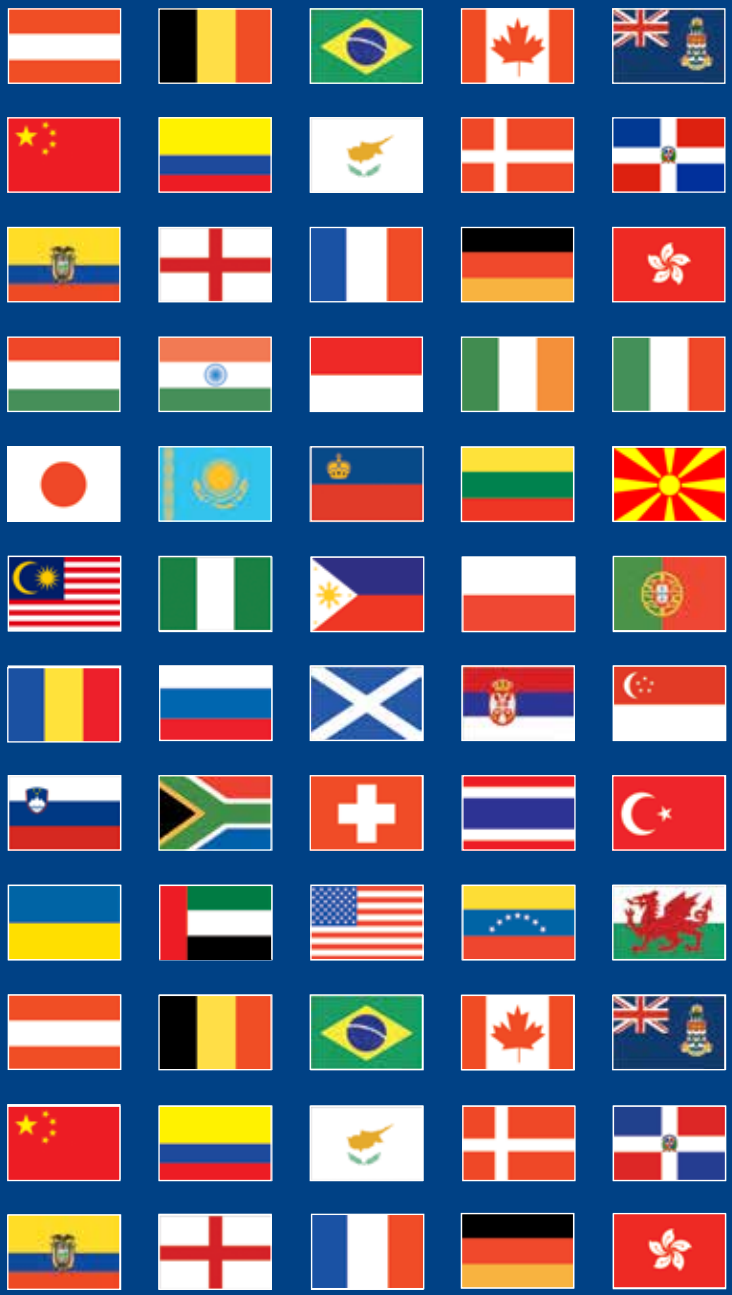
GETTING THE DEAL THROUGH

# Dispute Resolution

## in 49 jurisdictions worldwide

## 2014

**Contributing editor: Simon Bushell**



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## Dispute Resolution 2014

### Contributing editor: Simon Bushell Latham & Watkins

*Getting the Deal Through* is delighted to publish the twelfth edition of *Dispute Resolution*, a volume in our series of annual reports, which provide international analysis in key areas of law and policy for corporate counsel, cross-border legal practitioners and business people.

Following the format adopted throughout the series, the same key questions are answered by leading practitioners in each of the 49 jurisdictions featured. New jurisdictions this year include Ecuador, Hong Kong, Indonesia, Kazakhstan, the Philippines, Portugal and the United Arab Emirates.

Every effort has been made to ensure that matters of concern to readers are covered. However, specific legal advice should always be sought from experienced local advisers. *Getting the Deal Through* publications are updated annually in print. Please ensure you are referring to the latest print edition or to the online version at www.gettingthedealthrough.com.

*Getting the Deal Through* gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We would also like to extend special thanks to contributing editor Simon Bushell of Latham & Watkins for his continued assistance with this volume.

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London
June 2014

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Law Business Research

THE QUEEN'S AWARDS FOR ENTERPRISE: 2012

Published by
**Law Business Research Ltd**
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 7908 1188
Fax: +44 20 7229 6910

First published 2003
Twelfth edition
ISSN 1741-0630



Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112

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# Turkey

**Gönenç Gürkaynak and Ayşın Obruk**

ELIG, Attorneys-at-Law

## Litigation

### 1 What is the structure of the civil court system?

The Civil Procedure Law, Code No. 6,100 (Civil Procedure Law), came into force on 1 October 2011, and the former Civil Procedure Law, Code No. 1,086 (Former Civil Procedure Law), was abolished.

#### Courts of first instance

The courts of first instance are subdivided into general courts and special courts. General courts consist of civil courts of first instance and courts of peace. The distinction between these two types of general courts is based on specific dispute matters, which are regulated under articles 2 and 4 of the Civil Procedure Law. Special courts have jurisdiction over disputes that require specific legal expertise, such as disputes related to labour law matters, consumer rights, intellectual and industrial property rights, family law, maritime law or disputes relating to cadastral rights.

#### Court of Appeals

Under the Turkish civil court system, unlike many other civil law jurisdictions, the Court of Appeals acts as a final appeal court and court of cassation.

Under the Civil Procedure Law, regional courts of justice are regulated to serve as first-tier courts to review objections to judgments of the local courts. The courts will be the appeal courts of the courts of first instance, and for certain court decisions the Court of Appeals will act as the final appeal step of the litigation process for final and appealable decisions granted by a regional court of justice and decisions granted by the arbitration board. However, the establishment of regional courts of justice has not yet been completed; therefore, until the regional courts of justice are established, the provisions regarding the appeal process stipulated within the scope of Civil Procedure Law will continue to be applied. Hence, the Court of Appeals still acts as a final appeal court and court of cassation.

### 2 What is the role of the judge and the jury in civil proceedings?

Turkish law does not provide for jury involvement in civil or criminal proceedings. As a general principle, judges take on only an arbitral (passive) role, whereby the parties actively determine and question the facts. However, judges may also have an inquisitorial role, depending heavily on the subject matter of the action. Under Turkish law, judges do not evaluate and analyse the facts or matters relating to the claim ex officio unless they have been raised or put forward by the relevant parties during the proceedings.

On the other hand, in cases where there is a public policy concern such as family law or labour law matters, Turkish law provides a rather more inquisitorial system where a broader scope of action for judges is provided.

### 3 What are the time limits for bringing civil claims?

The statute of limitations is regulated under the Turkish Code of Obligations (TCO) No. 6,098, which came into force on 1 July 2012. The TCO takes the place of the former Turkish Code of Obligations, No. 818, which was published in the Official Gazette on 29 April 1926.

The general provision on limitation periods in Turkish law provides a time limit of 10 years for every kind of obligation, unless otherwise regulated within the relevant law. For the exceptional receivables mentioned below, the statute of limitation is five years:

- periodic incomes, such as rent, salary and principle interest;
- accommodation and food and beverage charges;
- debts arising from the retail sales of small enterprises;
- debts arising from a partnership agreement and based on a relationship between the partners or between the partners and the company;
- debts arising from attorneyship, commission contract or agency contract, and from a brokerage contract (except commercial ones); and
- debts arising from a construction contract, except where the contractor does not fulfil his or her obligation or there is gross fault.

With regard to tort law, the statute of limitation for the injured party to seek compensation expires after two years from the day the injured party is informed of the damages and the offender; and, in any case, 10 years from the date on which the tortious act was committed.

The statute of limitation commences when the debt is due. If the due date of the debts hinges upon a notification, the statute of limitation period commences when the notification is made to the counterparty. The statute of limitations cannot be modified and is of a mandatory nature. In that sense, except regarding the suspension or interruption of the statute of limitations set forth under the TCO, the parties are not allowed to make an agreement to suspend the statute of limitation.

### 4 Are there any pre-action considerations the parties should take into account?

Save for certain limited types of claims, such as cancellation of a shareholders' resolution in joint-stock companies, Turkish law does not require pre-action considerations for the party bringing such claim before the relevant court. However, serving of a notice of breach to the other party and requesting a remedy before bringing some civil claims to the respective courts is a legal requirement for a party in order to put the other party into default.

**5** How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement?

Civil proceedings are initiated by the plaintiff submitting a petition to the court. The plaintiff, while initiating a civil proceeding, must also pay a portion (usually a quarter) of the relevant court fees and litigation expenses in advance. The court in return serves a copy of the petition to the defendant. The lawsuit becomes legally pending as of the date on which such lawsuit is registered in the relevant court's records. As a matter of Turkish law, civil courts do not commence proceedings on behalf of the plaintiff ex officio.

To provide efficiency and integrity in the litigation process in Turkey, the Ministry of Justice has adopted a National Judiciary Informatics System (UYAP), which implements a very ambitious information system between the courts and all the other institutions of the Ministry. UYAP has equipped institutions with computers, networks and internet connections that give them access to all the legislation, decisions of High Court of Appeals' judicial records, judicial data of the police and army records. As such, UYAP provides an electronic network covering all courts, offices of public prosecutors and law enforcement offices along with the Central Organisation of the Ministry of Justice. UYAP is an e-justice system, and forms part of the e-government that has been developed to ensure a fast, reliable, soundly operated and accurate judicial system. As a central network project, it encompasses all of the courts, public prosecutor services, prisons, other judicial institutions and other government departments in Turkey. The aim is to create an effective, less bureaucratic judicial system for each concerned institution and Turkish citizens. Using UYAP, after filing a lawsuit petition, the parties to such lawsuit can remain informed with respect to other petitions submitted to the lawsuit's file, although the relevant documents may not be served on the parties.

**6** What is the typical procedure and timetable for a civil claim?

There are three phases in civil proceedings. During the first phase, the court executes a preliminary inquiry based on the subject matter of the claim and makes a series of rulings. With regard to the order and time limit stated in the rulings, parties exchange briefs along with the documents rendered as evidence and submit a list of evidence. The court serves the plaintiff's brief and evidence list to the defendant, and the defendant submits his or her response brief and evidence list to the court. Following the first exchange of briefs, the plaintiff submits his or her response brief, and subsequently the defendant submits his or her second response brief against the plaintiff's response.

During the investigation phase, oral hearings take place. The court evaluates evidence that is submitted by the parties and investigates the accuracy of the facts alleged by the parties.

During the final phase (the judgment phase), the judge renders a decision after examining the claims of the parties that have been accurately proven.

Depending on the complexity of the lawsuit, a civil proceeding may take from one-and-a-half to three years, including, as the case may be, the period of time to elapse for appeals proceedings.

**7** Can the parties control the procedure and the timetable?

Civil proceedings are conducted in accordance with the provisions of the Civil Procedure Law. The court, however, to a certain extent has discretion in determining the timetable for proceedings. On the other hand, the parties may request from the court extensions of time limits imposed by the court or rescheduling of a hearing only if they have a substantial excuse, which may be the case when additional time is required for further examination of the evidence that is submitted to the court. The parties may also accelerate the procedure and thus shorten the investigation phase through out-of-court settlements for recognition of certain documents as evidence for a specific dispute prior to legal proceedings. These agreements may be recognised by civil courts only if the court is satisfied that these agreements are valid, enforceable and binding on the parties.

**8** Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

As per article 219 of the Civil Procedure Law, the parties to a trial are obliged to submit all the documents that they set out in their evidence lists and hold as per the Turkish Civil Law and Turkish Commercial Law, in particular:

- any document on which any other document submitted to the court is based;
- any letter or telegram received from the counterparty in relation to the subject matter of the trial;
- any document that is related to the transactions and benefits that are associated with both parties; and
- any document that is individually or jointly owned by the parties.

Therefore, parties are required to preserve documents and other evidence in relation to a pending trial, and submit such documents to the court even if such documents would be unhelpful to their case.

Additionally, electronic documents can also be submitted as both hard and soft copies to the court on the condition that such documents are recorded properly in the electronic environment upon the request of the court. The parties may submit the relevant parts of certain documents, such as commercial books, instead of the whole content of them.

**9** Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

According to article 159 of Procedural Law, all petitions and documents submitted to the court are filed by the court clerk after they are referred to the judge or chief clerk. Under the monitoring of the court clerk, the parties may review the lawsuit file and may obtain copies of the documents from the lawsuit file; otherwise, their right to defence would be hindered. The persons related to the lawsuit may review the lawsuit file with the permission of the judge. The documents that are to be kept in secret can only be reviewed with the explicit permission of the judge.

The Advocacy Law No. 1,136 also protects client confidentiality. According to article 36, lawyers are forbidden from disclosing the information that they have learnt under the favour of their services. Attorneys may serve as witnesses in a lawsuit only with the consent of their clients. However, even if such consent is given, attorneys can refuse to testify.

The above also applies to in-house lawyers; nevertheless, there are no laws in Turkey that specifically regulate legal professional privilege.

**10** Do parties exchange written evidence from witnesses and experts prior to trial?

In the Turkish judicial system, parties do not exchange written evidence from witnesses prior to trial.

Since experts are appointed by the court during the trial, parties may not exchange written evidence from experts prior to trial. On the other hand, article 293 of the Civil Procedure Law allows the parties to obtain private expert opinion on the subject matter of the trial to be submitted to the court.

**11** How is evidence presented at trial? Do witnesses and experts give oral evidence?

Pursuant to the Civil Procedure Law, parties must submit their evidence to the court with a list. The documents listed as evidence may be submitted in copies; however, the judge may require the parties to submit the original copies for review. Parties may neither change the witnesses declared in the evidence list nor submit an additional witness list.

Witnesses give oral evidence at the hearing, which is taken down in writing by the court's clerk in the minutes of the hearing. Under the Civil Procedure Law, there is no judicial practice of cross-examination; therefore, witnesses may only be interrogated by the judge. As per article 152 of the Procedure Code, the attorneys of the parties may directly ask questions to the witnesses, expert witnesses and third parties invited to the hearing; however, parties may only ask questions with the judge's permission. Unless the witness is exempted from swearing an oath as per the Civil Procedure Law – such as employees of the parties, the parties' spouses or persons who would benefit from one of the parties winning the case – as a general rule, witnesses will be permitted to testify under oath.

Although it is possible for experts to give oral evidence, the general approach of the courts is to require experts to submit their findings and opinions in writing. Judges may seek expert opinions on issues that require specific and technical knowledge. If parties cannot agree on an expert, the judge may ex officio appoint at most three experts to give their opinion on the issues to be determined by the judge.

In terms of attendance at the hearings, on the condition that the parties have given consent, the court may allow witnesses, expert witnesses or a party to be heard while they are somewhere other than the court. The hearing of such witnesses or parties is transferred to the court using audio or video forms.

**12** What interim remedies are available?

The court may grant a suitable interim remedy regarding the dispute at hand where there is an emergency situation that may cause the current situation to be changed, may inevitably obstruct acquiring a right or where substantial damage is expected to occur. The Civil Procedure Law also provides for specific interim remedies for certain cases, such as seizure or attachment granted for moveable or immoveable properties that are the subject matter of a dispute; maintenance and protection of the subject matter of a dispute; payment of alimony; or any other interim remedy provided by the Civil Law No. 4,721 of 8 December 2001 for divorce proceedings.

Execution of the interim relief decision shall be requested within one week of the decision's date. Otherwise, an interim relief decision by itself shall no longer be executed, even if the lawsuit has been brought within the legal period. The party that requests interim relief shall ensure a security for the presumptive damages that the counterparty or the third person would suffer in case he or she could be found unfair. The court must mention the reason for its decision explicitly. The court shall decide on the non-performance of the security if the claim would rely on an official document or conclusive evidence.

**13** What substantive remedies are available?

There are three main types of judgments available under the Civil Procedure Law:

- judgments for performance, which include all kinds of monetary judgments and judgments for specific performance;
- judgments for a declaratory judgment; and
- judgments for establishment or change of a right or legal status.

Further, if so requested and upon the ruling of the court, a default interest (to be calculated at a statutory rate) may be payable on monetary claims.

**14** What means of enforcement are available?

According to the Civil Procedure Law, a judgment of a civil court is enforced by the competent execution offices after the execution proceedings are initiated in accordance with the provisions of the Execution and Bankruptcy Law No. 2,004 dated 19 June 1932. In proceedings that are initiated to enforce a monetary judgment, the holder of such judgment is entitled to receive the relevant amount from the proceeds of foreclosure (via public sale or auction) of the debtor's assets, which is carried out by the relevant execution offices. Furthermore, depending on the nature of the judgment, a defeated party that does not comply with the court judgment that prohibits him or her from performing certain acts or orders him or her to perform a certain act may be sentenced to imprisonment.

**15** Are court hearings held in public? Are court documents available to the public?

As a general rule and pursuant to article 28 of the Civil Procedure Law, court hearings are open to the public. However, because of public policy, public morality or protection of personal rights of an individual, the courts may decide to conduct the hearings in a confidential manner. Parties and their counsel have access to documents that are presented or readily available to the court, such as pleadings, witness statements and orders in relation to a lawsuit. However, a duly issued and notarised power of attorney will be required for counsel of the parties to receive copies of the files. To avoid doubt, any other lawyer may also examine any and all lawsuit files by presenting his or her lawyer identity card to the court, but cannot make copies of the files.

The court may, ex officio or upon the request of the party, decide to conduct hearings in a confidential manner for reasons of public morality or public security. In a confidential hearing, the judge warns the people attending the hearing not to disclose the information they have heard during the hearing and records such warning in the hearing minutes.

**16** Does the court have power to order costs?

Pursuant to the Civil Procedure Law, all fees, including court fees and the attorneys' fees of the counterparty, shall be borne by the defeated party. Note that the attorneys' fees to be taken into account by the court are not the actual fees that are paid to such attorneys, but are rather calculated in accordance with the relevant statute. If the claimant is partially successful with its claims, then fees and expenses shall be allocated between claimant and defendant on a pro rata basis. The court determines expenses and fees in accordance with the relevant statute and declares the amount of the same in its decision.

As a general rule, court fees are calculated based on the value of the subject matter of a dispute.

Foreign plaintiffs may be required to deposit, at the court's discretion, security for costs (cautio judicatum solvi), provided, however, that the court may in its discretion waive such requirement for security in the event that the plaintiff is considered to be either a national of one of the contracting states of the Convention Relating to Civil Procedure at The Hague on 1 March 1954 (ratified by Turkey pursuant to Law No. 1,574 published in the Official Gazette No. 15,226 dated 4 May 1975), or a national of a state that has signed a bilateral treaty with Turkey, which has been duly ratified, containing, inter alia, a waiver of the cautio judicatum solvi requirement on a reciprocal basis.

**17** Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

The Civil Procedure Law does not allow the parties to make agreements or fee arrangements with respect to court fees. Furthermore, lawyers are not allowed to charge fees that are below the amount determined by the relevant regulations, charge contingency fees or enter into any other kind of 'no win, no fee' arrangement.

According to the Civil Procedure Law, only parties whose rights have been violated may seek legal relief by initiating a lawsuit against the violating party. Therefore, 'right to sue' should be construed in a conservative manner, and only parties whose rights have been violated shall be entitled to bring an action before the courts. Under Turkish law, there is no provision preventing the plaintiff from receiving funding from third parties to initiate legal proceedings. However, this does not enable such third party to be involved in the proceedings as a party.

As a general rule, all risks incurred or to be incurred by a defendant in a legal proceeding shall rest with the defendant as being the addressee of the claims of the plaintiff. Therefore, the defendant is not entitled to share its risk in a legal proceeding with a third party. However, pursuant to the Civil Procedure Law, where the decision of the court may have an effect on a third party as well as the defendant, the defendant may request such third party to either attend the lawsuit with him or her, or replace the defendant by becoming a party to the lawsuit.

**18** Is insurance available to cover all or part of a party's legal costs?

There is no such insurance applicable in Turkey to cover all or part of a party's legal costs.

**19** May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

As per article 113 of the Civil Procedure Law, associations and other legal entities may commence civil proceedings with respect to their status and on behalf of themselves in order to protect their members' and associates' rights. The protection involves claims to establish a right or legal status, to cease unlawful acts and to prevent unlawful acts that are deemed imminent.

**20** On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

Since the establishment of a regional court of justice has not yet occurred, the provisions of the Former Civil Procedure Law regarding appeal continue to apply. Therefore, a local court judgment may be appealed if the value of the moveable or the amount of the receivable item that is the subject matter of the dispute is more than 1,690 Turkish liras. There is no such limit for appealing a judgment relating to immoveable property.

A party may appeal a local court's judgment on the following grounds:

- misinterpretation or inappropriate application of the applicable laws and regulations or the provisions of the agreement between the parties;
- local courts not having jurisdiction on the lawsuit;
- violation of the legal procedures to be followed in the lawsuit;
- inaccurate evaluation of the disputed facts; or
- rejection of the evidence presented by a party without legitimate reasons.

Until the establishment of regional courts of justice is completed, the parties may apply for correction of the decision. Once the Court of Appeals renders its decision, the parties may apply to the same division of the Court of Appeals for correction of its decision under certain limited circumstances and on the grounds as determined by the Civil Procedure Law. However, this procedure shall not be considered as a further appeal.

On the other hand, subsequent to the establishment of regional courts of justice, regional courts will review objections to the decisions of local courts of first instance before the appeal procedure. Therefore, if the parties intend to object to the decision of the court of first instance, they shall first apply to the regional courts prior to seeking relief from the Court of Appeals. However, as mentioned above, this procedure is currently not effective, as the regional courts are not yet established.

Under the provisions of the Civil Procedure Law, the appeal process before the regional courts is legislated as a second step of appeal prior to the Court of Appeals.

**21** What procedures exist for recognition and enforcement of foreign judgments?

According to the Turkish International Private and Procedural Law No. 5,718 dated 27 November 2007 (Turkish Private International Law), foreign court judgments may be recognised and enforced under Turkish law without a re-examination of the merits of the case, provided that:

- such judgment of a foreign court does not relate to a matter that falls within the exclusive jurisdiction of the Turkish courts;
- such judgment of a foreign court does not explicitly violate public order in Turkey;
- such judgment is rendered by a state court that does not have jurisdiction in terms of either the subject matter or the parties of the lawsuit, provided such judgment is objected by the defendant;
- there is reciprocity between Turkey and the country where the relevant foreign court presides with respect to enforcement of court judgments, such reciprocity to be evidenced by:
  - a treaty between Turkey and the relevant country providing for reciprocal enforcement of court judgments;
  - a provision in the laws of such country permitting the enforcement in such country of judgments rendered by Turkish courts; or
  - de facto enforcement in such country of judgments rendered by Turkish courts; or
- the defendant was duly summoned or represented in accordance with the procedural rules of the jurisdiction of the foreign court.

**22** Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

Procedures for obtaining oral or documentary evidence for use in civil proceedings in other foreign jurisdictions depend on the mutual agreements with such countries or, in the absence of such an agreement, on the principle of reciprocity.

Turkey is also a party to the Hague Convention on Civil Procedure dated 1 March 1954.

## Arbitration

**23** Is the arbitration law based on the UNCITRAL Model Law?

The Turkish Act on International Arbitration No. 4,686 (Arbitration Act), which came into force on 21 June 2001, is to a large extent promulgated under the influence of the UNCITRAL Model Law (Model Law).

**24** What are the formal requirements for an enforceable arbitration agreement?

An arbitration agreement must be in writing. An agreement is deemed to be in writing under Turkish law if it is contained in a document signed by the parties. In the event that the agreement is made by way of an exchange of letters, telex, telegrams, fax or other means of telecommunication, or in an electronic form or by way of exchange of statements, then the existence of an agreement may be put forward only in the case of acceptance of the other party and not denied by any of the parties related thereto. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement, provided that the contract is in writing and the reference provides that such clause becomes part of the contract.

**25** If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

The Arbitration Act has adopted the party autonomy principle in the appointment of arbitrators. The number of arbitrators may either be determined in the arbitration agreement or may be left to be decided later on. The parties are to determine an odd number of arbitrators. Lacking such agreement, the tribunal should comprise three arbitrators. Each party shall appoint an arbitrator and the arbitrators nominated by the parties shall appoint the third arbitrator, who will serve as the chairperson. If either party fails to notify the other that it has selected its arbitrator within 30 days from arrival of the arbitrator appointment notice sent to it by the other party, or should arbitrators appointed by parties fail to agree on a third arbitrator then, upon an application to be filed by either party, the competent court shall make the appointment on behalf of the failing party or arbitrators.

There are three main causes for challenging an arbitrator:

- the appointed arbitrator does not meet the qualifications specified by the parties;
- a ground for challenge exists pursuant to the arbitration procedure agreed by the parties; or
- the relationship of an arbitrator with one of the parties casts a shadow on his or her independence or impartiality.

In accordance with articles 415 and 416 of the Civil Procedure Law, the parties are entitled to determine the number of arbitrators provided that such number is an odd number. If the parties do not determine the number of the arbitrators, three will be appointed. If the parties want to choose one arbitrator, and if they cannot agree on their choice, the court will choose the arbitrator. If the parties want to choose three arbitrators, each party can choose one arbitrator and those arbitrators will appoint the third as the president. If three arbitrators are chosen, at least one of them should be a jurist who should have at least five years of experience in a related field.

**26** Does the domestic law contain substantive requirements for the procedure to be followed?

Parties have the liberty to set out the procedure to be followed during the arbitration proceedings, provided that such procedure does not violate the mandatory provisions of the Arbitration Act. Failing such agreement between the parties, the arbitral tribunal shall conduct the arbitration in accordance with the Arbitration Act. Other main principles of international arbitration, such as equal treatment of the parties and giving the parties the opportunity to present their cases, are also accepted under the Arbitration Act.

In accordance with article 424 of the Civil Procedure Law, the parties may determine the provisions of the procedure to be applied by the arbitrators, provided that such determination does not violate the mandatory arbitration provisions of the Civil Procedure Law.

**27** On what grounds can the court intervene during an arbitration?

Recourse to court is possible only in certain cases determined by the Arbitration Act to provide the efficiency of the arbitration proceedings. The appointment of arbitrators shall be made by the court under certain circumstances (see question 25). The court of first instance also has jurisdiction to order interim relief upon the request of one of the parties (see question 28), to assist the arbitral tribunal in taking evidence upon the request of the arbitral tribunal, and to decide on the challenge of arbitrators if one of the parties requests all the arbitrators or the number of arbitrators representing the majority vote to be challenged.

**28** Do arbitrators have powers to grant interim relief?

Parties are entitled to apply either to an arbitral tribunal or to the competent court, either before or during arbitration proceedings, to request interim or conservatory relief with regard to the subject matter of the dispute. However, interim measures granted by the arbitrators are neither enforceable before courts nor other official authorities. Further, interim measures granted by the arbitrators do not have binding effect on the third parties.

In accordance with article 414 of the Civil Procedure Law, unless otherwise agreed, the arbitration board may decide to grant a preliminary injunction decision or the determination of the evidence upon the request of one party.

**29** When and in what form must the award be delivered?

The award shall be in writing, reasoned, dated and signed by the arbitrators. The venue of arbitration, names and addresses of the parties and their representatives, the names of the arbitrators and an express statement indicating that either party has a right to request the competent court to set aside the award shall be included in the award. The majority of arbitrators are entitled to render an award. An arbitrator or the chairperson shall notify parties of the award in order for the award to become final and so that the parties can challenge the award if required.

Unless otherwise agreed, the arbitral tribunal shall deliver the award within one year of the issuance of the first minutes of the first hearing. Where there is a sole arbitrator, this one-year period starts as of the appointment of such arbitrator. This time limit can be extended with the agreement of the parties or, failing such agreement, upon the recourse of a party, on the decision of the court of first instance.

**30** On what grounds can an award be appealed to the court?

The only remedy against an arbitral award is to request its setting aside. The Arbitration Act does not allow for the concepts and remedies of appeal and retrial. A request for setting aside may be initiated before the court of first instance within 30 days from notification of an award or a decision regarding correction or interpretation of such an award. The request for challenge of an award stays the enforcement of the award.

The court will hear the case with priority. The Arbitration Act sets out the cases in which an award may be set aside.

The causes to be considered ex officio by the court are the subject matter of the dispute not being eligible for arbitration under Turkish law and the award being in violation of public order.

The causes to be proven by a party are:

- one of the parties to the arbitration agreement being incapacitated or the arbitration agreement being invalid;
- failure to adhere to the agreement between parties or provisions of the Arbitration Act in appointment of the arbitrator or arbitral tribunal;
- failure to render the award within the term of arbitration;
- the tribunal making an unlawful decision by which it finds itself competent or incompetent;

- the tribunal rendering a decision on a matter not covered by the arbitration agreement or its failure to decide on the whole claim or exceeding its authority;
- failure to conduct the arbitration proceedings in accordance with the parties' agreement or, failing such agreement, with the provisions of the Arbitration Act, provided that such failure affects the essence of the award; or
- failure to observe the principle of equal treatment of parties.

Either party may, in full or in part, waive its right to challenge the award even before the arbitration proceedings are initiated, provided that both parties' domiciles or residences are outside Turkey.

Decisions to be rendered by courts as to the setting aside of the award may be appealed before the Court of Appeals, provided that the examination at this appeal stage will be limited to the grounds for setting aside.

**31** What procedures exist for enforcement of foreign and domestic awards?

Enforcement of a foreign award in Turkey shall be subject to the provisions of the 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) only if such decision is rendered in a signatory country to the New York Convention. Turkey made two reservations and limited the applicability of the New York Convention by declaring that it will apply the New York Convention for the recognition and enforcement of foreign awards granted in another state that is a signatory to the New York Convention on the basis of complete reciprocity, and only for conflicts arising from contractual or non-contractual relationships that are deemed to be of a commercial nature under its national law.

If the award is rendered in a state that is not a signatory to the New York Convention, then the enforcement of the award shall be subject to the Turkish Private International Law. According to the Turkish Private International Law, a foreign award can be enforced in Turkey provided that such award is final and binding under the applicable procedure law. The procedures foreseen for enforcement of a foreign award by the Turkish Private International Law are similar to the provisions of the New York Convention. However, the Turkish Private International Law requires that a standard of reciprocity be met before a foreign award can be recognised or enforced. If an agreement exists between Turkey and such country regarding reciprocal enforcement or a provision in the foreign law permitting the enforcement of a Turkish award, or a de facto practice that enables enforcement of Turkish awards, then reciprocity is deemed to exist.

To enforce an award, it is a requirement that an enforcement lawsuit be initiated before the civil court of first instance.

Domestic awards are enforced in the same way as judgments rendered by Turkish courts.

**32** Can a successful party recover its costs?

Unless otherwise agreed by the parties, the losing party will bear the costs of arbitration. If both parties partially prevail, the costs of arbitration, including the fees and expenses of arbitrators and experts, attorneys' fees, expenses of notifications and expenses made by the witnesses to the extent approved by the tribunal, shall be apportioned between the parties according to the degree they prevail.

## Alternative dispute resolution

**33** What types of ADR process are commonly used? Is a particular ADR process popular?

The new Law on Mediation on Civil Disputes No. 6,325 (Mediation Law), published on 22 June 2012 in the Official Gazette, and its provisions will come into force one year after its release date on 22 June 2013. The Mediation Law, as an alternative dispute settlement method in Turkey, will only apply to the resolution of civil law disputes arising from matters and proceedings, including those bearing foreign elements. Civil law disputes containing allegations of family violence do not fall within the scope of the Mediation Law.

The mediator facilitates a resolution through a process of communication and is obliged to provide equality among the parties. The parties are free to resort to a mediator, and to sustain, terminate or renounce a process of mediation. The parties may agree to apply for a mediator before or during the litigation process. The mediator is selected by the parties, unless otherwise agreed. The mediator may not take any action on matters that fall within the jurisdiction of a judge.

According to the Mediation Law, the mediator must be a Turkish citizen with a law degree and at least five years of seniority in the profession; he or she may not have been sentenced for an international crime, must have an absolute ability in addition to the obligatory training that ought to be completed, and must have passed a written and practical exam.

Additionally, the Advocacy Law also stipulates that attorneys may invite parties for settlement on the issues that may be resolved upon the relevant parties' will and mutual consent.

On a separate note, under the Procedural Law, during the pre-examination process (which is significant for gathering a great amount of evidence and broadly ascertaining the dispute), the judge shall encourage the parties towards settlement or mediation following the determination of the dispute.

Furthermore, pursuant to the concept of reconciliation stipulated under Criminal Procedure Law, there shall be an attempt to reconcile between the suspect and the victim, or the real or legal person who has suffered damages from the certain crimes.

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**34** Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

There is no legal requirement for the parties to litigation or arbitration to consider ADR before or during proceedings. However, as per article 320 of the Civil Procedure Law, during proceedings the judge may at any time encourage parties towards settlement.

## Miscellaneous

**35** Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

Under Turkish law, there are no specific features of dispute resolution other than those stated above.

DISPUTE RESOLUTION 2014 ISSN 1741-0630