

TURKEY

Law and Practice

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Aktay Law Firm is a full-service law firm providing legal consultancy to domestic and international clients, successfully blending business insight with legal expertise. The firm is recognised by leading international law firms around the world, actively contributes legal articles to international publishers, and participates in seminars and panels in its areas of expertise. The firm represents clients in a broad range of domestic and international commercial transactions, dispute resolution and arbitration. Mr Faruk Aktay and Dr Can Eken have recently

established International Arbitration Advisors, a global boutique platform for international investment and commercial disputes. With presences in Istanbul, New York, London, Dubai and Singapore, it aims to be a premier platform dedicated to providing expert guidance and comprehensive support in the field of international commercial arbitration, bringing together an elite team of seasoned professionals with extensive experience in navigating the complexities of cross-border disputes.

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1. General

1.1 Prevalence of Arbitration

In Türkiye, international arbitration is increasingly preferred as a method of resolving disputes, reflecting a growing confidence in its efficiency and effectiveness. Domestic parties commonly opt for international arbitration by the express inclusion of arbitration clauses. The Turkish legal framework under the Turkish International Arbitration Act, numbered 4686 and dated 5 July 2001 (the “Act”), mimics the UNCITRAL Model Law on International Commercial Arbitration and is in favour of arbitration proceedings, thus making it attractive for domestic and international parties seeking a reliable and neutral forum for resolving cross-border disputes.

1.2 Key Industries

In Türkiye, industries such as construction, banking and finance, maritime and shipping, energy and telecommunications have experienced significant international arbitration activity in recent years. These sectors often involve complex projects, contracts with international counterparties, and substantial investments, which can lead to disputes requiring efficient and specialised dispute resolution mechanisms.

Turkish construction companies with projects awarded all around the world have a significant tendency to refer disputes to arbitration.

The complexity of the disputes as well as the calculation of damages requires expertise and neutrality. These factors, alongside a level of efficiency only offered by arbitral tribunals, and the enforceability of awards both domestically and internationally, combine to make arbitration an attractive choice for resolving cross-border disputes in these industries.

1.3 Arbitration Institutions

In Türkiye, the Istanbul Chamber of Commerce Arbitration and Mediation Center (ITOTAM) and the Istanbul Arbitration Centre (ISTAC) are the most prominent arbitral institutions for international arbitration. Established to enhance Istanbul’s status as a regional hub for dispute resolution, ISTAC offers modern arbitration rules, experienced arbitrators and efficient administration of cases. In addition to these, the Energy Disputes Arbitration Center (EDAC) offers a specialised centre for energy-related disputes inside and outside of Türkiye. During the course of 2023-24, no new arbitral institutions have been reported to have been established in Türkiye.

1.4 National Courts

In Türkiye, there are designated courts to oversee disputes relating to international and domestic arbitrations. For international arbitrations, the Istanbul Civil Courts of First Instance (Istanbul 1st Commercial Court) and the Istanbul Circuit Courts of Appeal (Istanbul Regional Court of Justice) generally handle international arbitration cases with their specialised hearings. These courts are particularly specialised in handling disputes arising from international commercial arbitration agreements by applying both Turkish law and international arbitration principles such as those found in the UNCITRAL Model Law. For domestic arbitrations, disputes typically fall under the jurisdiction of regular civil courts, with jurisdiction determined by the monetary value and subject matter of the dispute. However, there are no specialised courts which exclusively rule over domestic arbitrations. The recently established Istanbul Finance Center also has an agenda to strengthen the legal infrastructure for the swift resolution of financial disputes, yet it favours national courts and has opted out of establishing specialised courts and divisions.

2. Governing Legislation

2.1 Governing Law

Türkiye has not adopted the UNCITRAL Model Law as of 2024. International arbitration is primarily governed by the Act. This legislation is largely based on the UNCITRAL Model Law, providing a familiar and internationally recognised framework for resolving international arbitration disputes. The Act adopts many of the key provisions and principles of the UNCITRAL Model Law, including provisions on the arbitration agreement, composition of arbitral tribunals, conduct of arbitration proceedings, recognition and enforcement of arbitral awards, and judicial

assistance in arbitration matters. Turkish legislation diverges from the UNCITRAL Model Law in areas such as the form and validity of arbitration agreements and the procedural rules for challenging arbitral awards and tribunal jurisdiction. Despite these differences, the Act aligns with international standards to ensure efficient and fair resolution of international disputes through arbitration in Türkiye.

2.2 Changes to National Law

There have been no significant changes to Türkiye's national arbitration law in the past year. However, Türkiye continues to demonstrate a dynamic and determined approach in improving its arbitration framework to attract more international investments and become a preferred seat of arbitration for international disputes. While there are ongoing discussions for legislative amendments to further streamline arbitration procedures or address emerging issues, specific changes that could significantly alter the arbitration landscape in Türkiye have not been reported.

3. The Arbitration Agreement

3.1 Enforceability

There are certain legal requirements for the legality and enforceability of an arbitration agreement in Türkiye.

- *Written condition:* According to Turkish law, the arbitration agreement must be in writing. The written requirement rules that the agreement can be part of a contract as a clause or a separate contract on its own.
- *Specific matters:* The topic of arbitration must concern matters that would be enforceable under the law. For example, it may focus on a

commercial dispute between the parties or a specific legal issue.

- *Competency of the parties:* The parties must have legal capacity to enter into the arbitration agreement.
- *Compliance with Turkish law:* The arbitration agreement must comply with the general principles of Turkish law and public order.
- *Arbitration rules:* Parties must choose specific arbitration rules or institutions to determine how they will conduct the arbitration process. These rules provide guidance throughout the process of executing and concluding an arbitration agreement.
- *Independence and impartiality:* The arbitration agreement should ensure that the arbitral tribunal is independent and impartial. Parties must take the necessary measures to protect the independence and impartiality of arbitrators.

3.2 Arbitrability

Under Turkish law, disputes involving criminal matters, disputes involving bankruptcy and administrative disputes within the exclusive jurisdiction of administrative courts cannot be resolved through arbitration. However, an exception to the general rule for administrative disputes exists for those that relate to concession agreements executed with the administration.

Turkish law follows a dual-track approach when establishing the arbitrability of a dispute. The first part of this approach is determining the nature of the subject matter. In order to consider a dispute arbitrable, the subject matter must be open to settlement by the parties. The second part of this approach is determining whether or not the dispute is explicitly closed to arbitration by any legislation under Turkish law. If the subject matter at hand is not closed to arbitration by law and

is open to settlement by the parties themselves, then it is considered arbitrable under Turkish law.

3.3 National Courts' Approach

Turkish courts generally view arbitration as a favourable method of dispute resolution. Therefore, they demonstrate a high level of determination to ensure the enforcement of arbitration agreements, which strengthens the growing and developing field of Turkish arbitration.

Determining the Law Governing the Arbitration Agreement

Turkish courts place high importance on party autonomy as a principle of arbitration; therefore, they substantially uphold the choice of the parties when determining the choice of law and jurisdiction governing arbitration agreements. This willingness to endorse party autonomy generally results in the parties choosing the governing law of the arbitration agreement. The root of this respect for autonomy comes from the influence of the UNCITRAL Model Law and the New York Convention. However, while Turkish courts generally respect the choices of the parties, in cases where the party autonomy leads in a direction that contradicts Turkish public policy or mandatory provisions set by Turkish law, the courts have no choice but to intervene, thus reducing party autonomy to a certain extent. This respectful yet watchful approach towards arbitration ensures a stable and lawful arbitration process in Türkiye.

Enforcement of Arbitration Agreements

Turkish courts generally hold the enforcement of arbitration agreements in high regard, with the condition that those agreements meet the necessary validity requirements set by Turkish law. The validity requirements of arbitration agreements are clearly stated in the Act and the Turkish Code of Civil Procedure (Law No. 6100,

dated 12 January 2001). This eager approach to upholding and enforcing arbitration agreements is due to the recognition of the binding nature of arbitration and it being the preferred method of dispute resolution.

Regular Enforcement of Arbitration Agreements

As mentioned above, arbitration agreements are generally upheld and enforced by Turkish courts due to the method of arbitration being favoured as an alternative to litigation. The principle of competence-competence has been firmly adopted by the Turkish courts, which in essence means that arbitrators have the autonomy to rule on their own jurisdiction. This principle has been adopted to ensure the transparency and independence of the arbitration process.

3.4 Validity

The principle of separability, commonly known as the doctrine of severability, is adopted by Turkish courts and is applied to certain arbitration clauses that are a part of an otherwise invalid arbitration agreement. The main aim of the principle of separability is to ensure that arbitration clauses that are a part of an invalid contract retain their validity. The principle dictates that even if the contract to which the arbitration clause is attached is deemed invalid due to reasons such as illegality, lack of legal capacity of a party or non-compliance with legal requirements, the arbitration clause remains valid under Turkish law.

The Act firmly integrates this principle into arbitral proceedings, which aligns with internationally recognised arbitration norms, for instance, the norms that are found in the UNCITRAL Model Law.

Due to the adoption of the principle of separation, Turkish courts view arbitration clauses, and therefore arbitration agreements, separately from the main contracts and shield the institution of arbitration from the invalidity of the main contract. This method ensures that arbitration remains a reliable, stable and independent method of dispute resolution for all parties involved.

4. The Arbitral Tribunal

4.1 Limits on Selection

Turkish courts fully respect the autonomy of parties participating in arbitration proceedings. However, this substantial room for autonomy involves certain legal necessities in order to be considered legitimate and lawful. Türkiye has organised a legal framework within which the parties can exercise their autonomy in selecting the arbitrators for their proceedings.

A crucial limitation on the autonomy of the parties in choosing the arbitrators is the condition that the arbitrators have to be impartial and independent. The relevant Article in the Act states that arbitrators must be impartial and independent throughout the arbitral proceedings. This means that the parties cannot appoint arbitrators with conflicts of interest or bias. The Act also provides that if an arbitrator has a conflict of interest at any point in the arbitral proceedings, they must immediately disclose that conflict of interest.

While the parties to the arbitration agreement are free to choose their arbitrators within the limits of the law, it should be noted that the number of arbitrators must be an odd number. In addition, if the parties cannot agree on the number of arbitrators, the legally prescribed number of arbitrators is three. If the parties agree on the

number of arbitrators but cannot agree on an arbitrator, they are appointed by the civil court of first instance.

Furthermore, both the Turkish Code of Civil Procedure and the Act dictate that arbitrators are required to have the necessary qualifications required by law, and by the parties themselves if they specified the qualifications that they seek.

4.2 Default Procedures

In Türkiye, the parties have the autonomy to select arbitrators freely. Turkish arbitration law states that if the parties have not chosen or agreed on the method of selecting an arbitrator in the agreement or cannot reach an agreement on that method after the dispute arises, the court intervenes and appoints the arbitrator upon the request of one or both parties.

The aim of this intervention by the courts is to make sure that the arbitration process goes forward smoothly and efficiently even in situations where the parties are unable to come to an agreement. The principle behind this default procedure is to maintain the efficacy and integrity of arbitration proceedings by providing a mechanism to resolve disputes over arbitrator selection swiftly and effectively, and this intervention ensures the continuation of this principle.

4.3 Court Intervention

The intervention of courts typically occurs when there are disputes or challenges relating to the appointment or disqualification of arbitrators. The grounds on which a court may intervene include the following:

- *Failure of parties to agree on arbitrators:* If the parties to the arbitration agreement cannot agree on the appointment of arbitrators within the agreed-upon time frame or according to

the procedure set out in their agreement, any party may request the court to appoint an arbitrator.

- *Challenge to an arbitrator's appointment:* If a party challenges the appointment of an arbitrator, alleging reasons such as lack of impartiality or independence, the court may decide on the challenge and, if necessary, replace the arbitrator.
- *Failure of party-appointed arbitrators to agree on a third arbitrator:* In cases where each party has appointed an arbitrator and those arbitrators fail to agree on the appointment of a third arbitrator (in a three-member tribunal), either party may request the court to make the necessary appointment.
- *Subsequent court review of arbitrator's authority:* Although rare, there are instances where a court may review an arbitrator's authority, particularly in cases of alleged misconduct or procedural irregularities that might affect the integrity of the arbitration process.

However, it is important to note that Turkish law places limitations on the court's power to intervene in arbitrator selection. Courts generally respect the principle of party autonomy in arbitration, meaning they will intervene only when necessary to safeguard the integrity and fairness of the arbitration process. The grounds for challenge or intervention are strictly defined, and courts must adhere to procedural rules set out in the arbitration laws.

Moreover, once an arbitral tribunal is constituted, the tribunal itself usually has primary authority over procedural matters and the conduct of the arbitration.

4.4 Challenge and Removal of Arbitrators

In Türkiye, there are special provisions on the rejection or dismissal of arbitrators.

Firstly, arbitrators may be challenged under the relevant article of law if there are reasonable grounds for questioning their independence or impartiality. This article emphasises the significance of arbitrators being impartial and free from any conflicts of interest that could sway their decision-making, in line with international arbitration standards.

Secondly, the relevant article of law allows the parties to object to an arbitrator if they do not meet the agreed criteria or if there are other grounds that call into question the independence or impartiality of the arbitrator. There may be a number of factors that may affect their ability to make a fair decision, such as financial or personal interest in the outcome of the arbitration, personal or professional connections to one of the parties, or any other circumstance.

In order to challenge an arbitrator, one must usually notify the arbitral tribunal of the grounds for challenge and provide a written statement outlining the reasoning behind the challenge within a predetermined amount of time. After reviewing the challenge, the tribunal makes a decision regarding its legitimacy. According to Turkish legislation, the judgment on a successful challenge may be subject to judicial review if the challenged arbitrator does not resign freely.

In order to maintain the validity and integrity of the arbitration process, parties engaged in arbitration proceedings in Turkey must carefully analyse the grounds for contesting arbitrators. In Türkiye's legal system, the framework strives to respect justice and impartiality, which promotes trust in arbitration as a useful alternative conflict settlement method.

4.5 Arbitrator Requirements

Arbitrators must act impartially and independently throughout the arbitration process in accordance with Turkish legislation. The term "independence" means the absence of any connections or situations that could jeopardise the arbitrator's objectivity or decision-making in the case, whereas impartiality requires arbitrators to address the disagreement objectively, without showing bias in favour of one side or the other.

The Act underlines that arbitrators are required to reveal any information that could cast doubt on their independence or impartiality. This covers any prior involvement in the case, financial stakes in the resolution of the conflict, and interpersonal or professional ties to the parties or their agents. If a party to the arbitration reasonably suspects that an arbitrator may lack independence or impartiality, they have the right to challenge the arbitrator and to be informed of such circumstances. Similar emphasis is placed on the value of arbitrator independence and impartiality in ISTAC's Arbitration Rules.

5. Jurisdiction

5.1 Matters Excluded From Arbitration

Under Turkish law, which is mainly governed by the Act and the Turkish Code of Civil Procedure, several subjects are not arbitrable. These exclusions are meant to safeguard vulnerable parties, uphold the public interest or guarantee that certain judicial bodies decide cases. The topics that are excluded from arbitration include disputes involving criminal matters, disputes involving bankruptcy, and administrative disputes within the exclusive jurisdiction of administrative courts. However, an exception to the general rule for administrative disputes exists for those

relating to concession agreements executed with the administration.

5.2 Challenges to Jurisdiction

The principle of competence-competence is firmly applied in Turkish law. This principle gives arbitral tribunals the authority to rule on their own jurisdiction. The competence-competence principle gives arbitral tribunals the choice to challenge the jurisdiction of the proceeding. This right to challenge includes objections that may be raised by parties regarding the existence or validity of the arbitration agreement.

In accordance with Turkish law, parties that wish to contest the jurisdiction of the tribunal are required to bring up these objections as soon as possible in their initial declaration of the content of the dispute, unless they can provide evidence of legitimate reasons for delay. Before moving on to the main issues of the case, the tribunal is then at liberty to rule on these objections as a preliminary matter.

Moreover, Turkish courts have the authority to examine arbitral tribunal awards granted in their own jurisdiction. Within 30 days of receiving notice of the tribunal's award, parties that are unhappy with the decision may file an application with the appropriate court. Subsequently, the court will evaluate the jurisdictional decision of the tribunal, considering the competence-competence and due process principles.

5.3 Circumstances for Court Intervention

In Türkiye, courts may address issues regarding the jurisdiction of the arbitration court, primarily if a party objects to the court's jurisdiction before or during the arbitration proceedings. Courts generally adopt the principle of competence-competence and allow arbitral tribunals to decide according to their own jurisdiction. How-

ever, in cases of serious allegations of irregularities or violations of public policy, Turkish courts may intervene. Upon a party's application to set aside or enforce an arbitral award, courts may review adverse decisions of arbitral tribunals regarding jurisdiction and ensure compliance with procedural fairness and legal standards.

5.4 Timing of Challenge

In Turkish law, parties have the right to challenge the jurisdiction of the arbitral tribunal at different stages of the arbitration process.

- *Initial stage (as soon as a case has been filed for arbitration):* Parties contesting the jurisdiction of the arbitral tribunal must raise their objections as soon as possible in their initial declaration of the content of the dispute, unless they can provide evidence of legitimate reasons for delay.
- *After the constitution of the arbitral tribunal:* Once the arbitral tribunal is constituted, it can rule on its own jurisdiction, including any objections raised by the parties regarding the existence or validity of the arbitration agreement. This is done as a preliminary matter before addressing the main issues of the case.
- *After an award has been rendered:* If the arbitral tribunal rules that it has jurisdiction and proceeds to make an award, parties that are dissatisfied with the tribunal's decision on jurisdiction can challenge it in court. Under Turkish law, parties have the right to apply to the appropriate court to review the tribunal's jurisdictional ruling within 30 days of receiving notice of the award. The court will then evaluate the tribunal's jurisdictional decision, taking into account the competence-competence principle and due process guidelines.

5.5 Standard of Judicial Review for Jurisdiction/Admissibility

In Türkiye, the standard of judicial review for questions of admissibility and jurisdiction in arbitral proceedings is generally deferential rather than *de novo*. The courts typically respect and defer to the decisions of the arbitral tribunal on matters such as its own jurisdiction and the admissibility of evidence. However, this deference is not absolute. Turkish courts have the authority to review challenges to the arbitral tribunal's jurisdiction and admissibility rulings, particularly if a party files a specific objection regarding these issues. The courts will examine whether the arbitral tribunal exceeded its authority, acted beyond the scope of the arbitration agreement, or made a decision that contravenes public policy or fundamental principles of law. This approach aims to balance the autonomy of arbitral tribunals with the need for judicial oversight to ensure fair and effective arbitration proceedings in Türkiye.

5.6 Breach of Arbitration Agreement

In Türkiye, national courts generally defend the principle of party autonomy and the enforceability of arbitration agreements. If a party initiates litigation contrary to the arbitration agreement, Turkish courts are generally willing to dismiss such litigation in favour of arbitration, provided that certain conditions are met.

If a party challenges jurisdiction based on an arbitration agreement, the court will generally defer to the arbitral tribunal's determination of jurisdiction unless it finds that the arbitration agreement is expressly void, or invalid. Turkish courts follow an approach supportive of arbitration as an alternative dispute resolution mechanism to litigation.

5.7 Jurisdiction Over Third Parties

Under Turkish law, the general rule is that an arbitral tribunal's jurisdiction is limited to the parties that have explicitly agreed to arbitration in an arbitration agreement. However, there are limited circumstances where an arbitral tribunal might assume jurisdiction over individuals or entities that are not signatories to the arbitration agreement. This applies to domestic parties as well as international ones.

6. Preliminary and Interim Relief

6.1 Types of Relief

In Turkish law, arbitration courts have the authority to take preliminary or interim measures. Such injunctions are issued to ensure that certain temporary arrangements are made during the dispute resolution process or to preserve the situation between the parties.

According to Turkish law, preliminary or provisional injunction decisions issued by the arbitration court are binding. The parties must comply with these decisions.

If a party fails to comply with an injunction issued by the arbitral tribunal, this may adversely affect the course and outcome of the arbitration process. In addition, the courts may also request the implementation of these injunctions.

6.2 Role of Courts

In Türkiye, courts can play a role in preliminary or interim relief in arbitral proceedings, particularly before an arbitral tribunal is constituted or to support ongoing proceedings. They can grant interim relief in aid of foreign-seated arbitrations under specific conditions, such as preserving assets or preventing irreparable harm. Turkish legislation allows for the use of emergency arbi-

trators, whose decisions are generally binding and can include injunctions, asset preservation orders and other interim measures. National courts may intervene after an emergency arbitrator has been appointed in exceptional cases, such as procedural irregularities or breaches of public policy, but generally respect and enforce their decisions unless compelling reasons justify otherwise.

6.3 Security for Costs

In Turkish law, both courts and arbitration tribunals have the authority to request security for costs. This practice is especially common when a party's financial situation is uncertain or litigation would be costly. Such security requests are made to ensure the right to a fair trial and the financial sustainability of the litigation process.

7. Procedure

7.1 Governing Rules

The Act governs the procedure of arbitration in Türkiye. The Act is based on the UNCITRAL Model Law. Importantly, the parties are free to agree on rules that apply to them on many points since many provisions in the Act are not mandatory and can be decided by the parties. So, parties can choose major arbitration institutions and their rules can apply to arbitrations when the seat is Türkiye, if the Act allows.

Also, notably, Türkiye has the competence-competence and separability/severability principles well established in the Act. In Türkiye, there are also some arbitration institutions. The Istanbul Arbitration Centre (ISTAC) has ISTAC Rules. Moreover, some chambers of commerce have well-established arbitration bodies. The Istanbul Chamber of Commerce has the Istanbul Chamber of Commerce Arbitration and Mediation

Center (ITOTAM) and it has its arbitration rules. If parties choose these centres, their rules can apply.

7.2 Procedural Steps

There are no particular procedural steps that are required by law specific to Türkiye. Parties are free to agree on the procedural rules within the law. The overarching principles are that the parties must be treated equally and must be given opportunities to put forward their claims and defences.

7.3 Powers and Duties of Arbitrators

Article 7 of the Act introduces a provision on the selection/challenge/responsibility of the arbitrator or arbitration committee, the termination of their duties and their authority. According to this provision, juridical persons cannot be arbitrators. Again, under this provision, if the parties agree to have a sole arbitrator but cannot agree on the arbitrator and there is no appointing authority decided by the parties, the appointing authority in such circumstances is the civil/commercial court of first instance and this court will determine the sole arbitrator.

Apart from this, the arbitrators must be independent and impartial. There are also some rules on the nationality of arbitrators. According to these rules, if the parties have different nationalities, and if a single arbitrator is to be selected, this arbitrator should not be of the nationality of either of the parties, and if three arbitrators are to be selected, two of them should not be of the nationality of one party. A similar procedure applies in cases where more than three arbitrators are selected.

The arbitrator may be challenged if the arbitrator does not have the qualifications agreed upon by the parties. If there is a reason that justifies

doubting the arbitrator's impartiality, then the arbitrator may be challenged as well.

7.4 Legal Representatives

In Türkiye, as a general rule, only Turkish attorneys registered with a Bar in Türkiye can represent parties in courts. Parties in arbitration proceedings, however, may also be represented by foreign natural or juridical persons. This provision does not apply to requests filed in court in connection with arbitration. Requests filed in court in connection with arbitration can only be filed by Turkish lawyers, as explained.

8. Evidence

8.1 Collection and Submission of Evidence

There are no specific rules in the Act on the collection and submission of evidence at the pleading stage and at the hearing.

According to Article 10/D of the Act, within the period agreed upon by the parties or determined by the arbitrator or arbitral tribunal, the parties can add written evidence to their petitions and refer to the evidence they will present in the future. Under Article 11/C-4, if one of the parties does not attend the hearing or refrains from presenting evidence without showing a valid reason, the arbitrator or arbitral tribunal may continue the arbitration proceedings and make a decision based on the available evidence.

According to Article 12/A, the arbitrator or arbitral tribunal can (i) appoint one or more experts to report on the issues determined, (ii) order the parties to provide the necessary explanations and information and provide the relevant documents to the expert, and (iii) conduct discovery regarding the case. Under the same

Article, unless otherwise agreed by the parties, upon the request of one of the parties or when deemed necessary by the arbitrator or the arbitral tribunal, experts may attend the hearing to which they will be summoned after submitting their written or verbal reports. At this hearing, the parties can ask questions to the experts and may bring experts of their choice to the hearing to be heard on the dispute. According to Article 12/B, the parties submit their evidence within the period determined by the arbitrator or arbitral tribunal. The arbitrator or arbitral tribunal may request assistance from the civil/commercial courts of first instance in collecting evidence. If the parties ask for the assistance of the Turkish courts, the Turkish courts apply the provisions of the Turkish Code of Civil Procedure. So, discovery, direct examination and cross-examination, the use of witness statements, and disclosure are all possible under the Act. The parties can ask for the assistance of Turkish courts during this process.

8.2 Rules of Evidence

As explained above, the rules of evidence in international arbitration proceedings are largely left to the parties to decide. In domestic matters, and especially in court, the parties do not have as much flexibility to agree on procedural rules as they have in international arbitration proceedings. However, the Turkish Code of Civil Procedure also has similar rules on discovery, direct examination and cross-examination, the use of witness statements and other relevant rules of evidence.

8.3 Powers of Compulsion

Under Article 3/2 of the Act, for issues arising from international arbitration, courts may intervene only in line with the provisions of the Act. There are several occasions where arbitrators or parties can ask for the assistance of courts.

Regarding the evidence, as explained above, under Article 12/B, the arbitrator or arbitral tribunal may request assistance from the courts of first instance in collecting evidence, which includes both the production of documents and the attendance of witnesses. In this case, the Turkish Code of Civil Procedure will apply in securing witnesses and documents. In terms of the difference between parties and non-parties, the arbitral tribunal cannot order any decision binding third parties that are not party to the arbitration. This issue is explicitly stated in the Act for provisional measures. According to Article 6/2, arbitrators cannot decide on interim measures or liens binding third parties.

9. Confidentiality

9.1 Extent of Confidentiality

There is no specific provision in the Act on confidentiality. So, similar to many other procedural issues, confidentiality is also subject to the agreement of the parties. In practice, parties sometimes sign a confidentiality agreement or include a confidentiality clause. In institutional arbitration, major Turkish arbitration institutions may have confidentiality provisions; for instance, ISTAC and ITOTAM have included confidentiality provisions in their arbitration rules.

10. The Award

10.1 Legal Requirements

Article 14/A of the Act lists the requirements for an arbitration award. According to this Article, the following are required:

- names, surnames, titles and addresses of the parties and their representatives and attorneys, if any;

- the legal reasons and justification on which the decision is based, and the amount of compensation awarded in claims for compensation;
- place of arbitration and date of decision; and
- names and surnames, signatures and dissenting votes of the arbitrator or arbitral tribunal that made the decision.

A set-aside proceeding may be initiated against the decision.

There is no specific time limit on delivery of the award. In the same Article, it is stated that the arbitrator or arbitral tribunal's decision is notified to the parties by the arbitrator or the president of the arbitral tribunal.

10.2 Types of Remedies

There are no limits on the types of remedies specified in the Act. Unless otherwise agreed by the parties, the arbitrator or arbitral tribunal may also render partial awards.

10.3 Recovering Interest and Legal Costs

The general practice in Türkiye is that the winning party generally receives statutory interest or interest at a reasonable rate agreed by the parties. The winning party is also awarded the costs of the proceedings and a sum based on a tariff (published yearly) for the lawyer, if the winning party is represented, as the representation costs. According to Article 164 of the Attorney Act numbered 1136 and dated 7 April 1969, at the end of the case, the attorney fee to be charged to the losing party based on the tariff belongs to the lawyer. So, Türkiye follows a "costs follow the event" principle, but there is a cap on the lawyer's costs.

In the Act, the distribution of the costs can be agreed between the parties. Unless there is such an agreement, the losing party pays for all the legal costs as specified in the Act. There is no specific provision on interest in the Act. Interest can be awarded according to the applicable laws in arbitration. If there is a very high rate of interest, in certain circumstances such interest rate might not be enforced in Türkiye on public policy grounds.

11. Review of an Award

11.1 Grounds for Appeal

The arbitration award is final and binding and there is no appeal procedure against arbitration awards, unlike court judgments. There is the possibility of a set-aside proceeding with very limited grounds. The grounds the losing party must raise are listed in Article 15 of the Act, and they are:

- One of the parties to the arbitration agreement was under some incapacity, or the arbitration agreement is invalid under the law to which the parties have subjected it or, failing any indication thereon, under Turkish law.
- In the selection of the arbitrator or arbitral tribunal, the procedure specified in the agreement of the parties or stipulated in the Act was not followed.
- The decision was not made within the arbitration period.
- The arbitrator or arbitral tribunal decided that they do not have jurisdiction, or the arbitrator or arbitral tribunal was unlawfully authorised.
- The arbitrator or arbitral tribunal decided on an issue outside the arbitration agreement, or did not decide on the entire request, or exceeded their authority.

- The arbitration proceedings were not conducted in accordance with the agreements of the parties in terms of procedure or, in the absence of such an agreement, with the provisions of the Act, and this situation affects the merits of the decision.
- The principle of equality of the parties was not observed.

Apart from the grounds listed above that a party must raise, the court, on its own motion, may set aside an award if it finds that:

- the dispute subject to the decision of the arbitrator or arbitral tribunal is not arbitrable under Turkish law; or
- the decision is against public policy.

11.2 Excluding/Expanding the Scope of Appeal

Importantly, parties may agree to waive, wholly or partially, their right to bring set-aside proceedings in Türkiye according to Article 15 of the Act.

11.3 Standard of Judicial Review

Under Article 15 of the Act, a set-aside request is reviewed and decided without going through the merits of the case with a full hearing (similar to summary judgment in the UK and USA), unless the regional court hearing the case decides otherwise.

12. Enforcement of an Award

12.1 New York Convention

The New York Convention entered into force in Türkiye on 30 September 1992. Türkiye made two reservations:

- That it will apply the Convention only to the recognition and enforcement of awards

made in the territory of another contracting state.

- That it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, that are considered commercial under the national law.

So, reciprocity and commerciality are the two reservations Türkiye noted.

Türkiye has also signed the ICSID Convention and nearly 100 bilateral investment treaties.

12.2 Enforcement Procedure

Türkiye follows the grounds under the New York Convention for the enforcement of awards. We cannot give a conclusive answer whether an award that has been set aside by the courts in the seat of arbitration will be enforced for every case. In each case, the courts will consider the issues in the case and decide on the enforcement or sovereign immunity defence according to the specifics of the case.

12.3 Approach of the Courts

Türkiye has gradually become a more and more arbitration-friendly jurisdiction. While there are many cases where the losing party challenged the award on the public policy grounds, the courts have gradually applied those grounds for stopping enforcement more cautiously over the last decades. Unless there is a situation that would be against public policy and the fundamental principles of law in Türkiye, an arbitration award would not be stopped on public policy grounds. Such an example that might be considered against public policy might be a severe penalty clause in a contract or a very high interest rate that would lead to the bankruptcy of the losing party.

13. Miscellaneous

13.1 Class Action or Group Arbitration

The Act does not have any specific provision for class action arbitration or group arbitration. However, institutional rules in Türkiye such as those of ISTAC and ITOTAM have provisions where arbitration between multiple parties are possible if the parties agree on such rules.

13.2 Ethical Codes

As mentioned above, arbitrators must be impartial and independent, and they must operate at these standards by treating both parties equally and giving them equal opportunity to present their cases. Lawyers licensed in Türkiye and acting in arbitration must also follow the professional and ethical rules for lawyers in Türkiye.

13.3 Third-Party Funding

There are currently no rules or restrictions on third-party funding in Türkiye. So, Turkish law does not explicitly prohibit or permit third-party funding. General contract law principles would determine the issues.

13.4 Consolidation

There is no specific provision on consolidation in the Act. However, arbitration institutions provide consolidation provisions, and consolidation might be possible if the parties agree on such rules. Both ISTAC's and ITOTAM's arbitration rules have consolidation provisions.

13.5 Binding of Third Parties

Depending on the formation and interpretation of an arbitration agreement, a third party might be bound by the arbitration agreement. Article 2 of the Act will be important in determining this issue. Also, under Article 6 of the Act, if one of the parties requests interim measures or liens from the court before or during the arbitration

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proceedings, the court can grant such measures, which might affect foreign or local third parties.

Trends and Developments

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Aktay Law Firm is a full-service law firm providing legal consultancy to domestic and international clients, successfully blending business insight with legal expertise. The firm is recognised by leading international law firms around the world, actively contributes legal articles to international publishers, and participates in seminars and panels in its areas of expertise. The firm represents clients in a broad range of domestic and international commercial transactions, dispute resolution and arbitration. Mr Faruk Aktay and Dr Can Eken have recently

established International Arbitration Advisors, a global boutique platform for international investment and commercial disputes. With presences in Istanbul, New York, London, Dubai and Singapore, it aims to be a premier platform dedicated to providing expert guidance and comprehensive support in the field of international commercial arbitration, bringing together an elite team of seasoned professionals with extensive experience in navigating the complexities of cross-border disputes.

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Dubai International Finance Centre (DIFC) Courts as a DIFC Part II Legal Practitioner. During his career, he has represented clients in cross-border transactions as well as complex dispute resolution and arbitration cases. His exceptional background in law and economics and his in-depth understanding of different legal regimes enable him to bring unparalleled insight and a novel perspective on complicated legal matters. Faruk Aktay is currently acting as co-chair of the Türkiye Chapter of the New York Bar Association and is also an active member of the Law Society of England and Wales, International Bar Association. In Türkiye, he is a member of the International, British, German, French and Italian Chambers of Commerce.



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International Arbitration and Dispute Resolution in Turkey

In Türkiye, the general trend for international arbitration is upwards. Starting with a law to establish the Istanbul Arbitration Centre (ISTAC) in 2014, arbitration has since gained further momentum. ISTAC launched Istanbul Arbitration Days in 2024 and aims to organise this event every year from now on. In Istanbul, there are also other arbitration events happening yearly such as GAR Istanbul and Istanbul Arbitration Week.

Another trend in Türkiye is the increasing links between Türkiye and Central Asian countries. Ibn Haldun University (Türkiye), Baku State University (Azerbaijan) and the Turkish Arbitration Academy with the support of the Organization of Turkic States launched the first International Summer School on Arbitration from 26 to 30 June 2023 in Baku, Azerbaijan, and the summer school took place for a second time this year between 24 and 28 June in the same city. The participants were students and practitioners from the member countries of the Organization of Turkic States.

There are other organisations that also organise arbitration programmes in Istanbul for students and practitioners from Central Asian countries. In June 2024, a delegation from Uzbekistan visited the Istanbul Chamber of Commerce Arbitration and Mediation Center (ITOTAM), another eminent arbitration centre in Istanbul. Thus, looking at these developments we can see that there is increasing co-operation between Türkiye and Central Asia. It seems this trend will continue to increase in the coming years.

The activities and support of the Organization of Turkic States are not limited to summer schools. Turkic states and the Organization of Turkic States collaborate on important publications as well. There is a book coming out later this year supported by Turkic states and the Organization of Turkic States, and one of the authors of this report, Dr Can Eken, has been asked to write a chapter on the development of arbitration in Turkic states.

Turkish academics and practitioners are following global trends in Türkiye as well. The effects of artificial intelligence and technological developments on international arbitration is one of the important subjects followed in Istanbul.

There was a panel at Istanbul Arbitration Days on the effects of technological developments in the arbitration world. There have been several other important conferences organised in Istanbul on artificial intelligence and technological developments in arbitration in recent years. With the increasing global trend on these important issues, Türkiye is following this global trend closely as well.

Türkiye's leading arbitration institutions also closely follow developments globally. Thus, Turkish arbitration institutions follow emergency arbitration rules, fast-track arbitration rules and other innovative rules in arbitration. We are seeing increasing collaboration between arbitration institutions in Türkiye and globally. Turkish arbitration institutions have recently signed a memorandum of understanding between each other and other arbitration institutions in the world.

Apart from the traditional financial and retail sectors, specific sectors hold higher importance in Türkiye. The construction, hotel and tourism, mining and energy sectors are such sectors that require special attention in Türkiye. Either Türkiye attracts foreign investors or Turkish investors invest in those sectors in other countries. Technology is another important sector where Türkiye has incentives. Thus, we can expect a continuing increasing trend regarding disputes in these sectors.

FIDIC contracts and construction arbitration is an important topic in Türkiye since there are many Turkish construction businesses that operate in many countries and are parties to arbitration in major arbitration institutions. With a growing construction and projects sector, arbitration work related to the construction industry will continue to grow.

Investment arbitration continues to be important in Türkiye, too. In ICSID, there have been two cases against Türkiye in the last two years alone, which increases the total number of cases pending at ICSID against Türkiye to six. There have also been 25 cases concluded against Türkiye at ICSID. Moreover, Turkish investors are actively using investment arbitration. With foreign investors active in Türkiye and Turkish investors investing abroad, the importance of investment arbitration in Türkiye is also expected to grow.

Overall, Türkiye has great potential to be an important international arbitration hub. By following and updating its rules and creating close links with targeted jurisdictions and arbitration institutions, Türkiye is getting closer to this goal. If Türkiye continues its activities to create further links, we might see Istanbul become an important hub for specific regions such as Central Asia or for disputes between the West and the East.

We can also see Türkiye attracting more arbitration practitioners and scholars. With the increasing number of international arbitration conferences, many foreign practitioners are visiting the city and learning about the important issues discussed in Türkiye. Thus, this may lead to foreign practitioners being more familiar with the rules of Turkish arbitration institutions. Whether they advise their clients to include them in their contracts or not is another issue, but there is a possibility that this might be the case. These developments will surely help Istanbul to become a more active arbitration centre.

Since international arbitration cases enjoy greater confidentiality than court cases unless reported, it is more difficult to discover the trends occurring in the practice. Everyone can only speak from their own experiences in practice. Thus, there is some anecdotal information

we can share as well. It is said that there have been an increasing number of Turkish users of the Milan Chamber of Arbitration in recent years. We can continue to see increasing relationships between Italian and Turkish businesspeople.

It seems that the number of disputes in construction, energy and mining will continue to increase directly proportionally to the number of activities in those sectors. Thus, it might be reasonable to devise specific arbitration rules for those sectors. This would address the needs of the industry better, and ISTAC or ITOTAM could be leading centres in the sector if they reach out to the industry and show the merit in their endeavours.

Türkiye – Regional Hub in International Dispute Resolution

Türkiye, and especially Istanbul, is a geopolitically very important country/city connecting two continents, Asia and Europe, with each other. As arbitration is a bridge between nations, countries and cultures to resolve cross-border disputes, Türkiye has this natural feature serving such function geographically. If Türkiye succeeds in turning this geographical feature into a legal feature, we could see Istanbul and Türkiye become a leading arbitration seat globally.

One of Türkiye's objectives is to become an international and regional centre for alternative dispute resolution, which requires a multi-pronged legal strategy including legal reforms, development of infrastructure, preparing educational programmes and establishing foreign partnerships. In order to fulfil this goal, Türkiye needs take into account the trends and changes in the broader region.

In order to become a regional hub for dispute resolution for international parties, the country

has made significant improvements in aligning its arbitration laws with international standards. Most notably, the amendments to the Turkish International Arbitration Law in 2001 and the subsequent updates that have followed have aimed to improve the procedural efficiency and enforceability of arbitral awards. These reforms are incredibly important as they provide the solid legal framework that instils confidence in international parties seeking dispute resolution in Türkiye. Türkiye's ratification of both the Singapore Convention and the New York Convention dated 1958 highlights the country's commitment to creating a safe and stable arbitration environment for international disputes and making Turkey a safe harbour for foreign investors.

The promotion and development of arbitration institutions is crucial in putting Türkiye in a position to be considered as a regional hub for dispute resolution. Arbitral institutions such as ISTAC and the Energy Disputes Arbitration Center have played an important role in promoting Türkiye as a preferred seat of arbitration for resolving international disputes. ISTAC, in particular, has amassed international recognition for its professionalism, adherence to international arbitration standards, efficiency and neutrality. By creating and sustaining a conducive environment for arbitration and offering advanced facilities and administrative support, ISTAC is boosting Türkiye's appeal as a leading arbitration destination in the Middle East. In this respect, both Istanbul Arbitration Week and Istanbul Arbitration Days managed to attract thousands of practitioners from all around the world to Istanbul.

In order to be considered a regional hub for conflict resolution, it is also essential to keep up with and adopt new technologies to improve the availability and effectiveness of arbitral proceed-

ings in Türkiye. Online document management systems, conducting virtual hearings if necessary, and digital platforms for aiding the arbitral process are being used to simplify arbitration procedures and meet the needs of parties that are located abroad. By adapting to and making use of new technology, Türkiye is putting itself at the forefront of international arbitration standards and showing that it is committed to innovation in conflict settlement.

Beyond institutional infrastructure and legislative frameworks, public awareness and promotion are essential components of Türkiye's plan to establish itself as a regional centre for alternative dispute resolution. Well thought out and conducted promotions increase the exposure of Türkiye as an option for international conflict resolution as well as creating a confident image regarding its stance on its arbitral procedures. Türkiye can promote its arbitration skills by utilising many outlets. Turkish legal practitioners and organisations are continually demonstrating the depth of their knowledge by taking part in international arbitration conferences and forums, and they will continue to do so in order to draw internationals seeking conflict resolution towards Türkiye.

Furthermore, important stakeholders can be successfully reached by focused marketing campaigns and promotional materials that promote Türkiye's benefits as a hub for arbitration. Türkiye has a competitive advantage when it emphasises aspects such as legality and procedural efficiency in comparison to other international arbitration centres. Türkiye's standing in the international arbitration community is further enhanced through strategic alliances with associations and entities. Relationships are strengthened and Türkiye's commitment to adhering to international arbitration norms and best prac-

tices is exhibited through co-operative efforts, collaborative events and reciprocal referrals.

The importance of diversity and inclusivity in Türkiye's arbitration ecosystem cannot be overstated. The arbitration community is vocally encouraging participants who come from a large range of backgrounds, including women, certain minorities, and professionals equipped with different linguistic and cultural backgrounds. As a result of this encouragement, Türkiye is becoming a more inviting and attractive location for international parties searching for impartial dispute resolution. Training programmes and mentorship activities aimed at helping the development of new, young and eager arbitrators and promoting diversity in leadership roles within arbitration organisations are extremely important in creating and nurturing an inclusive and diversified arbitration environment.

Türkiye has the opportunity to offer more options for conflict resolution than just traditional arbitration, thanks to emerging trends such as the popularity of conciliation and mediation as alternatives to arbitration. It is offering parties more options for quickly and amicably resolving conflicts and adding flexibility to its arbitration procedures and legal framework by implementing these strategies.

Trends and Developments in the Middle East

The Middle East has experienced dramatic and positive growth in arbitration proceedings in recent years, supported by the conduct of regional forums and some strategic efforts that clearly reflect the region's goal of becoming a dispute resolution hub in its own right.

The first Riyadh International Disputes Week (RIDW), held in Saudi Arabia in March 2024, has become a significant occasion that highlighted

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the Kingdom's ongoing projects to improve its arbitration framework and advance global practices in line with Saudi Vision 2030. Mr Faruk Aktay participated in the RIDW conferences to bolster the arbitral co-operation between Türkiye and the Middle East. In addition, the inaugural Doha Arbitration Day, which hosted talks on legal changes, case studies and business trends, has also made Qatar into a major promoter and centre of arbitration. Mr Faruk Aktay also personally attended this event in Doha and met with leading arbitrators and experts.

Dubai also hosts the Dubai International Arbitration Centre (DIAC) and is the home of the Dubai International Financial Centre (DIFC) Courts, which include the DIFC-LCIA Arbitration Centre. Mr Faruk Aktay has joined the ranks of international arbitration practitioners who have registered with the DIFC Courts. The DIFC Courts, as an independent court and centre, offer specialised services and operate with arbitration rules that are in line with international standards, which make them attractive to international parties. DIFC Courts' specialised technology and construction divisions also offer an important example of the future of alternative dispute resolution. Consequently, the DIFC Courts in the first half of 2024 handled 480 cases worth over AED1 billion.

Together with these attempts, there have been important legal revisions to bring arbitration laws into line with international norms. This will strengthen the enforceability of arbitral rulings and increase trust in the region's conflict resolution processes. Furthermore, the expansion of arbitration into new industries such as technology and finance, as well as more established ones like construction, is a reflection of the Middle East's expanding economic goals and the growing complexity of regional conflicts. The Middle East is on its way to solidifying its position as a top location for arbitrating international disputes as long as institutions increase their support for arbitration proceedings and investment in arbitration infrastructure keeps growing.