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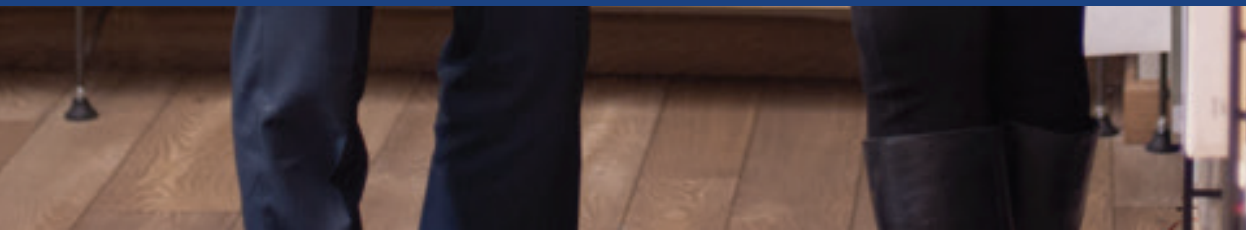
COMMERCIAL DISPUTE RESOLUTION UNDER TURKISH LAW

RULES, DEVELOPMENTS AND INSIGHTS - 2020



FIRM OVERVIEW

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Commercial Dispute Resolution under Turkish Law: Rules, Developments and Insights

Turkish civil litigation is a unique system where the concepts and practices of civil law meet with the ones originating from Turkish law. Along with the classical and common judiciary concepts and practices among civil law systems, Turkish law envisages a sui generis concept, called "enforcement proceedings without judgment." This frequently resorted-to type of enforcement action is native to Turkish law, and differs from similar concepts in terms of its application and scope.

The Turkish civil litigation system operated within two levels of judicial scrutiny, with the first one applied at the first instance courts' level, and the second one before the Court of Cassation. This was until 2016 when the Regional Appellate Courts entered into service as the third one situated in between the initial, and ultimate, judicial scrutiny. This is a positive development in terms of legal security. However, it has deepened the ever-lasting problem of prolonged litigation before the Turkish courts.

Indeed, mandatory mediation was introduced for labour disputes -which constitute the significant portion of the court's workload- on 1 January 2018, in order to address this problem. Commercial disputes have also been included in the scope of mandatory mediation as of 1 January 2019, after seeing that mediation is a statistical success in the resolution of labour disputes. The legislator plans to further expand the scope of mandatory mediation into other areas of law, which also includes consumer law disputes. Along with mandatory mediation, a significant number of disputes are also resolved by arbitration as an alternative dispute resolution mechanism. In this respect, the Istanbul Arbitration Centre ("ISTAC") -which is also supported by many official institutions- operates with regard to local and international disputes as an alternative dispute resolution mechanism, despite certain prejudices and criticisms.

Furthermore, the need for the rules regulating the economic life increases with the complex and progressive nature of today's business life. If the ones who violate these rules are at executive positions in the businesses, the types of crimes causing economic damages are named as "white-collar crimes". All these developments have led commercial penalties to become a more commonly used instruments.

1. Litigation the Disputes

a. General Overview

Judicial power is exercised by the independent and impartial courts (Article 9 of the Turkish Constitution). Disputes arising from the relations governed by private law are resolved by the civil courts, which fall under civil jurisdiction amongst the main five judiciary branches (Constitutional Jurisdiction, Civil and Criminal Jurisdiction, Ad ministrative Jurisdiction, Jurisdiction over Jurisdictional Disputes, and Court of Accounts) under the Turkish judiciary organization. The civil courts of first instance include the civil courts of first instance, civil courts of peace, family courts, civil courts of intellectual and industrial property rights, civil courts of enforcement, labour courts, cadastral courts, consumer courts, and commercial courts. In principle, judiciary proceedings of the civil courts are subject to Civil Procedure Code numbered 6100 ("CPC"), which entered into force on 01.10.2011.

Turkish Civil Law is influenced by the continental law systems. The reference laws to the Turkish Code of Obligations and Turkish Civil Code are respectively the Swiss Code of Obligations and the Swiss Civil Code, whereas the reference law for Turkish Commercial Code is the German Code of Obligations. Having said that, although the CPC is a national law, the reference law to the former procedure code whose fundamental concepts were adopted in the CPC, is the Swiss Code of Civil Procedure of Neuchâtel canton.

If parties to a commercial dispute have not concluded a valid arbitration agreement, nor preferred an alternative resolution method, they would resort to legal remedies before the courts. As explained in detail, below, mediation has become the prior mandatory step for commercial disputes to be heard before the courts as of 01.01.2019, with an aim to relive the workload of the courts. This rule means that the courts shall reject cases on procedural grounds, in the event that a lawsuit is filed without first applying to mediation. The disputes that involve a foreign element are not exempt from this requirement.

Although the conclusion of mediation meetings -which can principally take up to a maximum of eight weeks as per the law- must be awaited before filing a lawsuit, the creditor or the right holder can always apply (without carrying out the mediation process) for enforcement without a judgment mechanism as stipulated under the Turkish Enforcement and Bankruptcy Code ("EBC"), or for temporary legal protection, such as provisional attachment. However, in any event, the aforementioned procedures fall within the authority and/or supervision of the courts.

The Court of Cassation and Regional Courts of Appeal supervise and scrutinize the decisions rendered by the commercial courts of first instance. The most important role of the Regional

Courts of Appeal as the second-tier courts is to examine and evaluate the (non-final) decisions rendered by the first instance courts, with regard to their compliance with the substantial facts and evidence in the case, along with the law. At the third stage, the Court of Cassation, as a legal supervisory authority, examines the non-final decisions of the Regional Courts of Appeal in respect of their compliance only with the law.

b. Types of Lawsuits That Can Be Filed Before Commercial Courts

Lawsuits are examined under three main categories under Turkish law. These are determined based on the legal protection requested from the court, and include actions for performance, declaratory actions, and constitutive actions.

- Constitutive actions appear in commercial disputes in the form of annulment of general assembly resolutions in joint stock companies, reduction of contractual penalties, or the use of pre-emptive purchase rights of shareholders over a joint property. These kinds of lawsuits are filed in order to construct the desired legal status where the parties are unable to form, change, or end a legal status by their unilateral declarations.

- Declaratory actions aim to determine the presence or absence of a right or legal relation, or whether or not a document has been forged. Declaratory actions are divided into two categories, those being positive and negative. Requests for determination of rental receivables would be an example of positive declaratory actions; whereas, requests for determination that a person who faces a repetitive payment request for a debt that has already been paid, would be an example of negative declaratory actions. One of the main differences between these two types of declaratory actions is that the statute of limitations period is interrupted when a positive declaratory action is filed; whereas, the statute of limitations period is not automatically interrupted when a negative declaratory action is filed.

- Actions for performance is a type of lawsuit where the court is requested to order the defendant to give, or do something, or cease from doing something. As one of the most common types of lawsuits, compensation actions are classified as actions for performance.

Regardless of the value or amount of the disputed matter, the commercial courts of first instance are competent to hear any commercial disputes. The need for specialization in the commercial courts is fulfilled by dividing these courts into chambers, and determining the work distribution between the chambers, “With respect to the nature and frequency of the dispute.” Apart from this, other courts are also established with special laws for the same purpose, such as the civil courts for intellectual and industrial property rights, labour courts, and consumer courts.

c. Proceedings before Commercial Courts

i. Filing of a Lawsuit

The parties are principally not required to appoint attorneys to represent them before the Turkish courts. However, if an attorney is appointed, this person must be an attorney registered with a bar association.

Litigation commences when a lawsuit petition is submitted to the authorized court of competent jurisdiction as per the CPC. The plaintiff must deposit the litigation fees and advance on costs to the court's teller when filing a lawsuit. The most important fee is the upfront judgment and writ fee, stipulated under the Act on Fees. For legal actions concerning monetary claims that are subject to proportional fees, and for those declaratory actions which concern monetary claims, a judgment and writ fee of 6.831% of the disputed value subject to decision is charged. The plaintiff must deposit one-quarter of this amount along with the lawsuit petition. In the event that the case is accepted for the requested amount, the defendant party deposits the remaining three-quarters of the judgment and writ fee; whereas, the court rules that the one-quarter of the fee deposited previously by the plaintiff, shall be paid by the defendant to the plaintiff. If the case is rejected in its entirety, the fee deposited by the plaintiff, at the ratio of one-quarter, is to be returned to the plaintiff.

In principle, the lawsuit petition is followed by a response petition presented by the defendant, and rebuttal and rejoinder petitions are submitted, respectively, by each party. Although a term of two weeks is stipulated as of the time for service of each petition, it is possible and common that this term may be extended up to one month by the court upon request, particularly in commercial cases.

Some of the most important components of lawsuit petitions are the values of the disputed matters, the relief sought, explicit summaries of all of the incidents under sequence numbers, and specification of what incidents will be proven through which evidence.

ii. Defences Brought Against the Lawsuit

While response petitions are similar to the lawsuit petitions in terms of important components they include, defence requests called, "preliminary objections," pose particular significance, since it will no longer be possible to assert these causes of objection that are listed as numerus clausus in the CPC, even upon the plaintiff's consent in the following phases of the trial, if they are not included in the response petition. These causes of objection consist of the following:

- Jurisdictional objection, where there are no rules of mandatory jurisdiction; and
- Arbitration objection as to the dispute must be resolved by way of arbitration;

If the defendant has claims to assert against the plaintiff, these claims must be presented before the court in the response petition as a counter action, in order to have them heard by the same court, in the same trial procedure. Otherwise, these claims may only be presented in a separate lawsuit petition that would be subject to a separate trial. If there is a connection between these reciprocal claims, the court may decide to merge these two cases later on.

Other claims and defences may be expanded in the rebuttal and rejoinder petitions presented by both parties. For instance, the defendant may freely claim a statute of limitations objection in the rejoinder petition, even if such claim was not included in the response petition. In the event that the defendant fails to assert such defence in the rejoinder petition, the only possibility to make such defence is by way of rectification of the response petition, or with the plaintiff's consent, as of this point.

iii. Preliminary Hearing and Evidence Collection

Following the completion of the exchange of petitions consisting of two petitions submitted by the parties, the court invites the parties to a preliminary hearing. Considering the additional terms of one month granted for each upon the parties' request, if any, and the time passed during the service of notices, preliminary hearings usually occur within six months after the lawsuit petition is filed. This period often extends beyond six months due to the judiciary recess.

While several hearings are held usually at intervals of three months during the trial, the preliminary hearing holds particular significance. Although the courts and parties do not always abide by this principle, the disputed and undisputed matters must be distinguished, and the course of the trial must be determined at this point in the preliminary hearing. The preliminary hearing is also the stage at which the court examines and decides on the causes of action and preliminary objections. While this is the principle, it is often encountered that the courts conclude these matters in the following steps of the trial, and even by the time of judgment, when disputes require complex and technical information.

Also, the courts grant the parties a term of two weeks for submission of the evidence that is not presented to court, but which is specified in the petitions. A party relying upon a certain piece of evidence who is not in the possession of such evidence must inform the court as to where such evidence might be obtained from within the given term. In light of this information, the court would request the counter party or third party holding the possession of such evidence to present the evidence to the court. The evidence that is specified in the petitions, but not presented to the

court within the granted term, or upon which no information was provided as to its whereabouts, are deemed waived. New evidence that is sought to be presented after this point is not accepted due to the restrictions on expansion of claim and defence, if there are no reasons justifying such delay.

The main principle as to collection of evidence in commercial cases is the introduction of any case materials by the parties. Accordingly, judges are not entitled to consider a fact or incident that is not introduced by the parties, through their own motion. Likewise, judges are not entitled to collect evidence through their own motion. However, certain cases specified by law constitute an exception to this rule. For instance, the judges may apply expert opinion or discovery ex officio. Similarly, judges may request that the parties present evidence as to the matters that are found to be vague or contradictory by the judge in regard to substantial or legal aspects thereof, if necessary, for resolution of the dispute.

While the parties may obtain scientific opinions from experts at any stage of the trial, provided that the trial is not prolonged, the courts may decide to obtain a separate expert report, in any manner, in practice. The term of three months that is granted for experts to prepare the requested reports may be extended by the court upon request. The court must obtain a new report from the same or another expert panel, upon the parties' objections to the determinations specified under the expert reports, in parallel with the Court of Cassation precedents. The Court of Cassation regards the scenario where objections to expert reports are not made by other expert report without reasonable cause, as grounds for reversal. It is often encountered that the courts appoint experts more than once in cases with strong technical aspects.

In practice, one of the most common discussions pertaining to disclosure and collecting of evidence is the court's role when a party relies upon a piece of evidence that is in the counter party's possession, and the initiative granted to the party holding the evidence. In principle, the parties are obliged to submit any documents in their possession, which they have relied upon as evidence, or by the counter party, to the court. If the documents, submissions of which are requested, are deemed necessary to prove the asserted claims by the court, and revealed to be in the counter party's possession, the court gives a definite term for submission of this document.
In the event that the counter party abstains from presenting such evidence to the court within the granted definite term, it is at the court's discretion to accept the other party's statements regarding the document's content.

Contrary to the collection of evidence practices of common law countries, attorneys representing the parties remain relatively passive as compared to the courts under Turkish law, which is a part of civil law system. Although attorneys have the authority to gather information and documents

before judiciary bodies, security organs, other public institutions and organizations, banks, and insurance companies for the clients they represent as per the Attorney Code, such authority is rarely used, and when it is used, the addressee institutions or companies do not act as cooperatively as expected. This being the case, the course of the lawsuit mostly remains dependent on the counter party's statements and evidence that would be presented in a discretionary manner; and the outgrowth of the trial becomes more ambiguous, especially if there is a dispute as to which party is to bear the burden of proof. The courts, on the other hand, which hold complete authority over such a sensitive matter for the case's future, do not always use their discretionary powers in the most appropriate manner, due to their heavy workload.

iV. Judgment

Rendition of a final decision on the merits would mostly take place at least two or three years after the commencement of the proceedings, and after having completed the exchange of petitions, collection of evidence, evaluation of court-appointed expert report(s), hearing of witnesses, if any and, lastly, the oral post-hearing briefs. Approximately after one month therefrom, the courts issue the reasoned decision, and serve it on the parties upon request.

Such reasoned and final decision, which is called a judgment, must include provisions addressing:

- Each request asserted by the plaintiff;
- Auxiliary requests, such as interests, if any; and
- Litigation costs, even if not explicitly requested.

Litigation costs include the expert/discovery expenses and judgment fee that are principally collected from the plaintiff during the trial, as well as attorney fees. At this point, it is worth noting that the attorney fee, as part of the litigation costs, is not the contractual fee agreed upon between the client and attorney, but a fee determined pursuant to the Minimum Attorneyship Fee Tariff ("Tariff") published annually by the Union of Turkish Bar Associations.

Where the reliefs sought by the plaintiff are granted, partially or in whole, the court rules that the expenses, in addition to the attorney fee ordered, shall be proportionately paid by the defendant to the plaintiff even if not requested, since the "costs follow the event" principle is adopted in Turkish litigation as a rule. The same rule, except for the attorney fees, applies when the plaintiff loses the case.

As per decision numbered 2019/145 of the 8th Chamber of the Council of State, the Tariff, which constitutes the basis for the attorney fees ruled upon at the end of trials, was amended as of

07.12.2019. Pursuant to the Tariff that will apply to the judgments rendered in 2020, "The fee awarded for the defendant's attorney shall not exceed the fee awarded for the plaintiff's attorney if the request for pecuniary damages is partially rejected." Additionally, the attorney fee awarded for the defendant's attorney shall be fixed at a symbolic flat rate, rather than a proportionate rate, based on the disputed quantum, if the request for pecuniary or non-pecuniary damages is totally rejected.

d. The Appeal Process

Judgments that rendered by the commercial courts of first instance are subject to appeal before the Regional Civil Courts, provided that the minimum value of each claim is below TRY 3.000. The judgments under this threshold are deemed to be finalized. This monetary limit is adjusted by the revaluation ratio determined and published by the Ministry of Treasury and Finance, and is TRY 5.390,00 for the year 2020. The time limit to file an appeal is two weeks starting for each party as of the due service of the judgment.

The judgments rendered by the Regional Civil Courts on commercial disputes are subject to appeal before the Court of Cassation, only for examination of whether the judgment is compliant with the law. However, as per Article 362 of the CPC, the judgments that are below the threshold of TRY 40.000 (TRY 72.070,00 for the year 2020), in either amount or value, cannot be appealed before the Court of Cassation. The judgments rendered by the Regional Civil Courts, and the judgments concerning the setting aside of applications against arbitral awards, may be appealed within two weeks as of the service thereof. Furthermore, the successful party also has such right, on the condition that it has a legal interest.

As per Turkish law, filing an appeal does not stay the enforcement of the judgment, in principle. The plaintiff who won the case is capable of commencing an enforcement procedure based on judgment in order to collect the amount ruled to be paid by the other party. On the other hand, the debtor party who would file an appeal must deposit to the court's safe box a security covering the award and the interests that will accrue throughout the appellate process in order to suspend a compulsory enforcement procedure until the finalization of the judgment. Such security may be in cash or in the form of a definite letter of guarantee unlimited in time, provided by a bank.

e. Temporary Legal Protections

Where the judgments that are rendered at least 2-3 years after a trial are brought before the Regional Civil Courts as the second instance courts, and the Court of Cassation as the further instance court, the resolution of disputes may take 5-6 years. Especially considering cases that may

even drag on for ten years because of court's workload, scope of the case, and particularities of the dispute, the plaintiff's opportunity to access the disputed asset, or to collect the pursued receivable, could be endangered for various reasons, such as malevolent transfer of the disputed asset to a third party.

It is possible for the plaintiff to overcome this risk, either before filing a lawsuit or during the trial, primarily by provisional measure or provisional attachment, based on the feature of the disputed matter. The plaintiff who seeks protection may request provisional attachment if the disputed matter is a monetary credit; or provisional measure, if the disputed matter is a right over property, other than money.

i. Provisional Measure

In general, provisional measure is requested in order to prevent the transfer of a claimed immovable or movable asset to a third party. The law does not provide a restriction as to the courts' discretion being exercised in view of the features and the material facts of the dispute to decide upon the type of relief can be granted. For instance, the courts may rule to stay the construction on an immovable asset, until the end of the trial, based on the fact that the entitlement over the property is disputed. The most important criterion that the court must consider here is that the granted provisional measure must not entertain the applicant's ultimate goal beforehand, which would be acquired by means of trial.

The court usually conducts an expedited examination on the provisional measure request of the file, taking into account any inconvenience likely to be caused by a delay, and/or the other party who would be notified of the situation. When doing so, the court should content itself with prima facie proof of the applicant's rightfulness on the merits, rather than on conclusive evidence. However, in practice, courts mostly expect an extremely high level of proof in a manner that is incompatible with the nature and purpose of temporary legal protection, and tend to reject these requests on the grounds that the relief sought requires adjudication on the merits. If the provisional measure request is rejected, the applicant is entitled to appeal before the Regional Civil Courts for a definite decision.

Such high criterion of proof is deemed to be satisfied mostly for the courts when the applicant presents an official document, debt acknowledgement, or any other conclusive evidence. Yet, the courts, after having deemed the plausible proof criterion fulfilled, also may request security from the applicant before the enforcement of the provisional measure decision. Such security which is, in practice, determined to be approximately 15% of the amount in dispute, serves to cover possible damages suffered by the opposing party, if the applicant is adjudicated against, at the end of the action.

To prevent any exploitation of provisional measure procedure, the applicant, whose request is granted, must apply to the enforcement office for enforcement of the measure within one week, and then must file a lawsuit to resolve the dispute on the merits within two weeks. If either of these two conditions are not fulfilled, the provisional measure decision is automatically removed.
In the event that a provisional measure is granted without the other party being heard, the decision may be appealed before the court that has granted the requested provisional measure, within one week of the execution of the measure or, if the measure was executed in the opposing party's absence, upon service of the minutes recording the execution. Such objections are concluded by the court upon hearing both parties in a hearing. The parties may bring this ruling before the Regional Civil Courts for a final decision.

ii. Provisional Attachment

Unlike a provisional measure, provisional seizures aim to secure the timely payment of a monetary claim of a creditor. Firstly, however, the receivable in question must not already be secured with a pledge. In the event that the court finds in favour of the creditor, or the enforcement proceeding is finalized, the provisional attachment will become conclusive, the seized assets will be publicly auctioned and liquidated by the enforcement office, and the claimed amount will be collected by the creditor.

While being a type of temporary legal protection, different requirements are stipulated under the EBC for provisional attachments, depending on whether or not the receivable is due:

- In principle, for a due credit, it suffices for the applicant to present prima facie evidence sufficient to demonstrate that the credit, which is not already secured with a pledge, exists and is due, with a reasonable possibility.

- For a receivable that is not due, the applicant must also demonstrate a risk requiring action prior to the due date, such as a scenario where the debtor is arranging the concealment of his assets or committing fraudulent acts that violate the creditor's rights.

However, the courts, in practice, seek an indication of the debtor's malevolent purposes even for due credits, and mostly allow provisional attachment requests only if the creditor possesses evidence, such as a bill of exchange or debt acknowledgment.

Other than these distinctive features, a provisional attachment is similar to provisional measure requests to a large extent, in terms of supplementary procedures, securities to be deposited, and available appellate process.

f. Enforcement of Court Judgments (Enforcement based on Judgments)

As mentioned under the Judgment and the Appeal Process sections above, the reasoned judgments rendered by the first instance courts are enforceable by use of the state authority, and the respondent's appeal does not automatically stay enforcement.

The plaintiff is entitled to apply to enforcement office, after being served with the judgment. Although the EBC designates separate procedures for different reliefs such as payment of a debt, evacuation and delivery of an immovable asset, delivery of a movable asset, doing something or refraining from doing something; the main principle is to force the debtor, who fails to comply with the judgment within the granted term, to fulfil the relief by using the state power.

Reliefs for payment of a certain amount of monetary debt are most frequently seen judgments in commercial disputes. The compulsory enforcement thereof is also quite common in practice. The creditor holding the judgment requests the enforcement office to issue a writ of enforcement to be served to the debtor. The debtor who receives such writ has seven days to pay the debt subject to judgment. Within this term, the debtor may either voluntarily pay the debt, or deposit a security to stay the enforcement during the appellate examination.

If the debtor fails to perform either option, it must declare its assets sufficient to cover the receivable subject to the judgment before the enforcement office, as instructed by the same writ. The debtor who fails to declare its assets is sentenced to preventive detention for one time , by the enforcement court upon the creditor's request, until making the necessary declaration. However, such detention cannot exceed three months.

If the debtor fails to pay the debt or deposit a security within the granted seven days, the creditor is entitled to have the debtor's assets seized and sold by the enforcement office.

Following the debtor's declaration, or the enforcement office's enquiry through public title registries where the debtor fails to declare property, movables and immovable assets may be seized that are listed on the registry; and the assets at the debtor's address may be seized in situ. If the detected assets are insufficient to cover the entire receivables, the debtor's receivables from third parties may be seized upon the creditor's request. For this to occur, the third parties are served with a notice requesting them to make payment to the bank account of the enforcement office, which would normally have been made to the debtor. At this point, the acts of dissipation of assets, in collusion with third parties for the purpose of concealing the assets, may be cancelled by a lawsuit filed by the creditor against the debtor and the third parties who have acted in bad faith.

The seized assets cannot be delivered to the creditor in return for its receivables. The seized assets shall be liquidated pursuant to the procedures provided in detail under the law, in order for the creditor to collect its receivables. Where the creditor's receivables are not fully paid, although all available assets are seized and liquidated, the enforcement office issues an insolvency certificate to the unsatisfied creditor. This document contains certain elements pertaining to both enforcement law and substantial law, which strengthen the creditor's hand regarding the prospective proceedings against the debtor.

g. A Special Procedure: Enforcement without a Judgment

The main purpose of compulsory enforcement, which finds its roots in the EBC, is to ensure the performance of judgments by means of state power, against the party who does not comply with the judgment. However, the EBC also provides the creditors with the right to resort to state power, even without a judgment demonstrating the existence of the receivable. This complex and unique procedure adopted in Turkish practice, namely, an enforcement without judgment, serves to collect the receivables in a very short span of time, albeit at the cost of precluding the debtor from using its rights, or hampering exercise of these rights, from time to time.

As per this procedure, if everything goes well on the creditor's part, the receivable may be collected within a couple of weeks, even without presenting any evidence. The party who pays something he did not owe under the enforcement order, may apply to court and retrieve it upon adjudication on the merits.

Enforcement without a judgment, like an enforcement based on a judgment, is commenced upon an application filed by the creditor before the enforcement office, with the purpose of attachment of an adequate amount of assets covering the debt that would be followed by liquidation. If the debtor is a person subject to bankruptcy, the creditor may opt to request the bankruptcy of the debtor from the commercial courts of first instance, instead of seizure of the debtor's assets.

Regardless of the elected proceeding, this starts with the creditor's application to the enforcement office and continues with a payment order that is issued by the enforcement office. It is not mandatory for the creditor to support its application with any relevant evidence e.g. a bill or document; however, the creditor, in such case, is required to expressly specify the cause of the debt. As stated in the Court of Cassation precedents, it is possible to commence a proceeding without a judgment, even for receivables that arise from torts.

The debtor, with the payment order, is notified to pay the claimed amount and the proceeding expenses to the enforcement office's bank account within seven days. Unlike enforcements that are based on judgments, the debtor is entitled to refrain from making any payment by objecting

to the debt or the signature under the bill, if any, within this term of seven days. The debtor who does not object to the payment order, and who fails to pay the debt, must declare its assets at the end of this term. As explained in the section, above, penal sanctions may be imposed on the debtor who does not comply with this obligation, or who makes a false declaration.

In principle, if the debtor raises an objection against the payment order, the creditor must file an action before the court within one year, and resolve the dispute on the merits, in order to resume the proceeding and collect the receivable. This action, called the annulment of objection, is a proper action for performance of a debt conducted as per the provisions of the CPC, and the decision granted in this action resolves the dispute on substantial grounds generating res judicata. It must be noted that this term of one year is not the statute of limitations term of the receivable. The creditor is always entitled to directly apply to the court claiming its receivable within the statute of limitations period of the receivable. Action for annulment of objection differs from the ordinary action for performance by asking the court to impose upon the losing party bad faith compensation a sum that is no less than 20% of the principal amount.

The creditor is entitled to request the removal of objection by applying to the enforcement courts, instead of filing an action before the general courts, provided that it has certain written documents stipulated by law. This procedure held before the enforcement courts is not an action, but an expedited legal remedy conducted over documents. For this reason, decisions that are rendered by the enforcement courts bear consequences only for current proceedings. In other words, if the creditor is found to be in the right, the debtor may still retrieve the paid sum by means of a formal action before the commercial courts. The same applies in the event where the debtor is found to be in the right, as the creditor can collect the receivable through the commercial courts. Again, the bad faith compensation referred to, above, applies in this procedure, as well.

If the objection is annulled or removed, the enforcement proceeding that is stayed upon the debtor's objection resumes for the creditor, and the debtor's assets are seized and liquidated upon the creditor's request.

There are also other procedures of enforcement without judgment stipulated under the EBC for i) liquidation of charges on properties, ii) evacuation of leased immovable properties, and iii) receivables originating from commercial bills in terms of the Turkish Commercial Code, apart from the ordinary enforcement without a judgment, as mentioned, above. Especially in proceedings pertaining to receivables that are based on commercial bills, which are commonly used in commercial transactions, the creditor's interest has greater protection, as compared to ordinary proceedings. For instance, in this method, the proceedings are not stayed even if the debtor objects to the debt.

2. Mediation

a. Mediation under National Law

The concept of mediation, which came into Turkish practice in its fullest sense through the Law on Mediation in Civil Disputes ("Mediation Law") in 2012, has appeared as a different resolution method against the inevitable increase in the workload of the courts. As per the statistical data of the Ministry of Justice, the number of cases before the commercial courts, which was approximately 127,000 in 2011, had constant increase, and exceeded 240,000 cases at the end of 2018. Yet, the number of judges in the courts, unfortunately, has not increased at the same ratio. The number of judges within the entire civil jurisdiction, including the commercial courts, has only reached 8,200 in 2018, whereas it was 5,300 in 2011. Accordingly, while commercial courts, having a case load that increases each year, together with the cases remaining from the past years, were adjudicating one case in approximately 323 days in 2011; this has increased to 521 days in 2018. It is observed that with the Istanbul courts, which are under a greater workload as compared with the overall country, the proceedings take even longer.

With an amendment in 2017 that came into force on 01.01.2018, application to mediation was stipulated as a compulsory precondition for lawsuits concerning employment disputes between employer and employee. The same regulation was made for commercial disputes in 2018, and entered into force as of 01.01.2019.

To further develop and spread the concept of mediation, application for mediation is planned to be stipulated as a precondition for other fields of law, such as consumer disputes[1]. In this respect, it is expected that application to settle through mediation will become mandatory for disputes between administration and individuals, and disputes between different public institutions arising from public law and/or private law.

During the progress of mediation, the number of disputes resolved by means of both mandatory mediation and voluntary mediation has increased significantly, especially in disputes related to employment. It is noted that 69% of 354,738 employment disputes have been concluded through mandatory mediation[2]. In 2019, on the other hand, these applications have risen to 739,255, whereas the success rate remains at 65%[3]. Although the same performance is expected from mediation in the commercial disputes, it is understood that this has not yet been achieved in practice and in statistics, since the parties of employment disputes initiate the mediation process with a need to settle, due to the provisions adopted in labour law, which protect the employee, and embrace a strict dependence on the formalities; whereas, the parties of commercial disputes perceive the mediation process as a forced procedural step that must be exhausted before commencing the judicial trial right away, instead of viewing mediation as an opportunity.

b. Mediation in International Commercial Disputes

The Mediation Law, which governs mandatory and voluntary mediation, also applies to the resolution of private law disputes that involve a "foreign element." That being said, only Turkish citizens may apply to mediation as per the Mediation Law. Therefore, scholars have expressed their concerns and suggest that mediation in commercial disputes would fail to adequately meet the concerns and expectations of the parties who come from different cultures.

Another conflict is the recognition and enforcement of the settlement documents, which are issued by the parties at the end of the mediation process, in a foreign country. Under national law, settlement documents are qualified to be enforced just like a judgement, in the event that they are signed by the parties, mediator, and the attorneys representing the parties, or upon the enforceability annotation obtained from the courts of peace, in the event that they are signed solely by the mediator and the parties.

The answer to the question of whether this document, which is qualified as judgement under Turkish law, is defined in the same way under the law of a foreign country, can be found in the conflict of laws principles of the relevant country. When we look at the conflict of laws principles in Turkey, recognition and enforcement of the settlement documents are not possible in Turkey, as per Turkish Private International Law ("TPIL") or the New York Convention given that these are not qualified as arbitral awards[4]. This problem with many jurisdictions worldwide has precluded international mediation from developing at the desired level, and eventually, the solution is sought in the international agreements[5].

With these concerns, Turkey signed the United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention) in August 7th, 2019. With the ratification of the Singapore Convention, which sets forth similar provisions as the New York Convention sets forth for the recognition and enforcement of foreign arbitral awards, the concept of international mediation will be integrated in the national law. Currently, the Singapore Convention is signed by 52 countries such as the USA, China, Iran and Azerbaijan[6], but not yet ratified by any of them except for only four countries[7]. It is expected that the Convention will be ratified by the legislative body and enter into force soon in Turkey.

With the acceptance of the Convention, the signatory countries, including Turkey, will need to stipulate a judiciary mechanism pertaining to the authority entitled for enforcement, since the Convention does not bring a solid regulation regarding the matter, just like the New York Convention[8]. It would be expedient to assign a judicial body for enforcement of the settlement agreements, as in the arbitral awards.

3. An Efficient Method for the Resolution of Commercial Disputes: Arbitration

a. In General

As widely recognized, arbitration has become a "must" for the business world[9]. The number of cases before the Court of Cassation is so high that the case files are "shelved out of the rooms," and even "do not fit the corridors." Thus, the judicial bodies tend to consider arbitration as a necessity, rather than an alternative resolution method[10]. Accordingly, the government has been conducting studies for many years to promote arbitration.

From a general perspective, under Turkish law, arbitration is examined under two headings, namely, national and international, and subject to different rules. Accordingly:

- Disputes seated in Turkey and containing a foreign element, or the disputes where the parties agreed to apply International Arbitration Law ("IAL"), fall within the scope of IAL; whereas

- Disputes seated in Turkey and not containing a foreign element, by virtue of IAL, fall within the scope of the CPC.

Recognition and enforcement of arbitrations with a foreign element, in Turkey, are subject to the New York Convention, if the seat of arbitration is in a country, and they are parties to the New York Convention; otherwise, they are subject to TPIL.

The IAL and CPC are based on the UNCITRAL Model Law. Therefore, the conduct of arbitration proceedings, and its rules and principles, are similar to international practice, to a large extent.

b. Foreign Arbitral Awards That Are Seated Outside of Turkey

The recognition and enforcement of foreign arbitral awards are subject primarily to the New York Convention. If, however, the seat of arbitration is not in a signatory country, TPIL, which has almost identical provisions to the New York Convention, will apply.

When a party wants to enforce a foreign arbitral award in Turkey as per TPIL or the New York Convention, it must apply to the commercial courts of first instance with a petition[11]. The procedure is simplified, which means that, in principle, each party is allowed to submit one petition. The decision, pursuant to the general rules, is subject to two appeals and one correction of the decision procedure. Lodging an appeal against the court decision automatically stays the

execution of judgement without any need for security. Although the enforcement decisions cannot be executed without being finalized, there is no legal obstacle, applying for the provisional seizure of the counterparty's assets and receivables based on the arbitral award, to secure the risk of the debtor hiding the assets, until the decision is finalized[12].

Even though the "révision au fond" prohibition (prohibition of examination on whether or not the foreign arbitral award applies the wrong correctly) is adopted under Turkish law, the arbitration awards are exposed to intervention at recognition and enforcement phase based on the "compliance with public order" criteria, which is one of the conditions for enforcement. The appeal examinations of the enforcement decisions are not made by any specialised chamber of the Court of Cassation. Rather these examinations are made by different chambers depending on the subject matter of the dispute. The scholars and the practitioners rightfully criticize the fact that disputes pertaining to arbitration are submitted to different chambers of the Court of Cassation, based on the subject matter of each dispute.

As per the division of tasks between the Court of Cassation chambers, the decisions regarding the recognition and enforcement of arbitral awards are usually rendered by the 11th, 15th, 19th and 23rd Civil Chambers of the Court of Cassation, none of which is specialised in arbitration. More than half of the cases regarding arbitration are heard before the 11th Civil Chamber, which is specialized in the law of obligations and commercial law; particularly, in insurance and transportation[13]. Each year, the 11th Civil Chamber deals with approximately 50 arbitration-related cases, whereas this number is 20 for the 19th Civil Chamber. Considering that a civil chamber examines approximately 20,000 cases (including those that remain from the previous years) per year, it is clear that the civil chambers do not have any expertise regarding enforcement requests, which they encounter rarely[14].

Submission of arbitration cases to different chambers not only causes these chambers not to have the opportunity to become specialized in this field, but also causes the issuance of contradictory decisions[15]. For instance, the 11th, 19th and 23rd Civil Chambers avoid examination of the foreign arbitral awards on the merits by internalizing the révision au fond prohibition with an arbitration-friendly approach[16]; whereas, the 15th Civil Chamber might act in an opposite way in some exceptional cases[17].

The contradiction between the Civil Chambers is fully revealed, once again, with the decision dated 05.03.2019 of the 15th Civil Chamber[18]. In the mentioned decision, it states that one of the parties no longer had the right to resort to arbitration for resolution of the dispute, since the other party had commenced bankruptcy proceedings, despite a valid arbitration agreement existing and, therefore, the arbitration objection must be dismissed.

The Chambers of the Court of Cassation accurately abandoned this view a very long time ago. For instance, the 23rd Civil Chamber ruled that where the creditor, who is a party to the arbitration agreement, commences a bankruptcy proceeding, it must prove the existence of their receivables with a decision obtained from the arbitral tribunal, not from the court, in its decision dated 28.06.2013[19].

Fortunately, the 15th Civil Chamber's decision remains to be an exception. Based on past experiences and precedents, we evaluate, as a remote possibility, that the courts and other Chambers of the Court of Cassation would adopt this discrete decision, since the 15th Civil Chamber's above-explained decision means that the arbitration agreement, which is formed by the mutual intent of both sides, could be abolished by the will of a single party.

As is clear, the lack of specialization, which is admitted by the judges of Court of Cassation, may result in decisions that may impede the development of arbitration in Turkey, which is perceived as a "must" by both the judiciary bodies and the business world. Therefore, it is strongly recommended that any types of disputes that are related to arbitration are heard before the same Civil Chamber, irrespective of the features of agreement or commercial relation subject to the dispute. Only when a single chamber is assigned for arbitration-related-disputes, will it be possible to issue foreseeable decisions that will complete each other, and which will comply with contemporary practices. This would play a crucial role, particularly in Istanbul's aim to become an arbitration centre[20].

c. Arbitral Awards That Are Seated In Turkey

Only an action for cancellation (setting aside) can be filed against the arbitral awards that are subject to either IAL or the CPC. Cancellation actions are heard before the Regional Court of Appeal in the name of first instance courts. This examination, in principle, is made on file and without holding a hearing.

Just like the refusal of enforcement actions, acceptance of cancellation actions may only be the case in limited circumstances. Also, in cancellation actions, the courts do not examine the correctness of the arbitral award. Arbitral awards are vacated only if there are manifest mistakes, such as the arbitral tribunal exceeds its authority, or rendering an award in the absence of arbitration agreement.

Although cancellation actions automatically stay the enforcement of arbitral awards that are subject to the IAL, it does not stay the enforcement of arbitral awards that are subject to the CPC. In the latter case, enforcement of awards may only be stayed upon the request of a party, and upon providing security sufficient to cover the granted compensation.

As per the IAL, a document suggesting that the arbitral award is enforceable may be requested from the court, in the event that the cancellation action is waived, the parties did not file a cancellation action in time, or a cancellation action is rejected. This document is required and sufficient for the enforcement of the arbitral award just with as a court judgment. However, if no cancellation action is filed in time, the court, dealing with an enforceability document request, examines whether the dispute that is subject to an arbitral award is arbitrable, and whether the award is in compliance with the public order.

According to Article 6 of the IAL, which is also applicable where the seat is outside of Turkey, the arbitrators are entitled to order provisional injunctions and seizures, upon the request of one of the parties. It is possible to obtain support from the Turkish courts, or to use the executive power of the state, against the party who does not voluntarily comply with the decision. The parties also have the right to request interim measures directly from the Turkish courts, as per the provisions of the CPC and EBL. Recent case-law underlines that the parties may request interim legal measures from the courts, not only prior to and during the arbitration proceedings, but also during the enforcement and cancellation actions, to secure the enforcement of the arbitral awards in the future. The courts' interim measures are automatically lifted when the arbitral award becomes enforceable.

If a cancellation action is filed, the last step that must be exhausted prior to an arbitral award becoming enforceable is the appeal examination. As in enforcement cases, appeals that are before the Court of Cassation are not examined by a specialized chamber, but by the chambers that are competent in respect of the subject matter related to the dispute. Presence of the contradictions mentioned, above, between the Court of Cassation's n on the cancellation requestandecisions may cause parties to hesitate when determining Turkey as the seat of arbitration. However, it is a noteworthy development that the Turkish courts are becoming more at peace with arbitration as time passes, and may internalize the révision au fond prohibition, rather than certain exceptions.

d. ISTAC's Foundation, Practice and Future

The Istanbul Arbitration Center ("ISTAC") is a relatively young arbitration centre as compared to arbitration centres that have proven their adequacies in international arbitration practice and has acquired a certain popularity. The ISTAC, founded in 2015, offers an efficient and trustworthy

dispute resolution mechanism, not only for local disputes, but also for international disputes. Considering that there were 27 new disputes registered before ISTAC in 2018, and 45 disputes in 2019, the process made by the ISTAC within a short period time is, indeed, promising.

ISTAC rules are heavily inspired by the ICC Arbitration Rules, in particular; since one of the purposes of the ISTAC is to establish an arbitration environment that is familiar to the international business world.

In arbitration proceedings under the ISTAC Rules, unless otherwise decided, the parties are deemed to have agreed upon the following:

- Istanbul shall be the seat of arbitration;
- The arbitration shall be confidential;
- It is at the ISTAC's discretion to decide whether the arbitration shall be conducted by a sole arbitrator, or by an arbitral tribunal that is comprised of three arbitrators;
  It is possible to apply for an Emergency Arbitrator;
- An Expedited Arbitration Procedure shall apply to the disputes that are less than TRY 300.000.

The expedited procedure aims to resolve the disputes by a sole arbitrator within three months after the application. Unlike the standard arbitration procedure, shorter times are stipulated for the exchange of petitions. And it is possible to extend this three-month period upon the requests of the parties, or the arbitrator, and with ISTAC's decision.

Applying for an Emergency Arbitrator is the mechanism that ensures temporary legal protection for the parties when it is not possible to await the appointment of a sole arbitrator, or constitution of the arbitral tribunal. Following the receipt of the application by the Secretariat of the ISTAC, an Emergency Arbitrator is appointed within two days, and the Emergency Arbitrator renders a decision within seven days. This decision may be revised or reversed completely by the sole arbitrator, or by the arbitral tribunal that is assigned over the main case, ex officio, or upon the parties' request.

Unlike the ICC, the ISTAC directly shares the awards with the parties, without the scrutiny. The main reason for this choice is the intention to minimize the arbitration expenses and duration. For the same reason, the ISTAC does not have the authority to approve the arbitrators appointed by the parties, nor does it conduct any preliminary examination pertaining to the presence and validity of the disputed arbitration agreement.

One of the most prominent advantages of the ISTAC as compared to other arbitration institutions is its low arbitration expenses. The ISTAC provides a cost calculation on its official web site, and its expenses vary based on the amount in dispute. Considering alternative scenarios, the list of ISTAC expenses is as follows:

Amount in Dispute	TRY 10.000.000	TRY 50.000.000	TRY 100.000.000
Administrative Costs	TRY 46.500	TRY 86.500	TRY 126.500
Fees for Sole Arbitrator	TRY 213.000	TRY 413.000	TRY 463.000
Fees for Arbitral Tribunal	TRY 363.000	TRY 763.000	TRY 1.013.000

It must be noted that the ISTAC has been established with the efforts and initiative of the state for rendering Istanbul a regional, and even a global centre of trade. In that vein, it has been stipulated that ISTAC arbitrations may be adopted as an alternative to state litigation, in respect of the standard contracts of the Public Procurement Authority. Although these have contributed to the arbitration environment in Turkey, and the successful introduction of the ISTAC, the ISTAC must eliminate any doubt concerning its independence from the state. When this is evaluated, together with the business world's inevitable concerns regarding a newly established arbitration centre, the ISTAC has a long way to go to be accepted in the world of arbitration. However, the accomplishments gained by the ISTAC throughout its short history shows that it enjoys the return of its efforts.

4. Criminal Litigation

a. In General

The Turkish criminal litigation system is comprised of the Criminal Courts of First Instance that have general jurisdiction, the Heavy Penal Courts, and the Specialized Courts (such as Juvenile Courts, or Criminal Courts of Intellectual and Property Rights). The Magistrates Court does not operate as a court, but renders decisions as to remand, search warrants, arrest and detention, and examines the objections against Non-Prosecutorial Decisions issued by public prosecutors.
In parallel with our explanations under Section 1(a), above, the courts examining the decisions rendered by the first instance courts in respect of criminal litigation are the Regional Courts of Appeal and the Court of Cassation.

The public prosecutors mainly control the investigation phase of crimes. The public prosecutors investigate allegations through the support of the police forces. With regard to crimes that are specified to be prosecuted upon complaints as per the Criminal Act numbered 5237, the public prosecutors are not entitled to commence an investigation and initiate a criminal action through their own motion, unless the victim/complainant/offended persons file a complaint. However, the public prosecutors may commence a criminal action upon the investigation conducted through their own efforts, regarding any and all crimes that are prosecuted without complaint. If a sufficient reason for filing a criminal action is not found, the public prosecutors render a non-prosecutorial (nolle prosequi) decision. In contrast, they commence a public action, and proceed to the trial phase by issuing an indictment, if they conclude that a crime has been committed.
Last, but not least, to decrease the workload of the courts and to assist in resolving cases faster, the "Expedited Procedure" and "Simple Procedure" have been introduced in the criminal litigation system with changes made in 2019. Only the catalogued crimes stated under the relevant provisions of law fall within the scope of expedited procedure, on the condition that the accused person gives consent to such practice in the presence of his/her attorney; whereas the simple procedure will apply to crimes that require a judicial fine, and/or imprisonment for a maximum of two years.

b. Criminal Litigation in the Scope of White-Collar Crimes

With the diversified economic relations in today's world, the number of rules regulating these relations, and naturally, the number of breaches of these rules have begun to increase. White-collar crimes are defined as "the crimes committed by those who have a high reputation and social status while performing their work[21]."

Amongst the crimes committed against companies the crimes, against the company's assets or its economic values, comes into mind in the first place: namely, stealing the company's belongings by its employees; taking the company properties allocated by the company, by the executives or employees; or fraud committed by means of fraudulent transactions conducted in the company records. Since perpetrators in such cases work at executive positions at the aggrieved companies, these acts causing economic damage, such as fraud or embezzlement, are called "white-collar" crimes.

There is no bag bill stipulating all the white-collar crimes under a single law in Turkish criminal legislation, and there is not a sole authority or court that is granted with the power to investigate these crimes.

For embezzlement[22] to occur, the possession or the power of disposal of a certain asset, or the authority and control to perform a legal act on a property, must be transferred with legally valid consent (paragraph 1). The actions of company managers, who have been granted representation powers, with the intention of generating personal benefit by using their powers, which is also considered to be embezzlement against the company, may be sentenced to imprisonment for up to seven years (paragraph 2). It must be kept in mind that the acts stipulated under the first paragraph for embezzlement are prosecuted upon complaint, the second paragraph stipulates the qualified version of the offence, and the acts provided under both paragraphs are subject to mediation before public prosecutors. In fraud, on the other hand, the offender deceives the counterparty with fraudulent acts[23]. In this regard, as an example, a money transfer from company accounts to personal accounts that is conducted by authorized signatories would constitute embezzlement, whereas such act would fall within the scope of fraud in the event that it is committed by means of fraud in the company accounts. In particular, Article 158/h of the Turkish Criminal Act stipulating the acts committed "during the commercial activities of merchants or executive officers of a company, or of those acting on behalf of a company, or in the scope of the cooperative activities conducted by executive officers of the cooperative," applies to these types of crimes.

The most challenging part of the investigations related to such crimes is to convince the public prosecutor that the conflict is not just a commercial dispute but, as a matter of fact, involves criminal elements. Sometimes the public prosecutors tend to render non-prosecutorial decisions by concluding that the subject matter of the case is only a commercial dispute. For that reason, it is crucial for companies to have internal investigation practices in place, and to implement such procedures fully, and in compliance with the law. Appropriate conduct of internal practices would help the companies to make a stronger impression on the public prosecutors.

On the other hand, bribery[24] is stipulated under "Offenses against the Reliability and Functioning of the Public Administration" section of the Turkish Criminal Act, and the wording of the relevant Article is consistent with international standards. This is because Turkey is currently a party to almost all of the international conventions combating corruption, including the UN Convention against Corruption. In the meantime, Turkey is under constant supervision and pressure of the OECD and the Group of States against Corruption (GRECO) of the Council of Europe, and is being guided towards taking the necessary steps for combating corruption, in light of the requests and advice of these institutions. Currently, the Article stipulates that "Those who provide, directly or by other means, an undue advantage to a public officer or another person indicated by the public officer to perform or not perform a task related to his/her duty shall be sentenced to imprisonment from four years up to twelve years."

Although the relevant Article includes provisions as to offering a bribe to a foreign public officer, or bribery within the private sector, it is criticized due to its narrow scope and the low number of implementations, in general.

Furthermore, Article 164 of the Turkish Criminal Act states that company executives' misinformation to the public constitutes an offence. As per the relevant Article, if the founders, partners, managers, directors or representatives, or the members of the Board of Directors or the Board of Internal Audit, or those who act as liquidators give, or cause others to give, false and important information in their statements to the public or their reports or recommendations, presented to the general assembly that might cause damage to those concerned, shall be sentenced to imprisonment from between six months and three years, or a judicial fine will be imposed up to one thousand days. It is sufficient for this crime to have occurred when information is presented as being correct, despite being aware that it is wrong. For example, showing false balance sheet figures or announcing unreal profits.

c. Sanctions

Lastly, it is worth mentioning that the principle of individual criminal responsibility applies to sanctions in the Turkish criminal law system. Therefore, it is extremely crucial to detect who has actually committed the crime, who has benefitted from the crime, and how. For that reason, we advise that the internal directive of the company should set forth a clear distribution of authority, and irrelevant executives must not be included in the investigation process.

In the event that certain crimes are committed to the company's benefit, the companies may encounter serious, but rarely imposed, security measures and administrative fines. As per Article

60 of the Turkish Criminal Act, where the managers and/or authorized representatives of a legal entity operating under a license or permit granted by a public authority commit a crime by abusing such license or permit for the benefit of the legal entity, the license or permit shall be cancelled, and the profit realized from the crime shall be confiscated.

That being said, as per Act numbered 5326 on Misdemeanours, it sets forth that if an organ, representative, or anyone acting within the scope of the legal entity's operational activity, commits crimes such as bribery, fraud, money laundering, or collusive tendering, the joint-stock and limited companies shall be penalized with an administrative fine up to two million Turkish Lira, the amount of which is updated each year. (Article 43/A)

Referances

1. "Proposal on Law Amending the Civil Procedure Code and Several Laws" has been presented on 20.03.2020.
2. Judiciary Reform Strategy Document, May 2019, page 14.
3. Statistics on Mediation As A Cause of Aciton In Employment Disputes; http://www.adb.adalet.gov.tr/Sayfalar/istatistikler/istatistikler/davasarti.pdf
4. Ziya Akıncı, Milletlerararası Tahkim, 2016, page 337.
5. Necla Öztürk, Arabuluculuğun Milletlerarası Özel Hukuk Boyutu: Genel Bakış, 2015, page 236; also see Timothy Schnabel, The Singapore Convention on Mediation: A Framework for the Cross Border Recognition and Enforcement of Mediated Settlements;
6. https://uncitral.un.org/en/texts/mediation/conventions/international_settlement_agreements/status; also see. https://istac.org.tr/arabulucuda-cozulemeyen-ticari-davalar-istac-tahkiminde-sonuclanacak/
7. The Convention has been ratified by Fiji, Qatar, Suudi Arabia and Singapure as of 29.05.2020.
8. (Timothy Schnabel, The Singapore Convention on Mediation: A Framework for the Cross Border Recognition and Enforcement of Mediated Settlements)
9. ICC Turkey Arbitration Day, 2018, page 30.
10. ICC Turkey Arbitration Day, 2018, page 98.
11. In the case numbered 2014/19-1090 E., subject to the decision numbered 2016/819 K. dated 15.06.2016 of General Assembly of the Court of Cassation , the dispute was concentrated on "whether the competent court was the commercial court, or the civil court". The General Assembly ruled that the competent court for the enforcement request was the Commercial Court of First Instance, by underlining that there is a competence relation between the civil court and the commercial courts, under the roof of "commercial courts", and that the dispute was arising from a commercial sale, parallel to the decision of the 19th Civil Chamber.
12. Court of Cassation 6th Civil Chamber. 2014/3906 E. 2014/4941 K.
13. ICC Turkey Arbitration Day, 2018, page 94; also see. ICC Turkey Arbitration Day, 2018, page 77;
14. ICC Turkey Arbitration Day, 2018, page 94;
15. Hakan Pekcanıtez; ICC Turkey Arbitration Day, 2018, page 115; also see. Ziya Akıncı, Milletlerarası Tahkim (International Arbitration), 2016, page 338.
16. 11th Civil Chamber, 22.06.2016; E. 4931, K. 6886; 19th Civil Chamber. 01.04.2015; E. 2014/7797, K. 2015/4744.
17. ICC Turkey Arbitration Day, 2018, page 95; see. 15th Civil Chamber. 25.10.2010, E. 2409, K. 5637.
18. Decision numbered 2018/2228 E. ve 2019/950 K.
19. Decision numbered 2013/4113 E. ve 2013/4498 K.
20. Ziya Akıncı, Milletlerarası Tahkim, 2016, page 238.
21. Payne, Brian K. (2011), White-Collar Crime, USA: Los Angeles, Sage Publications Inc.
22. Article 155 of Turkish Criminal Act
23. Article 157 of Turkish Criminal Act
24. Article 252 of Turkish Criminal Act

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