Legal 500
Country Comparative Guides 2024

Türkiye

International Arbitration

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This country-specific Q&A provides an overview of international arbitration laws and regulations applicable in Türkiye.

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Türkiye: International Arbitration

1. What legislation applies to arbitration in your country? Are there any mandatory laws?

In Türkiye, the arbitral proceedings are regulated under the Turkish Code of Civil Procedure numbered 6100 (TCCP) and the Turkish International Arbitration Law numbered 4686 (TIAL). The legislator has preferred to make a distinction between domestic arbitration proceedings and international arbitration proceedings and regulated the domestic arbitration under TCCP whereas international arbitration was regulated under TIAL.

Apart from afore-mentioned legislation on international and domestic arbitration, there are also arbitration rules issued by several arbitration institutions such as Istanbul Arbitration Centre, Arbitration Centre of Istanbul Chamber of Commerce, Energy Disputes Arbitration Centre and Organization of Islamic Corporation Arbitration Centre, which will be explained in a detailed manner in the following answers.

2. Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?

Türkiye is one of the signatories of the New York Convention. Türkiye has made a reservation with respect to application of the New York Convention only to disputes of a commercial nature.

3. What other arbitration-related treaties and conventions is your country a party to?

Apart from the New York Convention, Türkiye is also a party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID), the European Convention on International Commercial Arbitration, the Singapore Convention and the Energy Charter Treaty (ECT).

4. Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant differences between the two?

While TIAL is mainly based on the UNCITRAL Model Law, there are also some differences between two. Key differences can be summarized as follows:

As mentioned in our answer to Question 1, in Türkiye international and domestic arbitration laws are regulated under different codes namely TIAL and TCCP, whereas the UNCITRAL Model Law focuses only on international arbitration.

Both UNCITRAL Model Law and TIAL provide wide discretion to the parties on the number and appointment of arbitrators and include transparent procedures for challenging and replacing arbitrators. In addition to this, TIAL also sets out detailed institutional procedures for challenge and replacement, including when court intervention may be required.

UNCITRAL Model Law empowers the arbitral tribunals to order interim measures and specifies broad types of interim relief, facilitating preservation of assets and evidence. Similarly, TIAL also grants wide powers to the tribunals on the interim measures. On the other hand, TIAL explicitly restricts the tribunals' authority to render interim attachment. Accordingly, the tribunals do not have power to issue any interim attachments which should be enforced by the judicial authorities such as execution directorates.

UNCITRAL Model Law limits the court intervention to specific situations to balance efficiency and oversight. Hence, the courts mainly assist in matters like the appointment of arbitrators and enforcement actions. On the other hand, TIAL prescribes more detailed procedures regarding courts' involvement in the arbitral proceedings, particularly on the matters such as validity of arbitration agreements and arbitrator challenges to ensure balance between autonomy of the arbitral proceedings and the procedural integrity under national laws.

While there is no strict time limits prescribed under UNCITRAL Model Law imposed beyond reasonable procedural conduct, TIAL prescribes specific time limits for certain arbitration steps, reflecting a preference for expedited resolution of the disputes.

5. Are there any impending plans to reform the

arbitration laws in your country?

Since the arbitration laws (i.e. TIAL and TCCP) in Türkiye are relatively new legislations, to the best of our knowledge there is no impending plan to reform these laws. Having said this, in order to unify the procedures prescribed for international and domestic arbitration proceedings, there may be some legislative preparations in the future for a new arbitration law which shall be applicable to both international and domestic arbitration cases.

6. What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?

The main arbitration institutes in Türkiye are İstanbul Arbitration Centre (ISTAC), Arbitration Centre of İstanbul Chamber of Commerce (ITOTAM), Energy Disputes Arbitration Centre (EDAC), Arbitration Centre of the Union of Chambers and Commodity Exchanges of Türkiye (TOBBUYUM), Organization of Islamic Cooperation Arbitration Centre (OIC-AC).

ISTAC Arbitration Rules have been amended in April 2020 to allow arbitration applications and proceedings to be conducted online.

7. Is there a specialist arbitration court in your country?

While there are several Turkish arbitration institutions, which are explained above, rendering dispute resolution services, there is not any specialist arbitration court in Türkiye. On the other hand, it is also noteworthy that, several chambers of the Appeal Courts and the Court of Cassation have wide knowledge and experience on arbitration and arbitration-related disputes.

8. What are the validity requirements for an arbitration agreement under the laws of your country?

Under Turkish law, in principle, the conditions for the validity of a contract also apply to arbitration agreements. Accordingly, the requirements of the parties' capacity to enter into a contract, the absence of collusion, or the absence of an impairment of will are also required for arbitration agreements. In addition to these, there must also be special validity conditions. First of all, there must be a clear intention of the parties to arbitrate and such intent to arbitrate must be clearly understood from the contract.

In addition, there is a written form requirement set forth in Article 4 of TIAL International and Article 412 of TCCP. According to the definition of arbitration agreement both in TIAL and TCCP, the dispute must be definite or determinable.

In addition, the dispute must be arbitrable. The arbitrability of the dispute is important for the recognition and enforcement of awards. Arbitrability can be limited with mandatory law provisions.

For instance, Article 1 of TIAL and Article 408 of TCCP provide that the disputes related to rights in rem concerning immovables and that are not within the parties' disposal are not arbitrable.

The disputes which are not within the parties' disposal may be exemplified by proceedings in the field of criminal law. According to the Turkish Court of Cassation, these disputes are not arbitrable, as they cannot be freely disposed of in these areas of public order.

9. Are arbitration clauses considered separable from the main contract?

The separability principle is accepted under Turkish Arbitration Law. As per Article 412(4) of TCCP regulating domestic arbitration provides that no party can object to arbitration agreement based on the ground that the main contract is invalid. Similarly, Article 7 (H) (1) of TIAL regulating international arbitration stipulates that the arbitrator or arbitral tribunal may decide on its own jurisdiction, including challenges to the existence or validity of the arbitration agreement. In making this decision, the arbitration clause in a contract shall be considered independently of the other provisions of the contract. A decision of the arbitrator or arbitral tribunal declaring the main contract null and void shall not automatically result in the nullity of the arbitration agreement.

10. Do the courts of your country apply a validation principle under which an arbitration agreement should be considered valid and enforceable if it would be so considered under at least one of the national laws potentially applicable to it?

Turkish courts generally apply the validation principle with regard to arbitration agreements provided that the relevant dispute is considered arbitrable under mandatory

provisions of Turkish law (i.e. dispute should not be related to the rights in rem regarding immovables and it should be within the parties' disposal) This approach supports a fair and international alignment in resolving arbitration-related disputes, reflecting a pro-arbitration stance and an intention to offer recourse that respects the parties' original agreement to arbitrate.

11. Is there anything particular to note in your jurisdiction with regard to multi-party or multi-contract arbitration?

While TIAL and TCCP do not provide explicit provisions on the joinder of additional parties, different arbitration institutions have specific rules regarding multi-party arbitration. For instance, as to multi-contract arbitration, Article 10 of ISTAC Arbitration Rules provides that if the claims and relief sought between the parties arise out of, or in connection with more than one contract, they may be settled in a single arbitration on the condition that all of the contracts refer to arbitration under the Rules and that the arbitration agreements are compatible with each other. Besides, in accordance with Article 11 of ISTAC Arbitration Rules, ISTAC Board may allow the consolidation of two or more arbitration cases under certain circumstances upon the request of any party.

Like ISTAC, another very well-known arbitration institution in Türkiye, Arbitration Centre of İstanbul Chamber of Commerce (ITOTAM) has also specific rules with respect to claims between multiple parties (Article 15) and consolidation of arbitration cases (Article 16).

12. In what instances can third parties or non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?

Third parties or non-signatories can be bound by an arbitration agreement only if those third parties or non-signatories had clear consent to be bound by the arbitration agreement in question. Turkish courts also acknowledge this legal approach. For instance, very recently, in a case where the claimant initiating a setting aside proceedings before Turkish courts has claimed that the arbitral award should be annulled by the relevant Turkish court due to the fact that it is not the claimant but the company in which he is a majority shareholder is a party to the arbitration agreement and therefore the arbitral tribunal had no jurisdiction to render an award over the disputes between the parties.

After reviewing the facts in that case, the General Chamber of the Court of Cassation, in its decision numbered E. 2023/688, K. 2023/1328 and dated 21 December 2023, has dismissed the claimant's request for setting aside of the arbitral award based on the facts that (i) the claimant has previously objected to the court proceedings in Türkiye, where it was the respondent, by alleging that the contract between the parties contain an arbitration clause and therefore the Turkish Courts has no jurisdiction to hear the disputes between the parties and (ii) the relevant Turkish court has upheld this arbitration objection and dismissed the case which was not appealed by either party.

Hence, in that case, even if the claimant was not the actual party to the arbitration agreement in question, (i) the arbitration objection asserted by the claimant in the court proceedings prior to the arbitral proceedings and (ii) lack of any appeal for the court decision upholding that there is an arbitration agreement between the parties are considered by the Court of Cassation as an explicit consent of the claimant to become a party to that arbitration agreement.

13. Are any types of dispute considered non-arbitrable? Has there been any evolution in this regard in recent years?

As it is explained in our answer to Question 8, as per Article 1 of TIAL and Article 408 of TCCP the disputes which are related to rights in rem concerning immovables and the disputes which are not within the parties' disposal are not arbitrable.

14. Are there any recent court decisions in your country concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the Parties?

Article 8(a) of TIAL provides that subject to the mandatory provisions of this Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings. They may, in the determination of such procedure, make a reference to any law or international or institutional arbitration rules. If there is no such agreement between the parties, the arbitral tribunal shall conduct the proceedings in accordance with the provisions of this Law. TCCP, which regulates the domestic arbitration, contains a similar provision.

As to the application of Article 8(a) of TIAL, although we did not come across with any recent court decision specifically dealing with the choice of law applicable to

an arbitration agreement, a recent decision of the 19th Civil Chamber of the Court of Cassation numbered E. 2017/5578 and K. 2019/5114 and dated 13 November 2019 refers to Article 8 of TIAL while discussing the validity of the arbitration objection asserted by a party in the first instance court proceedings.

On the other hand, in relation with Article 424 of TCCP, in its recent decision numbered E. 2023/3077 and K. 2023/3238 and dated 11 October 2023, 6th Civil Chamber of Court of Cassation has stated that the arbitral tribunal has authority to determine the appropriate rules applicable to the procedure of a domestic arbitration and the arbitral tribunal is not automatically required to apply the procedural provisions of TCCP which should be applicable in the ordinary court proceedings.

15. How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?

As per Article 12(c) of TIAL, the arbitral tribunals decide on the disputes in accordance with such rules of law chosen by the parties as applicable to the substance of the dispute.

Besides, the applicable trade usages under the law are also taken into account by the arbitral tribunals in construing the provisions of the underlying contract and for filling the gaps.

On the other hand, any designation of the law or legal system of a State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules or its rules of procedure.

Failing any designation by the parties of the applicable substantive law, the arbitral tribunal shall apply the substantive law of a State, which has the closest connection with the dispute. The arbitral tribunal shall decide *ex aequo et bono or as amiable compositeur* only if the parties have expressly authorized it to do so.

16. In your country, are there any restrictions in the appointment of arbitrators?

Appointment of arbitrators are regulated under TIAL in relation with international arbitral proceedings and under TCCP in relation with domestic arbitral proceedings.

As per Article 7 of TIAL, the parties are free to determine the number of arbitrators. However, the number shall be odd. If the number of arbitrators is not determined by the parties, three arbitrators shall be appointed.

In accordance with Article 7 of TIAL, in order for a person to act as an arbitrator he/she should be a natural person and have the qualifications agreed by the parties. Besides, the candidate arbitrator should also be impartial and independent.

Unless otherwise agreed by the parties, in case of appointment of the sole arbitrator, this arbitrator should have a nationality which is different from either party. And in case of appointment of three-member arbitral tribunal, two arbitrators of the tribunal should have nationality different from the parties.

In terms of domestic arbitration proceedings, Articles 416 and 417 of TCCP also provide that the arbitrator should be a natural person, and he/she should provide a statement for his/her impartiality and independency. Besides, the arbitrators should also have the qualifications (if any) determined by the parties in their arbitration agreement. Finally, in case of appointment of more than one arbitrator, at least one of the arbitrators should have minimum 5-year experience in his/her field.

17. Are there any default requirements as to the selection of a tribunal?

Yes. Unless otherwise agreed by the parties, specific rules as to the selection of a tribunal specified in both TIAL (for international arbitration proceedings) and TCCP (for domestic arbitration proceedings) should be applied.

As per Article 7(b) of TIAL, only real persons can be appointed as arbitrators. In an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he/she shall be appointed, upon request of a party, by the civil court of first instance.

In an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator. If a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the civil court of first instance. The third arbitrator appointed shall be the chairman of the arbitral tribunal.

In an arbitration with more than three arbitrators, the arbitrators who will appoint the last arbitrator shall be appointed by the parties in equal numbers in accordance

with the above-mentioned procedure.

Apart from above where under an appointment procedure agreed upon by the parties:

i. a party fails to act as required under such procedure;
ii. the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure; or
iii. a third party, including an institution, that is empowered to appoint arbitrators fails to perform any function entrusted to it under such procedure;
iv. the appointment of the arbitral tribunal shall be made, upon a party request, by the civil court of first instance. The civil court of first instance's decision on the appointment of member(s) of an arbitral tribunal shall be final.

Similar provisions exist in Article 416 of TCCP in terms of domestic arbitration proceedings.

18. Can the local courts intervene in the selection of arbitrators? If so, how?

Please refer to our answer to Question 17

19. Can the appointment of an arbitrator be challenged? What are the grounds for such challenge? What is the procedure for such challenge?

Either party may challenge the appointment of any arbitrator. The grounds of challenge and the relevant procedure are regulated under Article 7 of TIAL.

Accordingly, an arbitrator may be challenged based on the following grounds:

i. if he/she does not possess the qualifications that were agreed to by the parties,
ii. if there exists a reason for challenge in accordance with the arbitration procedure agreed by the parties, or
iii. if the existing circumstances give rise to justifiable doubts as to his/her impartiality or independence.

The parties are free to agree on a procedure for challenging an arbitrator. A party who intends to challenge an arbitrator shall, within thirty days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance that may give rise to a challenge, send a written statement of the reasons for the challenge to the counterparty and to the arbitral tribunal.

A party who challenged one or more arbitrators before the arbitral tribunal shall provide its request and reasoning in this regard. A party who becomes aware that the challenge is not successful, within thirty days after having received notice of the decision rejecting the challenge, may apply to the civil court of first instance to challenge such decision and removal of the arbitrator or the arbitrators.

A challenge to the appointed sole arbitrator, or all members of the arbitral tribunal, or a challenge to the number of arbitrators that may remove the decision-making majority of the tribunal, shall only be made to the civil court of first instance. The court's decision on the challenge of arbitrator or arbitrators is final.

Similar grounds for challenging the arbitrators and the challenge procedure are regulated in Articles 417 and 418 of TCCP in terms of domestic arbitration proceedings.

20. Have there been any recent developments concerning the duty of independence and impartiality of the arbitrators, including the duty of disclosure?

With respect to international arbitration proceedings, TIAL mandates that arbitrators must be independent and impartial. They are required to remain free from any undue influence or bias throughout the arbitration proceedings. Arbitrators are expected to disclose any circumstances that may raise justifiable doubts about their impartiality or independence. This requirement remains active from the time of appointment and throughout the proceedings.

Similar standards apply under the TCCP, for domestic arbitration, where impartiality and independence are critical terms for upholding the arbitration agreement and outcome.

Turkish practice is influenced by international standards and guidelines, such as the IBA Guidelines on Conflicts of Interest in International Arbitration. These guidelines provide detailed recommendations on disclosures and have indirectly shaped Turkish arbitration practices, urging for more comprehensive disclosures.

21. What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?

Pursuant to Article 13(a) of TIAL, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. However, certain issues concerning procedure may be decided by a presiding arbitrator, if so authorized by the parties or the members of the arbitral tribunal.

Hence, unless otherwise agreed by the parties, Turkish international arbitration law recognizes the need for a full tribunal to reach decisions unless the parties agree otherwise. The presumption is that the agreed-upon number of arbitrators (often three for a panel) is necessary for rendering a binding award.

22. Are arbitrators immune from liability?

Article 7(e) of TIAL provides that unless otherwise agreed by the parties, an arbitrator who accepts his/her office shall be responsible to indemnify any damages that are related to the failure of the arbitrator to perform his duties without a justifiable reason. A similar provision exists in Article 419 of TCCP for domestic arbitration proceedings.

Therefore, upon their appointment, if the arbitrators fail to perform their disputes without a justifiable reason, this may raise their responsibility, and they may be held liable to indemnify the damages of the parties if any.

23. Is the principle of competence-competence recognised in your country?

Yes. Principle of competence-competence is recognized by Turkish arbitration law and the relevant court precedents in Türkiye.

According to Article 7(h)(1) of TIAL, the arbitrators may decide on their own jurisdiction, including objections to the validity of the arbitration agreement; the arbitration clause shall be considered independently from the main contract and the invalidity of the main contract shall not automatically result in the invalidity of the arbitration agreement. Article 422 of TCCP also states that the arbitration may decide on their own jurisdiction in domestic arbitration proceedings.

Furthermore, Article 7(h)(5) of TIAL provides that the arbitrators shall examine and decide the objection of lack of jurisdiction as a preliminary issue; and if they deem themselves competent, they shall continue the arbitration proceedings and decide the case.

There is no possibility to appeal to the court against the arbitrators' decision on their own competence. In the event that the arbitrators unlawfully decide that they are competent or incompetent, this issue can only be asserted by the parties in the annulment action to be filed pursuant to Article 15 of TIAL.

The Court of Cassation, on the other hand, states that the objections regarding the non-arbitrability of the dispute regarding the arbitration agreement should be resolved by the arbitrators who will resolve the merits of the case (11th Civil Chamber of Court of Cassation's Decision numbered E.2004/4057 K.2005/599 and dated 1 February 2005 and 14th Civil Chamber of Court of Cassation's Decision numbered E.2010/11426 K. 2010/13965 and dated 14 December 2010).

24. What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?

Article 5 of TIAL provides that if an action is brought before the court in a matter, which is the subject of an arbitration agreement, the respondent can make a preliminary objection to the court based on the arbitration agreement which is called preliminary arbitration objection. If such objection is accepted, then the action shall be dismissed by the court due to lack of jurisdiction.

Preliminary arbitration objection which is referred in Article 5 of TIAL is regulated under Article 413 of TCCP. As per Article 413 of TCCP, if a lawsuit has been filed before the local court for the resolution of a dispute which is subject to an arbitration agreement, the opposing party may file a preliminary objection for arbitration. In this case, if the arbitration agreement is not null and void, ineffective or impossible to enforce, the court shall accept the objection to arbitration and dismiss the case due to lack of jurisdiction.

25. What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?

The legal consequences of the respondent's failure in participating the arbitral proceedings are regulated under TIAL and TCCP for international and domestic arbitration cases respectively.

Article 11 (c) (3) of TIAL provides, in this regard, that if the respondent fails to communicate its statement of

defense, the arbitral tribunal shall continue the proceedings without treating such failure, in itself, as an admission of the claimant's allegations. Besides, as per Article 11 (c) (4) of TIAL, if any party fails to appear at a hearing or to produce evidence, the arbitral tribunal may continue the proceedings and may make the award on the evidence before it. Same procedure is prescribed under Article 430 of TCCP for domestic arbitral proceedings as well.

On the other hand, there is no provision under Turkish arbitration law authorizing the local courts to compel the parties to participate in the arbitral proceedings.

26. Can third parties voluntarily join arbitration proceedings? If all parties agree to the intervention, is the tribunal bound by this agreement? If all parties do not agree to the intervention, can the tribunal allow for it?

Under Turkish law, arbitral proceedings are mainly based on party autonomy and there is no specific provision either in TIAL or in TCCP regarding voluntary participation and/or intervention of the third parties in the arbitral proceedings.

On the other hand, in some arbitration rules there are specific provisions stipulating the joinder of third parties to the arbitral proceedings under certain circumstances.

For instance, Article 14 of the Arbitration Rules of ITOTAM (Istanbul Chamber of Commerce Arbitration and Mediation Center) provides that a party to the arbitral proceedings may submit its request to the Secretariat to join a third party to the arbitral proceedings. Joinder of a third party to the arbitral proceedings is subject to different procedures under the Arbitration Rules of ITOTAM based on the stage of the arbitral proceedings.

More particularly, in case where an arbitral tribunal has yet to be constituted and the joinder request was made by a party to the Secretariat of ITOTAM, regardless of the consent of the other party and the third party, the Arbitration Court is authorized to dismiss this joinder request if there is no arbitration agreement between the third party and the parties to the arbitral proceedings which is suitable for resolution of the disputes (if any) between the third party and the relevant parties in an arbitration case. On the other hand, after the constitution of the Arbitral Tribunal, a third party can be joined in the arbitral proceedings only if all parties to the arbitration agreement and the third party have an agreement in this regard.

27. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?

While the authorities of the arbitral tribunals to order interim measures are regulated under Article 6 of TIAL for international arbitration proceedings and under Article 414 of TCCP in relation with domestic arbitration proceedings, the legislation does not specifically mention the interim measures which can be issued by the arbitral tribunals as numerus clausus. Hence, the scope of interim measures is relatively wide. These measures include but not limited to preservation of any disputed asset, payment of specific amount of money by a party to an escrow account until the resolution of the dispute between the parties, payment of security for costs to be incurred by the parties during the arbitral proceedings, preservation of any documents, information or asset in an escrow until the resolution of the disputes between the parties.

Pursuant to Article 6 of TIAL, the arbitral tribunals may not grant interim measures or interim attachments (i) that are required to be enforced through execution offices or to be executed through other official authorities or (i) that bind third parties.

On the other hand, it is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection or an interim attachment and for a court to grant such measure or attachment. Besides, if a party does not comply with the interim measure or attachment ordered by an arbitral tribunal, the other party may request the assistance of the competent court for taking an interim measure of protection or an interim attachment.

As to the domestic arbitration proceedings, Article 414(3) of TCCP provides that where the arbitrator or arbitral tribunal or another person appointed by the parties is unable to act in a timely or effective manner, a party may apply to the court for interim injunctive relief or discovery of evidence. If these circumstances do not exist, the application to the court shall be made only on the basis of the permission to be obtained from the arbitrator or the arbitral tribunal or the written agreement of the parties in this regard.

28. Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?

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29. Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence? Can local courts compel witnesses to participate in arbitration proceedings?

With respect to international arbitration proceedings, Article 12 of TIAL regulates the evidentiary matters. According to this, the parties may provide their evidence within the term that is determined by the arbitrators. The arbitral tribunal may request from the competent court of first instance assistance in taking evidence.

Similar provisions exist in Articles 428, 429 and 432 of TCCP regarding evidentiary issues in domestic arbitration proceedings. There are also specific provisions regarding evidentiary matters under the rules of arbitration institutions such as ISTAC, ITOTAM and EDAC.

30. What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?

In Türkiye, both counsel and arbitrators are subject to various ethical codes and professional standards, which ensure that legal and arbitration proceedings are conducted with integrity and professionalism.

The Law No. 1136 (the “Attorney Law”) is the primary law that regulates the profession of lawyers in Türkiye. It outlines the duties, rights, and responsibilities of lawyers, including ethical obligations such as confidentiality, loyalty, and integrity.

Turkish Bar Association also provides a code of conduct that all practicing lawyers must follow. This code sets out the ethical obligations and standards of conduct for lawyers, including honesty, confidentiality, and the duty to avoid conflicts of interest.

In terms of the main ethical and professional standards of the arbitrators, TCCP and TIAL include provisions related to the duties and responsibilities of arbitrators. Both TCCP and TIAL emphasize the importance of impartiality, independence, and the duty to disclose any circumstances likely to give rise to justifiable doubts as to the arbitrators' impartiality or independence.

31. In your country, are there any rules with respect to the confidentiality of arbitration proceedings?

Although there is no specific provision under TIAL or TCCP as to the confidentiality of arbitration proceedings, it is prescribed under the rules of several Turkish arbitration institutions. For instance, Article 21 of ISTAC Arbitration Rules provides that unless otherwise agreed by the parties, the arbitral proceedings are confidential. At the request of one of the parties, the sole arbitrator or

arbitral tribunal may give any order concerning the confidentiality of the arbitration and the proceedings, and may take necessary measures to protect trade secrets, along with other confidential information. Similarly, Article 53 of ITOTAM Arbitration Rules stipulates that the parties, arbitrators, members of the Arbitration Court, Secretariat personnel, witnesses, experts and everyone involved in the arbitration administered by ITOTAM in any capacity whatsoever, shall be obliged to keep the arbitral proceedings confidential. Persons acting on behalf of the parties during the proceedings shall also be obliged to keep the arbitral proceedings confidential.

32. How are the costs of arbitration proceedings estimated and allocated? Can pre- and post-award interest be included on the principal claim and costs incurred?

As per Article 16 of TIAL, unless otherwise agreed by the parties, the fees of the arbitrators shall be fixed between the arbitral tribunal and the parties, by taking into consideration the amount in dispute, the nature of the dispute and the term of arbitral proceedings. If the parties and the arbitral tribunal cannot agree on the determination of the fees or if the arbitration agreement does not contain any provision concerning the determination of the fees or if no reference has been made by the parties in this respect to the established international rules or institutional arbitration rules, the fees of the arbitral tribunal shall be determined in accordance with the schedule of fees determined annually by the Ministry of Justice after the consultation with the relevant professional organizations, which are public establishments in nature.

The costs of arbitration include (i) the fees of the arbitrators; (ii) the arbitrators' travel and other expenses; (iii) the fees paid to the experts, and to the other persons whose assistance is sought and who are, collectively, appointed by the arbitral tribunal, and the costs for the site inspection; (iv) the witnesses' travel and other expenses to the extent approved by the arbitral tribunal; (v) if the successful party is represented by a counsel, the fees of the successful party's attorney fees, which are calculated by taking into account the minimum fee schedule, subject to the arbitral tribunal's approval; (vi) the charges to be made for the applications in accordance with this Law, to the courts; (vii) the notification expenses with respect to the arbitral proceedings.

Besides, there is not any specific provision under Turkish law which prevents the sole arbitrator or the arbitral tribunal from ruling for a pre-award and post award interest.

33. What legal requirements are there in your country for the recognition and enforcement of an award? Is there a requirement that the award be reasoned, i.e. substantiated and motivated?

The recognition and enforcement of foreign arbitral awards in Türkiye are primarily governed by the Turkish International Private and Procedural Law No. 5718 (IPPL) Additionally, as mentioned above in our answer to Question 2, Türkiye is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) since 1992, which further harmonizes and facilitates the enforcement of international arbitral awards in Türkiye.

In view of the foregoing, if the seat of arbitration is located in a country which is a party to the New York Convention, then the recognition and enforcement of the foreign arbitral award in Türkiye should be subject to the conditions prescribed under Article V of the New York Convention. Otherwise, relevant provisions of IPPL (Article 62) on the recognition and enforcement of foreign arbitral awards shall take place.

The party seeking recognition and enforcement of a foreign arbitral award must apply to the Civil Court of First Instance. The application should include (i) the original arbitral award or a duly certified copy thereof, (ii) the original arbitration agreement or a duly certified copy thereof, and (iii) if the award or agreement is not in Turkish, officially certified translations must be provided.

The Turkish courts can refuse recognition or enforcement of an arbitral award on the grounds prescribed under Article V of the New York Convention.

Enforcement of an arbitral award may also be refused if the award is in conflict with Turkish public policy. This is a common ground for refusal in many jurisdictions and is subject to interpretation by the courts. For instance, if the dispute which is subject to the foreign arbitral award is not arbitrable in Türkiye, then it will be considered by the Turkish court as a reason to refuse the recognition and enforcement of the foreign arbitral award in question.

34. What is the estimated timeframe for the recognition and enforcement of an award? May a party bring a motion for the recognition and

enforcement of an award on an ex parte basis?

The timeframe for the recognition and enforcement of an arbitral award in Türkiye can vary depending on several factors, such as the complexity of the case, the workload of the courts, and whether the decision is appealed.

Based on the recent workloads of the Turkish courts, it would be fair to state that the proceedings before first instance court typically takes about 12 to 18 months to decide on the application. This duration might be longer if the case is complex or if there are significant factual or legal issues that require extensive examination. On the other hand, if the decision of the civil court of first instance is appealed, the appeal process can take an additional 6 to 12 months. Appeals in Türkiye can extend the total duration significantly, especially if the case goes to the higher courts.

Further appeals, such as to the Court of Cassation, can extend the process by several months to over a year, depending on the specific issues and the court's backlog.

Apart from above, while ex parte proceedings are generally used in Turkish law for urgent matters where giving notice to the other party might defeat the purpose of the action (e.g., certain injunctions or temporary measures), they are not suitable for the enforcement of arbitral awards due to the need for a fair hearing and adherence to the principles of the New York Convention. Therefore, when an application for the recognition and enforcement of an arbitral award is filed, the opposing party must be notified and given an opportunity to respond.

35. Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?

As explained above, the recognition and enforcement of foreign arbitral awards are subject to the New York Convention (in case where the seat of arbitration is based in a country which is a party to the New York Convention) or to the provisions under Article 62 of IPPL regarding recognition and enforcement of foreign arbitral awards.

On the other hand, under Turkish law, the domestic arbitral awards (either rendered within the scope arbitral proceedings having foreign element and administered by TIAL or within the scope of entirely domestic arbitral proceedings administered by the provisions of TCCP) are not subject to a separate enforcement and recognition process.

In this regard, as per Article 15 of TIAL, the only recourse to a court against an arbitral award rendered in accordance with the proceedings prescribed under TIAL is to file a setting aside case before the authorized regional court of justice. An arbitral award may be set aside by the relevant court if the applicant proves that:

i. a party to the arbitration agreement was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under Turkish law;
ii. the composition of arbitral tribunal is not in accordance with the parties' agreement, or, [failing such agreement] with this Law;
iii. the arbitral award is not rendered within the term of arbitration;
iv. the arbitral tribunal unlawfully found itself competent or incompetent;
v. the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration;
vi. the arbitral proceedings are not in compliance with the parties' agreement [as to the procedure], or, failing such agreement, with this Law provided that such non-compliance affected the substance of the award;
vii. the parties are not treated with equality

Or if the court finds that the subject matter of the dispute is not capable of settlement by arbitration under Turkish law; or the award is in conflict with the public policy.

Same grounds are stipulated in Article 439 of TCCP in relation with setting aside proceedings regarding domestic arbitral awards.

36. Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts?

Yes. Both TIAL and TCCP prescribe specific time limits for the parties to commence the setting aside proceedings before the authorize regional court of justice.

Article 15 of TIAL provides that each party may file a case before the authorized regional court of justice within 30 days upon its notification of the arbitral award or a decision on correction or interpretation or an additional award. Similarly, in Article 439 of TCCP, the legal period for initiating the setting aside proceedings was determined as one month upon the notification of the

arbitral award or a decision on correction or interpretation or an additional award.

It is also noteworthy that while Article 15 of TIAL states that the commencement of setting aside proceedings suspends the execution of the arbitral awards, pursuant to Article 439 of TCCP, the commencement of setting aside proceedings does not prevent the execution of the domestic arbitral awards rendered in accordance with the provisions under TCCP unless a security which equals to the amount of award is deposited by the applicant to suspend the execution of the relevant arbitral award.

37. Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure?

Under Turkish law, the arbitral awards rendered in accordance with the provisions of TIAL and TCCP can only be challenged through the setting aside proceedings before the authorized regional court of justice. However, the decisions of the regional courts of justice rendered at the end of the setting aside proceedings can also be appealed by the relevant parties.

As per Article 15 of TIAL, the judgment on the application for setting aside the arbitral award may be appealed in accordance with the provisions of TCCP, however, no request can be made for reconsideration of the judgment rendered at the stage of appeal. A similar provision exists in Article 439 of TCCP regarding the appeal of the judgements rendered by the courts on the application for annulment of the arbitral awards issued in domestic arbitration proceedings.

Any examination at the appeal stage shall be limited to the grounds available for setting aside the award which are explained in our answer to Question 35.

38. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?

As to international arbitration proceedings subject to Turkish Law, Article 15 of TIAL stipulates that the parties may, in part or in full, renounce the right to initiate an action for setting aside the award. A party whose domicile or habitual residence is not in Türkiye may renounce that right completely in an express clause in the arbitration agreement or in writing, following the conclusion of the arbitration agreement. Alternatively, in the same manner, the parties may waive their rights of commencing an action to set aside the arbitral award for one or more of the reasons set forth under Article 15 of TIAL.

39. In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the recognition of an award?

A third party or a non-signatory can be bound by an arbitral award only if that third party has joined in the arbitral proceedings in question based on the decision of the arbitral tribunal and/or the agreement of the parties to the relevant arbitration agreement. If this is the case, a third party may also have the right to challenge the recognition of an award. Please refer to our answers to Questions 12, 26, 35 and 37 in this regard.

40. Have there been any recent court decisions in your jurisdiction considering third party funding in connection with arbitration proceedings?

In Türkiye, there is no specific legal regulation either prohibits or allows third party funding in international arbitration. And, to the best of our knowledge there is yet to be a Turkish court decision in this regard.

41. Is emergency arbitrator relief available in your country? Are decisions made by emergency arbitrators readily enforceable?

Although the emergency arbitrator relief is not regulated under TIAL or TCCP, several arbitration institutions such as ISTAC and ITOTAM have separate emergency arbitrator rules.

ISTAC Emergency Arbitrator Rules provide that the emergency arbitrator, considering the nature and circumstances of the application, shall grant interim measures deemed to be appropriate. The emergency arbitrator may require an appropriate security in order to grant interim measures.

The emergency arbitrator's decisions are binding on the parties. The parties undertake to comply with the decision without any delay. In case where a party refuses to comply with the interim measure ordered by the emergency arbitrator, the other party may apply to the authorized local court to get support for enforcement of the relevant interim measure in accordance with the relevant provisions of TIAL and TCCP.

42. Are there arbitral laws or arbitration institutional rules in your country providing for simplified or expedited procedures for claims under a certain value? Are they often used?

Neither TIAL nor TCCP contains provisions regarding simplified or expedited procedures for arbitral proceedings. On the other hand, arbitrations institutions have specific rules for expedited proceedings. In this regard, ISTAC has fast track arbitration rules and ITOTAM has expedited proceedings rules. For instance, if the arbitral proceedings are administered under ISTAC, unless the parties agreed otherwise, ISTAC fast track arbitration rules shall take place if the dispute amount does not exceed 5 million Turkish Lira (approx. 145.000 USD) this amount is determined as 2 million Turkish Lira (approx. 58.445 USD) for ITOTAM expedited proceedings.

43. Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?

In Türkiye, the legal and arbitration community has been gradually recognizing the importance of diversity, including gender, ethnicity, age, and professional background, in the composition of arbitration panels. This is part of a broader global movement towards enhancing diversity in international arbitration, which has been supported by various international initiatives and declarations such as the Equal Representation in Arbitration Pledge, which aims to improve the profile and representation of women in arbitration. Turkish arbitration institutions, ISTAC, ITOTAM and EDAC have been working to position themselves as modern, international, and inclusive.

44. Have there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?

In accordance with Article V of the New York Convention and Article 62 of IPPL, it is not possible for a Turkish court to recognize and enforce an arbitral award which did not become binding for the parties, or which has already been set aside in the seat of arbitration.

On the other hand, recognition and enforcement of the arbitral awards which have already been enforced in other jurisdictions can be accepted or dismissed by the Turkish courts subject to the conditions prescribed under Article V of the New York Convention or Article 62 of IPPL, if the country in which the arbitral award was rendered is a not party to New York Convention.

In line with above, 11th Civil Chamber of Court of Cassation in its recent decision numbered E. 2020/7196 and K. 2022/2796 and dated 4 April 2022 held that in order for a foreign arbitral award to be enforceable in Türkiye, the award sought to be enforced must be a foreign arbitral award, the award must be final and enforceable or binding on the parties (not annulled or stayed), there must be an arbitration agreement between the parties, the party against whom the award is rendered must be informed of the appointment of the arbitrator or the arbitration proceedings, the dispute must be arbitrable, and the award must not be contrary to the public order of the enforcing State.

45. Have there been any recent court decisions in your country considering the issue of corruption? What standard do local courts apply for proving of corruption? Which party bears the burden of proving corruption?

Allegations on corruption should be proved by the party who alleges such corruption. Hence, the burden of proof is on the shoulders of claiming party. On the other hand, we did not come across with any criminal court decision regarding any corruption allegation in relation with international or domestic arbitral proceedings.

46. What measures, if any, have arbitral institutions in your country taken in response to the COVID-19 pandemic?

Various arbitral institutions around the world, including those in Türkiye, had taken measures to adapt to the challenges posed by the COVID-19 pandemic. These measures were aimed at ensuring the continuity of arbitration proceedings while adhering to public health guidelines. Many institutions shifted towards virtual or remote hearings using videoconferencing tools. This allowed arbitrations to continue despite lockdowns and travel restrictions. Some institutions updated their rules or provided specific guidelines to accommodate remote proceedings and to address issues like cybersecurity and data protection, which became more pertinent with the shift to digital formats. ISTAC, for example, promoted the use of its online dispute resolution services and updated its rules to facilitate remote arbitration processes in April 2020.

47. Have arbitral institutions in your country implemented reforms towards greater use of technology and a more cost-effective conduct of arbitrations? Have there been any recent developments regarding virtual hearings?

As explained in our above answer to Question 46, one of the most significant changes has been the adoption of virtual or remote hearings, which became essential during the pandemic and have continued due to their cost-efficiency and convenience. Besides, tools for online case management facilitate smoother interactions between parties, arbitrators, and the institution, ensuring that everyone has timely access to case materials and updates. Technologies that allow for the digital presentation of evidence make the process more streamlined and accessible, particularly in complex cases involving large volumes of documents.

48. Have there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?

The move toward paperless arbitration has gained traction in Türkiye, especially since the COVID-19 pandemic. Virtual hearings, electronic submissions, and the use of online platforms for case management have significantly reduced the reliance on physical documents, travel, and in-person meetings key components of greener arbitration. Recent developments in greener arbitration in Türkiye are marked by a growing awareness of sustainability issues and the adoption of eco-friendly practices such as digitalization, virtual hearings, and collaboration with international green arbitration initiatives. While there is currently no formal regulatory framework specifically for green arbitration, the Turkish arbitration community is moving toward more sustainable practices.

49. Do the courts in your jurisdiction consider international economic sanctions as part of their international public policy? Have there been any recent decisions in your country considering the impact of sanctions on international arbitration proceedings?

Turkish courts often take into account the application of international public policy in cases involving foreign court and arbitral awards, particularly where those awards are subject to enforcement in Türkiye. In arbitration, international public policy is a key factor in the recognition and enforcement of arbitral awards under the New York Convention to which Türkiye is a party. Although there are not many high-profile cases in Türkiye that explicitly address the intersection of economic sanctions and international arbitration, there is a growing awareness of the role of sanctions in international dispute resolution due to the intensification of global sanctions regimes in recent years.

50. Has your country implemented any rules or regulations regarding the use of artificial intelligence, generative artificial intelligence or large language models in the context of international arbitration?

Any rules or regulations regarding the use of artificial intelligence (AI) in the context of international arbitration were not implemented yet in Türkiye. However, the use of technology in arbitration processes, generally referred to as legal tech, has been on the rise globally, including in Türkiye. This includes the use of AI for tasks such as document analysis, legal research, and data management. Arbitration institutions and legal practitioners in Türkiye are increasingly adopting technology to enhance efficiency and effectiveness in arbitration proceedings.

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