possible to obtain the recognition and enforcement of an award that has been fully or partly set aside at the seat of the arbitration? If an arbitral award is set aside after the decision recognising the award has been issued, what challenges are available?

Within the context of the New York Convention, recognition and enforcement of an award that has been fully or partly set aside are at the court's discretion; however, Turkish courts would generally refuse to recognise

or enforce an arbitral award that has been fully set aside at the seat, especially where the award is annulled based on grounds other than public policy or arbitrability.

On the other hand, according to the IPPL, the court should refuse the recognition and enforcement of an award that has been fully or partly set aside at the seat of arbitration (IPPL, article 62(1)).

If the arbitral award is set aside at the seat of the arbitration after a Turkish court's decision recognising or enforcing the award, an annulment action could be filed in accordance with article V(1)(e) of the New York Convention.

Service

35. What is the procedure for service of extrajudicial and judicial documents to a defendant in your jurisdiction?

If the defendant and court are domiciled in Türkiye, service must be made to the last known residence address of the defendant by post (Notification Law, article 10). The service date is the date of delivery. If the addressee has a registered email address, the court may serve the documents electronically. In this case, the deemed service date is the end of the fifth day following the delivery date (Notification Law, article 7/a).

If the official language of the documents is not Turkish, the documents must be served with a Turkish translation.

36. What is the procedure for service of extrajudicial and judicial documents to a defendant outside your jurisdiction? Is it necessary to serve these documents together with a translation in the language of this jurisdiction? Is your jurisdiction a party to the 1965 Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the Hague Service Convention)? Is your jurisdiction a party to other treaties on the same subject matter? When is a document considered to be served to the opposite party?

The applicable rules differ if the court requesting the service is located in a different country. Türkiye is a party to the 1965 Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the Hague Service Convention) and the 1954 Convention on Civil Procedure, although the application of the latter is rare owing to the specific nature of the Hague Service Convention. If the court is located in a country that is a party to these conventions and no bilateral treaty exists, the Turkish authorities will apply the Hague Service Convention. If the Hague Service Convention does not apply and there is no bilateral treaty, then article 25 of the Notification Act applies.

The documents must be served with a translation into the language of the jurisdiction. The service date is when the documents are delivered to the opposite party.

Identification of assets

37. Are there any databases or publicly available registers allowing the identification of an award debtor's assets within your jurisdiction? Are there any databases or publicly available registers providing information on award debtors' interests in other companies?

The award creditor can use public databases to identify the award debtor's assets. For example:

- general information about companies can be found in the public trade registry records;
- ownership details for identified land and real estate can be accessed in the Turkish land registry, provided that the applicant can show a legitimate interest to see the details of those records; and
- trademark and patent ownerships can be accessed in the public records of the Turkish Patent and Trademark Office.

A limited number of trade registries provide a publicly available database enabling access to information regarding a person's shareholding, board membership or directorship in companies. There is no publicly available database providing information on award debtors' interests in other companies.

In addition, once an enforcement proceeding is initiated and the attachment becomes definite, the award creditor can conduct an asset search through the National Judiciary Informatics System (UYAP), which produces information on the debtor's assets, rights and receivables (EBL, article 78).

38. Are there any proceedings allowing for the disclosure of information about an award debtor within your jurisdiction?

The award creditor can apply to the bailiff's office to send a payment order with the judgment to the award debtor. The bailiff's office will send a payment order to the debtor and request the payment of the debt and disclosure of assets (by indicating their value) within seven days of the service date; however, since the bailiff's offices can search the debtor's assets using their systems, the disclosure of assets is not commonly used to identify assets.

Nevertheless, the award debtor's failure to disclose its assets might result in 10 days' imprisonment (EBL, article 337); however, imprisonment is rarely imposed, and even if it is, the debtor will be released from imprisonment once the assets are disclosed.

Enforcement proceedings

39. What kinds of assets can be attached within your jurisdiction?

Any of a debtor's movable and immovable assets, rights and receivables with economic value can be attached, although there are exceptions. There are safeguards to ensure that the debtors have sufficient means to survive and continue their economic existence. Accordingly, goods required for the debtor to continue its business and a certain percentage of the debtor's salary cannot be attached.

In January 2022, an amendment was made to the Law on the Central Bank of the Republic of Türkiye (CBRT) granting immunity against any attachment, interim injunction or provisional attachment to the assets of a foreign central bank held by the Turkish Central Bank (CBRT, Article 40).

40. Are interim measures against assets available in your jurisdiction? Is it possible to apply for interim measures under an arbitral award before requesting recognition? Under what conditions?

Yes, it is possible to obtain a provisional attachment order or a preliminary injunction decision before or during the arbitration proceedings where the seat is in Turkey (IAL, article 6). The requirements to obtain a provisional attachment order are specified in article 257 of the EBL, whereas the requirements for obtaining a preliminary injunction decision are stated in article 389 of the CPL.

Applying for interim measures under a foreign arbitral award before requesting recognition is controversial, and there are conflicting precedents. Recent precedents favour those applications. In this regard, 15th Civil Chamber of the Court of Cassation took the view that a receivable subject to a foreign judgment cannot be deemed due until enforced by Turkish courts, and therefore foreign judgments cannot be construed as grounds for provisional attachment. On the other hand, 6th, 11th and 19th Civil Chambers of the Court of Cassation have several decisions which assert that an enforcement decision should not be sought for granting a provisional attachment of assets. In parallel to this approach, most scholars acknowledge that interim measures can be applied before or during enforcement proceedings.

41. What is the procedure for obtaining interim measures against assets in your jurisdiction?

A party seeking enforcement may obtain a provisional attachment order pursuant to article 257 et seq of the EBL. The provisional attachment proceedings must be conducted before the competent court at the award debtor's residence in Türkiye.

To obtain a provisional attachment order, the creditor must establish prima facie that the receivables are matured and unsecured; however, it is also possible to obtain a provisional attachment for unmatured receivables in some circumstances. The creditor must show a clear and present danger that the debtor will lack sufficient assets. In this regard, the applicant is expected to show that:

- the debtor has no domicile in Türkiye; and
- the counterparty is preparing or engaging in bad faith manoeuvres intending to frustrate enforcement of the arbitral award.

The court has the discretion to grant a provisional attachment subject to a deposit. Although the courts have wide discretion in determining the amount, usually 15 to 20 per cent of the awarded compensation is required as a deposit. To protect the interests of the award creditor, Turkish courts regularly grant provisional attachment applications that are filed after an award is rendered but when setting-aside or enforcement proceedings are pending.

For the enforcement of the provisional attachment, the applicant must apply to the competent execution office within 10 days of the decision date; otherwise, the provisional attachment decision is void.

According to article 389 et seq. of the CPL, the creditor may apply for a preliminary injunction decision from the competent court located at the award debtor's residence in Türkiye.

The award creditor must show prima facie that it would be difficult or impossible to satisfy the right owing to the change that may occur in the current situation in the matter of dispute or that a disadvantage or serious damage will arise in the absence of the decision.

If the court grants the preliminary injunction decision, the applicant must deposit the amount determined by the court and request from the bailiff's office the execution of the decision within one week of the date of the decision.

The provisional attachment order and the preliminary injunction decision will be valid until the final award is enforceable or the tribunal rejects the claim (IAL, article 6).

42. What is the procedure for implementing interim measures against assets in your jurisdiction?

There are no specific provisions for interim measures against immovable property; therefore, the provisions of the EBL for obtaining a provisional attachment order and the provisions of the CPL for obtaining a preliminary injunction decision apply.

43. What is the procedure for requesting attachment against assets in your jurisdiction? Who are the stakeholders in the process?

The arbitral award must be enforceable to start the attachment proceedings. For instance, for foreign arbitral awards, the enforcement proceedings must be completed, and for the arbitrations seated in Türkiye with a foreign element, the enforceability certificate must be obtained. Since domestic arbitral awards are directly enforceable, no further action is required.

Initially, the award creditor must apply to the bailiff's office requesting it to issue the payment order and notify it of the judgment to the award debtor. The award debtor has seven days to pay, starting from the service date.

The award creditor can start the attachment proceedings if no payment is made within seven days. In any case, the creditor can initiate the attachment proceedings within one year, starting from the service date of the payment order (EBL, article 78).

The bailiff's office can attach the immovables, movables (subject to the compulsory registry) and bank accounts electronically if the relevant systems are compatible with the bailiff's office system.

Attachment proceedings differ depending on the nature of the assets and may be conducted ex parte.

The main stakeholders are the bailiffs' offices and the enforcement courts.

44. What is the procedure for implementing attachment orders against assets in your jurisdiction?

The award creditor can request the attachment of the immovable property after seven days have passed and, in any case, within one year, starting from the service date of the payment order. On the determination of the immovable property through the asset search, the award creditor can also request the attachment of the property through UYAP. Since the bailiff's office and the land registry systems are compatible, the attachment is registered to the records instantly. This registration restricts the award debtor's disposal right on the immovables.

The award creditor must request the compulsory sale of the immovable property within one year of the attachment date; otherwise, the attachment will be removed (EBL, article 106).

45. Are there specific rules applicable to the attachments against sums in bank accounts or other assets deposited with banks?

The principle is to count assets held by banks as movable property, and general rules about the attachment of movables apply to those assets in general; however, currencies, bonds and other commercial papers obtained by way of seizure will be attached directly by the officers and will not be left to the debtor or a third party in any circumstance.

Provided that all the banks operating in Türkiye, whether as branches or subsidiaries, must establish a Turkish legal entity, the creditors' accounts in those banks could be subject to attachment, irrespective of the bank's origin. It is not possible to attach bank accounts located outside Türkiye's jurisdiction.

The attachment of bank accounts is carried out by sending a writ electronically to the relevant banks since their systems are compatible with the bailiff's office system (EBL, article 89).

46. May a creditor of an award rendered against a private debtor attach assets held by another person on the grounds of piercing the corporate veil or alter ego? What are the criteria, and how may a party demonstrate that they are met?

Piercing the corporate veil is an exceptional measure under Turkish law. The corporate veil will be pierced only if the corporate structure has been used to evade mandatory legal obligations or the enforcement of existing and legitimate third-party rights. This standard generally relates to fraud or other misconduct calculated to avoid or conceal liability through the use of a company structure. Court of Cassation particularly seeks an economic integrity between the corporations as a requirement for lifting the corporate veil.

Recognition and enforcement against foreign states

47. Are there any rules in your jurisdiction that specifically govern recognition and enforcement of arbitral awards against foreign states?

There are no specific rules that govern the recognition and enforcement of arbitral awards against foreign states; therefore, Turkish courts apply the general rules on recognition and enforcement by taking into account the general sovereign immunity principles.

48. What is the procedure for service of extrajudicial and judicial documents to a foreign state?

Service related to *acta jure gestionis* can be made to diplomatic representatives of the foreign state through diplomatic channels (IPPL, article 49/2); however, if a specific multilateral or bilateral treaty exists between states, this method must be used instead of the general rule. See question 34 above.

49. May a foreign state invoke sovereign immunity (immunity from jurisdiction) to object to the recognition or enforcement of arbitral awards?

Foreign states cannot invoke sovereign immunity in disputes arising from private law relations (IPPL, article 49(1)).

50. May award creditors apply interim measures against assets owned by a sovereign state?

The availability of interim measures against foreign states depends on whether the states acted with *acta jure imperii* or *acta jure gestionis* in the underlying dispute. Foreign states cannot claim immunity from jurisdiction in legal disputes arising from private law relations (IPPL, article 49(1)). General rules regarding interim measures apply.

51. Are assets belonging to a foreign state immune from enforcement in your jurisdiction?

Courts must distinguish between assets used for commercial and sovereign purposes. All assets may be subject to attachment except those used for sovereign purposes. For example, assets used for diplomatic and military purposes are protected by state immunity.

Without prejudice to international treaties, in the execution proceeding of a judgment initiated against a foreign state, forced execution may be carried out on the assets belonging to the debtor state (EBL, article 32(2)). It is not possible to initiate an execution proceeding without a judgment against a foreign state (EBL, article 42(2)); therefore, assets belonging to a foreign state and used for commercial purposes are not immune from enforcement if an execution proceeding with a judgment is initiated.

All assets belonging to Turkey are immune from attachment as a matter of principle (EBL, article 82). All kinds of property directly assigned to public services and used for financial benefit can be considered state property, except those disposed of in accordance with private law provisions.

52. Is it possible for a foreign state to waive immunity from enforcement in your jurisdiction? What are the requirements of waiver?

A foreign state can waive immunity from enforcement in Turkey, but there should be an agreement between the parties to waive immunity. Under Turkish law, the agreement to arbitrate is generally understood as a waiver of immunity for the purposes of the arbitration proceedings. A waiver of immunity resulting from an arbitration agreement will not extend to the execution proceedings; a separate waiver is required for execution proceedings.

53. Is it possible for a creditor of an award rendered against a foreign state to attach the assets held by an alter ego of the foreign state within your jurisdiction?

In principle, it is not possible to attach the assets held by an alter ego of a foreign state unless the above criteria are sustained; however, in recent years, there has been a case in which the assets of an alter ego of a foreign state were attached by the award creditor through the bailiff's office. This practice of the bailiff's office is atypical and does not reflect the general approach to this controversial matter. The outcome of this case pending before the regional appellate court is important in assessing the Turkish approach.

54. May property belonging to persons subject to national or international sanctions be attached? Under what conditions? Is there a specific procedure?

Property belonging to individuals or entities subject to national or international sanctions may be attached, frozen or seized by the Turkish government. Government bodies have the power to freeze or seize assets, including bank accounts, real estate and other property belonging to sanctioned individuals or entities. The assets subject to the sanction will be specified, and they cannot be attached by a third party until the sanction is removed. Property that is not subject to the sanction can be attached (EBL, articles 82, 83, 83(b) and 83(c)).



Asena Aytuğ Keser

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Asena Aytuğ Keser is a managing associate at the firm. Her practice focuses on dispute management, business crime and anti-corruption, employment, insurance and reinsurance, administration, tax and regulatory, and construction and real estate.

Asena advises and represents both national and international clients in various commercial and corporate disputes before courts and arbitral tribunals, including high-profile compensation cases, M&A and shareholder disputes, real estate and construction disputes and enforcement of foreign court judgments and arbitral awards. She has a specific focus on business crimes, and she handles various disputes involving the application of both civil and criminal law principles. Asena also represents many clients in regulated markets, and her experience in dispute management expands to administrative and tax law-related disputes. She is also experienced in employment law.

Combining her experience in dispute management with insurance law, Asena focuses on the litigation aspect of the firm's insurance and reinsurance practice. She represents and advises many clients in both the local and London insurance markets, loss adjusters, international law firms and brokers in relation to handling and managing disputes concerning various types of insurance, carrying out settlement processes and assessing claim amounts and liability of respected parties.



Direnç Bada

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Direnç Bada is a dual-qualified lawyer admitted as a solicitor in England and Wales and as an attorney in Turkey. He is a managing associate at Gün + Partners and has worked for the firm since 2014.

Direnç specialises in the firm's dispute management, intellectual property (IP) and data protection and privacy practices. He has represented clients in international commercial disputes before the International Chamber of Commerce and the Istanbul Arbitration Centre. He has experience in civil and criminal IP litigation and advises clients on IP matters.

Direnç also advises multinational clients on international data transfers and localisation requirements. He obtained the Certified Information Privacy Professional Europe (CIPP/E) certification from the International Association of Privacy Professionals in 2019.



Kardelen Özden

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