International
Comparative
Legal Guides

Practical cross-border insights into international arbitration work

International Arbitration 2022

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1 Arbitration Agreements

1.1 What, if any, are the legal requirements of an arbitration agreement under the laws of your jurisdiction?

Under Turkish law, the legal requirements of an arbitration agreement consist of substantive and formal requirements. As to the formal requirements, an arbitration agreement must be in writing. The writing requirement is widely interpreted, and an agreement is deemed written if it meets one of the following conditions:

- In a document signed by the parties.
- Recorded in letters, telex, telegrams or other means of telecommunication exchanged between parties.
- Recorded in electronic media.
- Not objected to by the counterparty to the court or arbitration petition of which the existence of an agreement is alleged.
- Reference is provided to a document containing an arbitration clause with the aim of making it a part of the original contract.

In terms of the substantive requirements, an arbitration agreement must:

- Be agreed for a specific or determinable dispute that will arise or has already arisen out of a legal relationship, whether or not it originated from an agreement.
- Explicitly show the clear consent of the parties to arbitrate.
- Be concluded regarding a matter that is arbitrable.

1.2 What other elements ought to be incorporated in an arbitration agreement?

The secondary elements that parties may determine in an arbitration agreement which would avoid conflict in the prospective proceedings are the place of arbitration, number of arbitrators, language of arbitral proceedings, law applicable to the arbitration agreement, procedural rules applicable to the arbitral proceedings and law applicable to the merits of the dispute. The parties marginally agree on procedure of document submission, confidentiality, distribution of the costs and fees, duration of arbitration, and arbitrator's qualifications.

1.3 What has been the approach of the national courts to the enforcement of arbitration agreements?

The Turkish courts of first instance, the Regional Court of Appeals and the Court of Cassation favour arbitration objections duly made on the basis of a valid arbitration agreement.

2 Governing Legislation

2.1 What legislation governs the enforcement of arbitration proceedings in your jurisdiction?

Arbitration proceedings are governed by different laws: the International Arbitration Law No. 4686 ("IAL"); or Civil Procedural Law No. 6100 ("CPL").

2.2 Does the same arbitration law govern both domestic and international arbitration proceedings? If not, how do they differ?

The IAL governs international arbitration proceedings that have an international element and in which the seat of arbitration is Turkey. The IAL also governs arbitration proceedings where the parties agreed or the arbitral tribunal determined its application.

The CPL governs domestic arbitration proceedings. It is applicable to arbitration proceedings where the seat is Turkey with no international element, as defined in the IAL.

2.3 Is the law governing international arbitration based on the UNCITRAL Model Law? Are there significant differences between the two?

The IAL is substantially based on the UNCITRAL Model Law ("UML"). The IAL is inspired by chapter 12 of the Swiss Federal Code on Private International Law ("CPIL"), where it differs from the UML.

The IAL differs considerably from the UML, with the former having different regulation as to the scope of application, determining the law applicable to the merits of the dispute. The IAL has also enacted additional provisions related to interim measures, language of the proceedings, duration of the proceedings, terms of reference, etc.

2.4 To what extent are there mandatory rules governing international arbitration proceedings sited in your jurisdiction?

The mandatory rules aligned under the IAL are as follows:

- The number of arbitrators must be uneven.
- The parties must be given equal rights and powers in the arbitration proceedings.
- If a party requested interim relief from court before commencing arbitration proceedings, the proceeding must

be commenced within 30 days, otherwise the interim relief shall be removed automatically.
- The award must include the elements aligned in the law.
- An action for the setting aside of an arbitral award can be filed within 30 days.

3 Jurisdiction

3.1 Are there any subject matters that may not be referred to arbitration under the governing law of your jurisdiction? What is the general approach used in determining whether or not a dispute is "arbitrable"?

In general, disputes that are not subject to the parties' intention are determined as not arbitrable subject matters. Disputes arising from the rights *in rem* on immovable property located within Turkey are also regulated as not arbitrable.

In accordance with the Court of Cassation decisions, the following are also deemed not arbitrable:
- criminal law-related disputes;
- disputes related to cancellation of title deed registration;
- disputes falling within the jurisdiction of the administrative courts;
- disputes concerning public policy;
- disputes related to employment law (unless the dispute is related to the termination of an employment contract);
- bankruptcy proceedings; and
- disputes related to cancellation of general assembly meetings and dissolution of a company.

3.2 Is an arbitral tribunal permitted to rule on the question of its own jurisdiction?

Yes, the *kompetenz-kompetenz* principle applies and the arbitral tribunal may decide on its own jurisdiction, including determining the objections as to the existence and validity of the arbitration agreement.

3.3 What is the approach of the national courts in your jurisdiction towards a party who commences court proceedings in apparent breach of an arbitration agreement?

The court of first instance will review the existence and validity of the arbitration agreement if the arbitration objection is duly alleged a preliminary objection by the respondent. Otherwise, the court cannot issue competence of the arbitral tribunal *ex officio* despite the presence of a valid and existing arbitration agreement.

Upon an objection to arbitration, if the court finds that there is a valid and existing arbitration agreement, the court will dismiss the case on procedural grounds.

3.4 Under what circumstances can a national court address the issue of the jurisdiction and competence of an arbitral tribunal? What is the standard of review in respect of a tribunal's decision as to its own jurisdiction?

The arbitral tribunal's jurisdiction and competence can be reviewed by the Regional Court of Appeals if the arbitral award is challenged in an action for setting aside. The court will fully review the jurisdiction of the arbitral tribunal.

The court of first instance makes a *prima facie* review of the jurisdiction and competence of the arbitral tribunal by reviewing the existence and validity of the arbitration agreement if a party brings a lawsuit despite the presence of an arbitration agreement, and the arbitration objection is duly alleged a preliminary objection by the respondent. Also, a *prima facie* review of the jurisdiction and competence of the arbitral tribunal is possible if the court's assistance is requested in appointing arbitrators, ordering interim measures or collecting evidence.

Jurisdiction and competence of a foreign arbitral tribunal may be examined in cases brought for enforcement of the foreign arbitral awards under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("NYC").

3.5 Under what, if any, circumstances does the national law of your jurisdiction allow an arbitral tribunal to assume jurisdiction over individuals or entities which are not themselves party to an agreement to arbitrate?

As to the privity of the contract, an arbitration agreement binds only the parties who give their consent to arbitrate. If the individual or entities not party to the arbitration agreement give their clear consent to the arbitration agreement or do not object to arbitration, the arbitration agreement may be extended to them.

The subject being very controversial, it has also been debated whether jurisdiction over a third party may be extended where the group of companies' doctrine applies, there is a possibility to pierce the corporate veil, or there is succession, guarantee liability, or evidence of contradictory behaviour.

3.6 What laws or rules prescribe limitation periods for the commencement of arbitrations in your jurisdiction and what is the typical length of such periods? Do the national courts of your jurisdiction consider such rules procedural or substantive, i.e., what choice of law rules govern the application of limitation periods?

Limitation periods are governed by the substantive law, and the law applicable to the merits of the dispute governs the application of such limitation periods. The general length of the limitation period is 10 years. However, shorter lengths apply depending on the nature of the legal relationship giving rise to the dispute.

3.7 What is the effect in your jurisdiction of pending insolvency proceedings affecting one or more of the parties to ongoing arbitration proceedings?

The Enforcement and Bankruptcy Code stipulates that pending civil legal proceedings where the insolvent party is the claimant or respondent must stay until the 10th day from the creditors' meeting, unless the matter is urgent. Limitation periods do not run during the stay of proceedings. The arbitration proceedings are not foreseen clearly under the law – this may also be applicable for domestic arbitration.

4 Choice of Law Rules

4.1 How is the law applicable to the substance of a dispute determined?

The parties may freely choose the law applicable to the substance of the dispute. Failing that, the arbitral tribunal will decide on the application of the law which they deem to have the closest relationship to the dispute.

4.2 In what circumstances will mandatory laws (of the seat or of another jurisdiction) prevail over the law chosen by the parties?

Turkish public order may be considered if the seat of arbitration is Turkey, since in the future, it may be subject to an action for setting aside of the award in Turkey. Similarly, Turkish public order may be considered if the enforcement country of a foreign arbitral award is Turkey.

4.3 What choice of law rules govern the formation, validity, and legality of arbitration agreements?

The choice of law of the parties to be applicable for the arbitration agreement shall govern the formation, validity, and legality of arbitration agreements. Failing that, Turkish law shall be the governing law.

5 Selection of Arbitral Tribunal

5.1 Are there any limits to the parties' autonomy to select arbitrators?

The procedure for the selection of the arbitration is subject to the parties' agreement, provided that the number of arbitrators is uneven.

5.2 If the parties' chosen method for selecting arbitrators fails, is there a default procedure?

There shall be three arbitrators.

If the parties' chosen method for selecting arbitrators fails, the civil court of first instance will appoint the arbitrators at the request of a party.

5.3 Can a court intervene in the selection of arbitrators? If so, how?

If a sole arbitrator is to be appointed and the parties cannot agree on one, the arbitrator is appointed by the court at the request of a party.

If the parties decide on the appointment of three arbitrators, each party shall appoint one arbitrator, who shall in turn appoint the chair. If the parties decide on the appointment of five or more arbitrators, each party shall appoint the arbitrators, who will in turn appoint the last arbitrator equally.

Pursuant to the CPL and the IAL, the claimant will appoint an arbitrator by notifying the respondent, and respondent in turn shall appoint an arbitrator within one month or 30 days, respectively. If the respondent does not appoint an arbitrator, or if the two appointed arbitrators fail to agree on the third arbitrator within one month (CPL) or 30 days (IAL) of their appointment, the appointment shall be made by the court upon the request of a party.

If the parties' chosen method for selecting arbitrators fails, the court will appoint the arbitrators at the request of a party.

5.4 What are the requirements (if any) imposed by law or issued by arbitration institutions within your jurisdiction as to arbitrator independence, neutrality and/or impartiality and for disclosure of potential conflicts of interest for arbitrators?

An appointed arbitrator shall explain the facts that may give rise to suspicion regarding their impartiality and independence before accepting their duty as arbitrator, and shall also notify the parties regarding any facts that later arise.

The Istanbul Arbitration Centre ("ISTAC") regulates the requirements of an arbitrator's independence and impartiality. According to the ISTAC Arbitration and Mediation Rules, the arbitrator shall sign and submit to the Secretariat a statement of impartiality and independence within seven days of accepting the duty. Both before accepting the duty and during arbitration proceedings, the arbitrator shall disclose in writing to the Secretariat the facts that may give rise to suspicion with regard to their impartiality and independence.

6 Procedural Rules

6.1 Are there laws or rules governing the procedure of arbitration in your jurisdiction? If so, do those laws or rules apply to all arbitral proceedings sited in your jurisdiction?

The parties are free to choose the law or rules to apply to the arbitral proceedings, irrespective of the seat of arbitration. Failing that, Turkish law shall govern the arbitration proceedings if the arbitration is seated in Turkey.

The laws governing the procedure of arbitration are the IAL and CPL – please see question 2.2.

There are separate institutions regulating the rules of arbitral proceedings:

- The ISTAC Arbitration and Mediation Rules (applicable upon agreement of the parties).
- The Istanbul Chamber of Commerce Arbitration and Mediation Center ("ITOTAM") Arbitration 2021 Rules (which shall apply in commercial disputes where the parties to such dispute so agree or the arbitral tribunal so decides).
- The Union of Chambers and Commodity Exchanges of Turkey ("TOBB") Arbitration Rules (which shall apply to disputes that arise out of commercial and industrial transactions between Turkish companies, Turkish companies and foreign companies, and between foreign companies, where such Rules have been chosen in the relevant arbitration agreement).
- The İzto Arbitration Rules (applicable where the arbitration procedures concern disputes arising in connection with agreements between members of the İzmir Chamber of Commerce, or when a party is a member of the İzmir Chamber of Commerce, if the arbitration agreement is included in such agreements).
- The Union of Turkish Bar Associations Arbitration Center Rules (which are regulated to be applicable to all national and international disputes that are arbitrable, and especially to disputes arising from attorney fee agreements and disputes between attorneys).

6.2 In arbitration proceedings conducted in your jurisdiction, are there any particular procedural steps that are required by law?

The parties are free to determine the particular procedural steps to apply to the arbitral proceedings. Equal treatment of the parties is the limit to this freedom, in order to provide the parties with the reciprocal right to be heard before the tribunal and the international public order rules on the procedure.

6.3 Are there any particular rules that govern the conduct of counsel from your jurisdiction in arbitral proceedings sited in your jurisdiction? If so: (i) do those same rules also govern the conduct of counsel from your jurisdiction in arbitral proceedings sited elsewhere; and (ii) do those same rules also govern the conduct of counsel from countries other than your jurisdiction in arbitral proceedings sited in your jurisdiction?

There are no particular rules governing the conduct of counsel in arbitration proceedings. However, Turkish counsel must abide by the Lawyers Code of Conduct of the Bar Association. Turkish lawyers are also bound by the Code of Conduct of European Lawyers.

6.4 What powers and duties does the national law of your jurisdiction impose upon arbitrators?

Arbitrators must be impartial and independent. An appointed arbitrator shall explain the facts that may give rise to suspicion regarding their impartiality and independence before accepting their duty as arbitrator, and will also notify the parties regarding any facts that may arise later. Arbitrators are under obligation to perform their duties.

6.5 Are there rules restricting the appearance of lawyers from other jurisdictions in legal matters in your jurisdiction and, if so, is it clear that such restrictions do not apply to arbitration proceedings sited in your jurisdiction?

Admission as a lawyer in Turkey is determined under the Attorneys' Act. Foreign lawyers may only provide legal counselling on foreign law matters and international law matters. These restrictions do not cover the arbitration proceedings seated in Turkey. The parties are free to select lawyers from foreign jurisdictions as arbitrators or counsel.

6.6 To what extent are there laws or rules in your jurisdiction providing for arbitrator immunity?

There are none. Pursuant to the CPL and IAL, unless agreed otherwise by the parties, if an arbitrator fails to perform their duty without valid reason, they shall be responsible for the damage incurred by the parties.

6.7 Do the national courts have jurisdiction to deal with procedural issues arising during an arbitration?

National courts do not interfere in arbitral proceedings except to provide assistance, such as with the nomination of arbitrators, challenge of arbitrators, extension of the arbitration period, collecting evidence, and ordering of interim measures and attachments, at the request of a party.

7 Preliminary Relief and Interim Measures

7.1 Is an arbitral tribunal in your jurisdiction permitted to award preliminary or interim relief? If so, what types of relief? Must an arbitral tribunal seek the assistance of a court to do so?

Unless otherwise agreed by the parties, the arbitral tribunal may order interim relief or a precautionary attachment order at the request of a party. The arbitral tribunal does not need to seek the assistance of a court to do so.

However, the arbitral tribunal cannot order interim relief or attachment that must be exercised by other official authorities or that binds a third party.

7.2 Is a court entitled to grant preliminary or interim relief in proceedings subject to arbitration? In what circumstances? Can a party's request to a court for relief have any effect on the jurisdiction of the arbitration tribunal?

The court is entitled to grant interim relief before or during arbitration proceedings at a party's request. If a party requested interim relief from the court before commencing arbitration proceedings, the arbitration proceedings shall be commenced; otherwise, the interim relief shall be removed automatically.

A party may also request relief from the court if the other party does not fulfil the order of relief made by the arbitral tribunal. The order of relief made by the court at a party's request shall be removed automatically when the arbitral award becomes enforceable, or the arbitral proceeding is dismissed by the arbitral tribunal.

A party's request to a court for relief does not have any effect on the jurisdiction of the arbitration tribunal.

7.3 In practice, what is the approach of the national courts to requests for interim relief by parties to arbitration agreements?

The parties may apply to state courts for interim relief and the courts will hear this request; this shall not constitute an impediment to the validity of the arbitration agreement.

7.4 Under what circumstances will a national court of your jurisdiction issue an anti-suit injunction in aid of an arbitration?

There is no provision restricting a Turkish court from ruling on an anti-suit injunction.

7.5 Does the law of your jurisdiction allow for the national court and/or arbitral tribunal to order security for costs?

Under the IAL, the arbitral tribunal may ask the claimant to deposit security for costs. If the security is not provided within the time limit, the tribunal may decide on the stay of the proceedings. If the security is not deposited within 30 days of the stay order being notified to the parties, the proceedings will be terminated.

As to the CPL, the arbitral tribunal may ask the parties to deposit security for costs. Unless otherwise agreed, the security is paid in equal share by the parties. If the security is not provided within the time limit, the tribunal may decide on the stay of the proceedings. If the security is not deposited within one month of the stay order being notified to the parties, the proceedings will be terminated.

7.6 What is the approach of national courts to the enforcement of preliminary relief and interim measures ordered by arbitral tribunals in your jurisdiction and in other jurisdictions?

The arbitral tribunal may seek assistance from the national

courts when a party does not voluntarily comply with an interim measure decision.

The preliminary relief orders granted by the arbitral tribunals or by the courts in other jurisdictions may not be enforced in Turkey unless the decision is final and binding on the parties and the award is duly enforced.

8 Evidentiary Matters

8.1 What rules of evidence (if any) apply to arbitral proceedings in your jurisdiction?

The IAL and the arbitration chapter of the CPL regulate the rules of evidence to apply to arbitral proceedings.

8.2 What powers does an arbitral tribunal have to order disclosure/discovery and to require the attendance of witnesses?

According to Turkish law, an arbitral tribunal may appoint experts and request the parties to provide related documents and information to the experts, unless otherwise agreed between the parties in relation to the collection of evidence.

The arbitral tribunal has limited powers and can obligate neither the attendance of a witness nor the third party to give information. The assistance of the national courts may be requested for the collection of evidence.

8.3 Under what circumstances, if any, can a national court assist arbitral proceedings by ordering disclosure/discovery or requiring the attendance of witnesses?

The arbitral tribunal may seek assistance from the court in the collection of evidence. The court will apply the provisions of the CPL.

The national court may assist arbitral proceedings by ordering disclosure of a document, or requiring the attendance of witnesses at the request of the arbitral tribunal. There is no discovery process foreseen under Turkish law in the sense of common law.

8.4 What, if any, laws, regulations or professional rules apply to the production of written and/or oral witness testimony? For example, must witnesses be sworn in before the tribunal and is cross-examination allowed?

The production of witness testimony and cross-examination is permitted under the IAL. The parties may request the tribunal to hear the expert or witness during a hearing. In national courts, a fact witness must be sworn in, but such rule is not followed under the IAL.

8.5 What is the scope of the privilege rules under the law of your jurisdiction? For example, do all communications with outside counsel and/or in-house counsel attract privilege? In what circumstances is privilege deemed to have been waived?

The IAL does not provide for any privilege rules. Turkish lawyers registered to the Bar have an obligation of attorney-client privilege. Also, a lawyer cannot be forced to give testimony against their client. Privilege will be deemed to have been waived if the right holder has given clear consent to the waiver. Under Turkish law, prior waiver from a right that has not yet arisen is not permitted.

9 Making an Award

9.1 What, if any, are the legal requirements of an arbitral award? For example, is there any requirement under the law of your jurisdiction that the award contains reasons or that the arbitrators sign every page?

As per the IAL, the arbitral awards must include the following:

- names, surnames, titles and addresses of the parties and their counsel, if any;
- legal grounds of the decision and justifications, and amount of compensation awarded;
- place of arbitration and date of the award;
- names, surnames, signatures and counter votes of the arbitrator or arbitral tribunal; and
- statement setting out that action for the setting aside of the award may be pursued.

9.2 What powers (if any) do arbitral tribunals have to clarify, correct or amend an arbitral award?

Under the IAL, each party, within 30 days of receipt of the award and with notice to the other party, may request from the arbitral tribunal a correction of errors in fact, such as of a calculation or typo, or the interpretation of the award entirely or partially. If the arbitral tribunal considers the request to be justified after receiving the opinion of the other party, it shall make the correction or give the interpretation within 30 days of receipt of the request. The arbitral tribunal may correct an error in fact automatically within 30 days of receipt of the award.

10 Challenge of an Award

10.1 On what bases, if any, are parties entitled to challenge an arbitral award made in your jurisdiction?

A party can challenge an arbitral award on the following grounds (if):

- A party to the arbitration agreement is under incapacity or the arbitration agreement is not valid under the applicable law agreed between the parties, or if the arbitration agreement is invalid failing a choice of law, under Turkish law.
- The appointment of the arbitrators or the arbitral tribunal has not occurred in line with the IAL or the procedure agreed between the parties.
- The award is not rendered within the term of the arbitration.
- The arbitrators have determined their competence or incompetence against what is set out in the IAL.
- The award is rendered on a subject that is not covered by the arbitration agreement, the claims are considered partially, or the arbitrators exceeded their authority.
- The arbitral proceedings were not conducted in line with the agreement of the parties as to the procedure, or failing an agreement as per the IAL, which as a result has affected the substance of the award.
- The principle of equality of the parties has not been respected.

Revision au fond of the arbitral award is prohibited under Turkish law. If the court determined that the subject matter

of the arbitral award is considered non-arbitrable under Turkish law, or the arbitral award is in contradiction with public order, the award may be set aside by the court *ex officio*.

10.2 Can parties agree to exclude any basis of challenge against an arbitral award that would otherwise apply as a matter of law?

The parties may completely or partially waive their right to file an action for setting aside an arbitral award, provided that their place of business is outside of Turkey.

In any case, waiver is not possible for the grounds of setting aside of the award that will be determined *ex officio* by the court. The existence of these reasons will be determined by the court while requesting an enforceability certificate for the award.

10.3 Can parties agree to expand the scope of appeal of an arbitral award beyond the grounds available in relevant national laws?

No, they cannot.

10.4 What is the procedure for appealing an arbitral award in your jurisdiction?

An action for setting aside must be filed within 30 days from the notification of the arbitral award or the corrected arbitral award if a correction or interpretation of the award is requested by either party. The appeal shall be made before the regional court of appeals at the place of residence or business of the respondent. The Istanbul Regional Court of Appeals has jurisdiction if the respondent does not have a residence or an ordinary residence or business address in Turkey.

11 Enforcement of an Award

11.1 Has your jurisdiction signed and/or ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Has it entered any reservations? What is the relevant national legislation?

Turkey ratified the NYC in 1991 with two reservations: (i) the NYC shall apply only to arbitral awards regarding commercial disputes; and (ii) the NYC shall apply where the award is issued in another Member State to the NYC (reciprocity).

11.2 Has your jurisdiction signed and/or ratified any regional Conventions concerning the recognition and enforcement of arbitral awards?

No, but there are a number of bilateral investment treaties signed in relation to investment also concerning provisions on the enforcement of foreign arbitral awards.

11.3 What is the approach of the national courts in your jurisdiction towards the recognition and enforcement of arbitration awards in practice? What steps are parties required to take?

The national courts are not allowed to make a *revision au fond* of the arbitral award and are inclined to enforce foreign arbitral awards unless there is a ground for refusal, or the formal application is not made in line with the NYC or the International Private and Procedural Law No. 5718 ("IPPL").

The party requesting the enforcement must file a lawsuit before the civil court of first instance (or commercial court where the dispute is commercial). Unless the parties clearly agree on the court that will have jurisdiction for enforcement, the residence or location of the party against which the arbitral award is rendered, or failing that, the location of the assets subject to the enforcement, will have jurisdiction.

The party requesting enforcement shall submit the following documents to the court:

- the original or the authenticated copy of the arbitration agreement;
- the original or the authenticated copy of the final and enforceable arbitral award; and
- the authenticated copies of the translation of the above-mentioned documents.

11.4 What is the effect of an arbitration award in terms of *res judicata* in your jurisdiction? Does the fact that certain issues have been finally determined by an arbitral tribunal preclude those issues from being re-heard in a national court and, if so, in what circumstances?

If all stages of the appeal process against an arbitral award are exhausted, the arbitral award has the effect of *res judicata* in terms of substance in accordance with the decision of the Unified Chambers of the Court of Cassation. Enforcement of a foreign arbitral award shall have the same effect as if it has been rendered by a Turkish national court, and can be executed in Turkey accordingly.

An issue can be re-heard in a national court where:

- the arbitral award is not final and enforceable;
- the arbitral award is against public policy; or
- the subject matter is not arbitrable.

11.5 What is the standard for refusing enforcement of an arbitral award on the grounds of public policy?

The judge has discretion in determining whether or not the core principles of Turkish law are violated. Typical grounds of public policy are violation of due process, awards against good morals, awards rendered after expiration of the term of the arbitration, and awards violating regulations on foreign capital, customs or tax.

12 Confidentiality

12.1 Are arbitral proceedings sited in your jurisdiction confidential? In what circumstances, if any, are proceedings not protected by confidentiality? What, if any, law governs confidentiality?

Arbitral proceedings are confidential in principle. However, confidentiality has not been regulated under the IAL. A confidentiality order must be requested. Certain arbitration rules foresee that unless otherwise agreed by the parties, the arbitral proceedings are confidential, e.g. the ISTAC Arbitration and Mediation Rules.

12.2 Can information disclosed in arbitral proceedings be referred to and/or relied on in subsequent proceedings?

Although there is no regulation in relation to this, if the information or document is not specified as confidential, and the

parties have not agreed otherwise, such information or document can usually be used in a further proceeding.

13 Remedies / Interests / Costs

13.1 Are there limits on the types of remedies (including damages) that are available in arbitration (e.g., punitive damages)?

The law applicable to the merits of the dispute shall determine which types of remedies are available. In Turkey, if the remedy does not violate public policy, it may be applicable without any limit. Turkish law does not allow for punitive damages.

13.2 What, if any, interest is available, and how is the rate of interest determined?

Under Turkish law, for transactions between merchants, the interest rate may be freely agreed under the scope of the freedom of contract. In principle, agreement on compound interest is prohibited unless the period between the account terms shall be at least three months, and that the case at hand meets the requirements of one of the two exceptions foreseen under the Turkish Commercial Law, i.e. the parties conclude: (i) a running account agreement; or (ii) a loan agreement with a commercial affair nature.

13.3 Are parties entitled to recover fees and/or costs and, if so, on what basis? What is the general practice with regard to shifting fees and costs between the parties?

Fees and costs shall be covered by the party that is found unjust, unless the parties have agreed otherwise. If both parties are partially found unjust, fees and costs are usually equally allocated between them.

13.4 Is an award subject to tax? If so, in what circumstances and on what basis?

An award is not particularly subject to tax. However, to apply for the recognition and enforcement of an arbitral award, if the arbitral award is in a foreign language, the notarised translation to Turkish is required. Stamp tax is applicable if the award consists of monetary value in order to have the translated award notarised.

13.5 Are there any restrictions on third parties, including lawyers, funding claims under the law of your jurisdiction? Are contingency fees legal under the law of your jurisdiction? Are there any "professional" funders active in the market, either for litigation or arbitration?

Lawyers are obliged to request at least the amount of the fees foreseen under the Minimum Attorneys' Fee Tariff regulated by the Turkish Bar Association. Accordingly, only contingency fees are not permitted in place of attorneys' fees, but it is possible for a Turkish lawyer to agree on a contingency fee in addition to the minimum attorneys' fees.

There are no provisions restricting or regulating third-party funding, and there are no "professional" funders active in the Turkish market.

14 Investor-State Arbitrations

14.1 Has your jurisdiction signed and ratified the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (1965) (otherwise known as "ICSID")?

Yes, Turkey has signed and ratified the ICSID and it is in force.

14.2 How many Bilateral Investment Treaties ("BITs") or other multi-party investment treaties (such as the Energy Charter Treaty) is your jurisdiction party to?

There are 82 BITs that are currently in force. Turkey is also party to the Energy Charter Treaty.

14.3 Does your jurisdiction have any noteworthy language that it uses in its investment treaties (for example, in relation to "most favoured nation" or exhaustion of local remedies provisions)? If so, what is the intended significance of that language?

Although their contents tend to be similar, there is no uniform language for BITs.

14.4 What is the approach of the national courts in your jurisdiction towards the defence of state immunity regarding jurisdiction and execution?

The Turkish courts have limited experience in relation to the execution of ICSID decisions. Where the decision is rendered against an investor, real person or legal entity, the decision can be subject to execution as it is a decision rendered by a Turkish court. If the decision is given against the state, then the state immunity argument may be raised and the collection may be difficult. However, in a Court of Cassation decision, it was decided that attachment over the bank accounts of a consulate of a foreign country dedicated to the disbursements and costs of that consulate is not possible.

15 General

15.1 Are there noteworthy trends or current issues affecting the use of arbitration in your jurisdiction (such as pending or proposed legislation)? Are there any trends regarding the types of dispute commonly being referred to arbitration?

Since the IAL was adopted in 2001 and the ISTAC Arbitration and Mediation Rules came into force in 2015, Turkey has become an increasingly attractive place for arbitration. Other arbitration institutions have revised their rules, e.g. the ITOTAM as of 2021. The Union of Turkish Bar Associations Arbitration Center Rules and Tariff of Costs and Fees entered into force pursuant to the resolution of the board of directors dated 19 February 2022. The Rules are regulated to be applicable to all national and international disputes that are arbitrable, and in particular to disputes arising from attorney fee agreements and between attorneys.

Commercial, contractual, insurance, construction, M&A, and energy disputes are commonly referred to arbitration.

15.2 What, if any, recent steps have institutions in your jurisdiction taken to address current issues in arbitration (such as time and costs)?

In order to make ISTAC arbitration appeals less costly than court proceedings, arbitration fees have been reduced.

ISTAC has also updated the limit for application to the ISTAC Fast Track Arbitration from TRY 300,000 to TRY 1,000,000, pursuant to the resolution of the Board of Directors dated 21 March 2022, considering the success of the ISTAC Fast Track Arbitration Rules.

The ITOTAM Arbitration Rules have also been updated; for example, the 2021 Rules incorporated regulations on the joinder of additional parties, claims between multiple parties, multiple contracts, consolidation of arbitrations, third-party funding, case management conferences and procedural timetables, and expedited arbitration.

ISTAC has introduced an alternative dispute resolution method, "Mediation-Arbitration" ("Med-Arb"), which has the characteristics of both mediation and arbitration in two stages within the same proceeding. This mechanism aims to ease the number of commercial disputes waiting to be resolved.

In the early days of the COVID-19 pandemic, ISTAC published the ISTAC Online Hearing Rules and Procedures and has continued to resolve disputes without interruption. Subject to the parties' agreement, hybrid hearings are also permitted under these Rules, providing advantages in terms of costs and swift settlement of disputes.

15.3 What is the approach of the national courts in your jurisdiction towards the conduct of remote or virtual arbitration hearings as an effective substitute to in-person arbitration hearings? How (if at all) has that approach evolved since the onset of the COVID-19 pandemic?

Under the IAL, there are no regulations restricting remote or virtual arbitration hearings. Even before the pandemic, there were examples of virtual preliminary or evidentiary hearings in arbitration, and these have dramatically increased since the onset of the COVID-19 pandemic.

The CPL was amended in July 2020 to allow hearings via image and audio transmission at the request of a party and decision of the court. If the court allows, the requesting party and their witnesses, party-appointed and/or court-appointed experts may be heard and seen virtually. This rule is also applicable for domestic arbitration. Accordingly, at a party's request, the arbitral tribunal should have the right to decide on a remote or virtual hearing.

In line with the foregoing, as regards court hearings, the Turkish Ministry of Justice introduced an electronic hearing system aiming to digitally transform current practice. Implemented on 25 September 2020, the "*e-hearing*" system has enabled lawyers to attend court hearings remotely. As of 11 November 2021, the e-hearing system has been implemented in all 81 cities of Turkey and 1,400 civil courts. In practice, apart from some specific courts, the application of the system in civil courts is not too wide.

Ceren Çakır is the Founding Partner of ECC. Her area of expertise constitutes international and domestic arbitration involving commercial, financial and shipbuilding contracts, as well as charter parties and insurance disputes. She represents both local and international clients in arbitration proceedings under the ICC, SCC, DIA and GAFTA, and in *ad hoc* proceedings under the arbitration rules/laws of the LMAA, English Arbitration Act, IAL and CPL. She is also experienced in pre-arbitration and post-arbitration litigation, including enforcement of foreign arbitral awards and set aside proceedings.

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