



Arbitration Guide
IBA Arbitration Committee

TURKEY

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I. Background

(i) How prevalent is the use of arbitration in your jurisdiction? What are seen as the principal advantages and disadvantages of arbitration?

The use of international arbitration as a dispute resolution mechanism has been increasing in Turkey since 2000. Previously arbitration was only possible for disputes between private parties. However, following the amendments to certain provisions in the Turkish Constitution in 1999, contracts to which the state is a party could contain arbitration clauses.

Investors prefer international arbitration over local litigation for a couple of reasons. First, international arbitration provides fast and confidential dispute resolution. Second, complex disputes requiring specific language skills and expertise, such as those related to energy, telecom, intellectual property, information technology, infrastructure and construction projects are often more suited to arbitration.

(ii) Is most arbitration institutional or ad hoc? Domestic or international? Which institutions and/or rules are most commonly used?

Institutional arbitration is generally assumed to be more prevalent than ad hoc, yet there is very little data on the number of ad hoc arbitrations taking place in Turkey. International arbitration is undoubtedly more common than domestic arbitration, even though there has been a recent rise in the latter.

The Istanbul Chamber of Commerce and the Turkish Union of Chambers and Commodity Exchanges Court of Arbitration are the most commonly used Turkish arbitration institutions for domestic arbitration. Moreover, the Istanbul Arbitration Centre (ISTAC) was established by Law No. 6570, which went into effect on 1 January 2015 to oversee the settlement of both domestic and international disputes. As the Prime Ministry's Office of Turkey issued a circular that stated all public authorities shall consider including ISTAC arbitration clauses in their domestic and international agreements; ISTAC is expected to become a commonly used centre.

The most widely used arbitration rules for international arbitration disputes are those of the International Chamber of Commerce International Court of Arbitration, Stockholm Chamber of Commerce, London Court of International Arbitration and United Nations Commission on International Trade Law and International Centre for Settlement of Investment Disputes.

(iii) What types of disputes are typically arbitrated?

Parties may agree to arbitrate matters that are at their discretion, excluding certain disputes such as those that concern immovable property. Therefore, a wide variety

of commercial disputes are arbitrated in Turkey, including claims arising from sales and purchases, construction, licensing and mergers and acquisitions. There have also been investment arbitration disputes filed by international investors against the Turkish Government and by Turkish investors against foreign governments.

(iv) How long do arbitral proceedings usually last in your country?

Under the International Arbitration Law No. 4686 (IAL), the procedural rules governing international arbitration in Turkey, the final award on the merits shall be rendered within one year of either the appointment of a sole arbitrator or the first meeting of an arbitral tribunal, unless otherwise agreed by the parties. However, the parties may agree to extend this term, or, if the parties fail to reach an agreement, the court may extend it.

In practice, the length of the proceedings varies depending on the circumstances of each case.

(v) Are there any restrictions on whether foreign nationals can act as counsel or arbitrators in arbitrations in your jurisdiction?

In accordance with the IAL, parties may be represented by foreign natural or legal entities in arbitral proceedings. Yet in the event that requests must be made to the courts regarding arbitration proceedings, this provision will not apply. According to the Attorneyship Law, foreign attorneys working in Turkey may only advise on foreign and international law matters. As a result, Turkish nationals are required to act as counsel in any arbitration-related matters brought before the Turkish courts.

There are no restrictions on foreign nationals sitting as arbitrators.

II. Arbitration Laws

(i) What law governs arbitration proceedings with their seat in your jurisdiction? Is the law the same for domestic and international arbitrations? Is the national arbitration law based on the UNCITRAL Model Law?

The IAL, which entered into force in 2001, is the principal legislation governing international arbitration in Turkey. Although it is based on the 1985 UNCITRAL Model Law, there are certain principles included in the IAL that are not codified in the Model Law. These include the cost of arbitration (including fees of arbitrators, costs of proceedings, deposit of advance, and payment of costs), terms of reference and additional circumstances as to the termination of proceedings, which shall apply in cases where the parties have not referred to certain institutional rules. The IAL has not been amended to reflect the amendments of Model Law of 2006.

The IAL applies to disputes that are seated in Turkey and contain a ‘foreign element’ as specified in article 2. According to this article, the case is determined to have a foreign element when:

1. the domiciles, habitual residences or the place of business of the parties to an arbitration agreement are in different states; or
2. the domiciles, habitual residences or the place of business of the parties to an arbitration agreement are in a different state than:
 - (i) the seat of arbitration in cases where it is specified in the arbitration agreement or determined on the basis of this agreement; or
 - (ii) the place of performance of a significant part of the obligations arising out of the main agreement or the place with which the subject matter of the dispute has the closest connection;
3. at least one party to the main contract, which constitutes the basis of the arbitration agreement, has brought foreign capital into Turkey pursuant to the legislation on encouragement of foreign capital, or if enforcement of the main contract necessitates execution of a credit or security agreement to bring foreign capital into Turkey; or
4. there is a cross-border transfer of capital or goods realized under the main contract or a legal relationship that constitutes the basis of the arbitration agreement.

Domestic arbitration, wherein the foreign element is not present, as identified in the IAL, is governed by Section 11 of the Turkish Code of Civil Procedure (CCP), which entered into force in 2011.

(ii) Is there a distinction in your arbitration law between domestic and international arbitration? If so, what are the main differences?

Different laws apply to domestic and international arbitration and the distinctions between the two will be examined throughout this document. Some important differences concern the execution of an award during annulment proceedings and the right to challenge an arbitration award (see Section XII (i) and (ii)).

(iii) What international treaties relating to arbitration have been adopted (eg New York Convention, Geneva Convention, Washington Convention, Panama Convention)?

Turkey is a party to the New York Convention and the Geneva Convention, having ratified both agreements in 1992.

Turkey is also a party to the Washington Convention, which came into force in 1989.

- (iv) **Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?**

There are no rules regarding the applicable law to the merits of a dispute in the CCP, the law governing domestic arbitration. In the absence of an agreement by the parties, Turkish law will apply, as domestic arbitration by definition does not include a foreign element.

Regarding international arbitration, article 15 of the IAL provides that if the substantive law is not determined by the parties, the arbitrator or the tribunal shall apply the laws of the state that they deem to have the closest connection to the dispute.

III. Arbitration Agreements

- (i) **Are there any legal requirements relating to the form and content of an arbitration agreement? What provisions are required for an arbitration agreement to be binding and enforceable? Are there additional recommended provisions?**

According to article 4/2 of the IAL and article 412/3 of the CCP, an arbitration agreement must be in writing. This can be a written document signed by the parties, a letter, a telegram, a telex, a fax exchanged between the parties or an electronic medium. In addition, where a claimant claims the existence of a written arbitration agreement in its statement of claim and the defendant does not object to this in its statement of defense, the requirement of a written agreement is deemed to have been met.

An arbitration agreement can take the form of a clause in a contract or a separate agreement.

According to the Turkish courts, an arbitration agreement is required to establish clearly and without any doubt the parties' intention to submit the dispute to arbitration.

- (ii) **What is the approach of courts towards the enforcement of agreements to arbitrate? Are there particular circumstances when an arbitration agreement will not be enforced?**

In addition to the legal requirements discussed in Section III (i) above, an arbitration agreement is deemed valid if it is in accordance with the governing law determined by the parties. In case the parties have not determined the governing

law, the arbitration agreement must be in accordance with Turkish law (IAL, Article 4(3)).

To enter into an arbitration agreement, the parties must have the capacity to exercise their civil rights. In case the parties do not sign the agreement on their own behalf, their representatives must have the requisite authority. Furthermore, no objection can be raised against an arbitration agreement on the grounds that the main contract is invalid, or that the arbitration agreement relates to a dispute which has not yet arisen (IAL Article 4/4, CCP Article 412/4).

According to Court of Appeals, in order for the arbitration agreement to be valid, there has to be a clear intent, without any doubt, that the parties intended to submit the matter to arbitration. If there is any uncertainty on whether the parties intended to submit the dispute to the courts or to arbitration, the court will most likely find the arbitration agreement invalid.

- (iii) Are multi-tier clauses (eg arbitration clauses that require negotiation, mediation and/or adjudication as steps before an arbitration can be commenced) common? Are they enforceable? If so, what are the consequences of commencing an arbitration in disregard of such a provision? Lack of jurisdiction? Non-arbitrability? Other?**

Parties are free to determine the steps before an arbitration can commence, and multi-tier clauses are common in international arbitration, although not for domestic arbitration. Neither the IAL nor the CCP regulates multi-tier clauses.

- (iv) What are the requirements for a valid multi-party arbitration agreement?**

The IAL and CCP do not contain any specific provisions governing the validity of a multi-party arbitration agreement. In principle, a multi-party arbitration agreement must satisfy the conditions set out in the IAL and CCP that are applicable for all arbitration agreements in order to be valid.

- (v) Is an agreement conferring on one of the parties a unilateral right to arbitrate enforceable?**

The IAL and CCP are silent on this matter. However, the Court of Appeals has held in a decision that holding an arbitration agreement that grants only one of the parties the right to arbitrate valid would violate the general principles of law in terms of the parties' right to legal remedy.

- (vi) May arbitration agreements bind non-signatories? If so, under what circumstances?**

In principle, an arbitration agreement and an arbitral award are only binding on the parties to the agreement. The legislation does not provide for third-party

intervention in arbitration proceedings. Moreover, according to article 6/2 of the IAL, an arbitral tribunal cannot award an interim injunction or an interim attachment that is binding upon third parties. Yet parties may agree on procedural rules that allow third parties to join arbitration proceedings.

IV. Arbitrability and Jurisdiction

- (i) **Are there types of disputes that may not be arbitrated? Who decides – courts or arbitrators – whether a matter is capable of being submitted to arbitration? Is the lack of arbitrability a matter of jurisdiction or admissibility?**

Article 408 of the CCP and article 1 of the IAL provide that rights in rem over immovable properties and disputes not subject to parties' wills may not be arbitrated. Thus, commercial matters may be referred to arbitration, but other disputes, such as those concerning criminal issues, family law or issues related to employees' payments cannot be referred to arbitration.

The arbitrability of a dispute is related to the tribunal's jurisdiction. As a matter of principle, an arbitral tribunal is entitled to rule on whether or not it has jurisdiction over a dispute. Yet arbitration awards may be annulled by the courts if it is determined that the subject matter of the dispute is not arbitrable.

- (ii) **What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an arbitration agreement? Do local laws provide time limits for making jurisdictional objections? Do parties waive their right to arbitrate by participating in court proceedings?**

According to article 5 of the IAL and article 413 of the CCP, if a dispute has been brought before a court despite the existence of an arbitration agreement, the other party can submit an arbitration objection to the court. If this objection is accepted, the court shall dismiss the case on procedural grounds.

For both domestic and international arbitration, the procedure for making an arbitration objection is subject to the CCP's provisions regarding preliminary objections. Therefore, objections regarding the existence of an arbitration agreement must be submitted, at the very latest, with the response to the statement of claim, which is due within two weeks after the statement of claim has been served (unless an extension has been granted by the court). If the objection is not submitted by this deadline, the court will not take it into account.

In principle, merely participating in court proceedings does not cause a waiver of the right to arbitrate. In fact, if parties reach an agreement to arbitrate after the initiation of the court proceedings, the dispute will be forwarded to the arbitrator or tribunal.

- (iii) **Can arbitrators decide on their own jurisdiction? Is the principle of competence-competence applicable in your jurisdiction? If yes, what is the nature and intrusiveness of the control (if any) exercised by courts on the tribunal's jurisdiction?**

As noted above, an arbitrator or an arbitral tribunal shall rule on its own jurisdiction. The tribunal's decision regarding jurisdiction may be challenged during the annulment proceedings. An arbitration award may be annulled by the courts if it is determined that the sole arbitrator or the tribunal: (a) decided on its competence or incompetence in violation of the law, (b) decided on a matter that falls beyond the scope of the arbitration agreement, (c) did not decide the entirety of the claim or (d) decided on a matter that exceeds the arbitrator or the arbitral tribunal's authority. For instance, the Court of Appeals annulled the award of an ICC tribunal that dismissed the dispute due to lack of jurisdiction. It was found that the dispute was within the tribunal's jurisdiction according to the agreement between the parties.

V. Selection of Arbitrators

- (i) **How are arbitrators selected? Do courts play a role?**

Article 7/B of the IAL and article 416/1 of the CCP set out the default procedure for arbitrator selection. However, if the parties agree otherwise, their agreement is observed. The CCP and IAL provide that: (a) only natural persons may be appointed as an arbitrator (and in domestic arbitration, if the tribunal consists of more than one arbitrator, at least one of them must be a lawyer with a minimum of five years' experience), (b) if a sole arbitrator is to be appointed and the parties are unable to agree, the arbitrator is appointed by the court upon the request of one of the parties, (c) if three arbitrators are to be appointed, each party shall appoint one arbitrator and the two arbitrators selected by the parties shall then appoint the third arbitrator, (d) if a party fails to appoint an arbitrator within 30 days (or a month according to the CCP) after the receipt of the request from the other party, the arbitrator shall be appointed by the court upon the application of the requesting party (this procedure is also applicable if the two arbitrators fail to agree on the appointment of the third arbitrator) and (e) if more than three arbitrators are to be appointed, the arbitrators, who will then appoint the last arbitrator, shall be determined by the parties in equal numbers in accordance with the above-mentioned procedure.

The competent court may intervene, upon request by one of the parties, to select the arbitrators if: (a) one of the parties does not abide by the parties' agreement for the selection of arbitrators, (b) the parties or the arbitrators fail to come to an agreement on the selection, if the selection was left to the parties or the arbitrators selected by the parties or (c) the third party, body or institution authorized to make the selection fails to select an arbitrator or arbitrators.

The CCP and IAL set out that decisions rendered by the competent courts are final and cannot be appealed.

(ii) What are the requirements in your jurisdiction as to disclosure of conflicts? Do courts play a role in challenges and what is the procedure?

According to article 7/C of the IAL and article 418 of the CCP, a nominated arbitrator must disclose circumstances that may cause justifiable doubts as to his or her impartiality and independence before accepting the nomination.

The arbitrators are under a duty to inform the parties immediately if their circumstances change.

In the event that the arbitral tribunal rejects a party's challenge of one or more arbitrators, the concerned party may apply to the competent court within 30 days (or a month according to the CCP). In this application, they may request that the court set the arbitral tribunal's decision aside and accept its challenge.

Challenges of the whole tribunal or a majority of the arbitrators in the tribunal may only be made to the competent court. If a challenge of the whole tribunal or a majority of the arbitrators in the tribunal is accepted by the court, the arbitration proceeding comes to an end. However, if the names of the arbitrators are not explicitly set out in the arbitration agreement, then the process of selecting arbitrators shall be restarted.

The decisions of the competent court are final.

(iii) Are there limitations on who may serve as an arbitrator? Do arbitrators have ethical duties? If so, what is their source and generally what are they?

Only real persons may serve as arbitrators. Arbitrators are required by law to be impartial and independent and must disclose any circumstances that may cause justifiable doubts as to their impartiality or independence. For domestic arbitration, the CCP provides that when an arbitral tribunal is formed, at least one of the arbitrators must be a lawyer with a minimum of five years' experience. However this requirement is not applicable in case of a sole arbitrator. The parties are free to decide on any other qualifications or limitations on who may serve as an arbitrator.

If the competent court is asked to select the arbitrator or arbitrators in a dispute, the following principles are observed according to the IAL: (a) arbitrators should be impartial and independent, (b) if the parties have different nationalities and a sole arbitrator is to be selected, the arbitrator should not have the same nationality as either of the parties and (c) if three arbitrators are to be selected, two of the arbitrators should not have the same nationality as either of the parties.

- (iv) **Are there specific rules or codes of conduct concerning conflicts of interest for arbitrators? Are the IBA Guidelines on Conflicts of Interest in International Arbitration followed?**

Neither the IAL nor the CCP has specific rules concerning conflicts of interest for arbitrators, other than those mentioned above. The parties are free to determine or adopt rules, such as the IBA Guidelines on Conflicts of Interest in International Arbitration. Likewise, there is no rule that prohibits arbitral tribunals from taking guidance from the IBA Guidelines with regard to issues of conflicts of interest.

VI. Interim Measures

- (i) **Can arbitrators issue interim measures or other forms of preliminary relief? What types of interim measures can arbitrators issue? Is there a requirement as to the form of the tribunal's decision (order or award)? Are interim measures issued by arbitrators enforceable in courts?**

For international arbitration, IAL article 6/2 provides that unless otherwise agreed by the parties, the tribunal may grant an interim injunction or interim attachment order upon the request of one of the parties and may require the requesting party to provide appropriate security. However, the tribunal cannot issue an interim injunction or interim attachment order that must be carried out by the execution authorities or performed by any other public authorities. Moreover, the tribunal cannot grant an interim injunction or interim attachment order that is binding upon third parties. As a result, in case one of the parties fails to fulfil the interim injunction or interim attachment order, the other party is entitled to seek the assistance of the competent court.

Pursuant to the CCP, which governs domestic arbitration, the tribunal may issue interim injunction orders. The tribunal may also grant an interim injunction order upon the request of one of the parties, unless the parties have agreed otherwise. However an interim injunction order may be subject to the requesting party's provision of security. After the tribunal grants the interim order, the requesting party may apply to the courts for the enforcement of this order. The CCP article 414/2 provides that the court shall decide that the interim injunction given by the arbitral tribunal is enforceable, provided that a valid arbitration agreement exists.

- (ii) **Will courts grant provisional relief in support of arbitrations? If so, under what circumstances? May such measures be ordered after the constitution of the arbitral tribunal? Will any court ordered provisional relief remain in force following the constitution of the arbitral tribunal?**

Provisional orders granted by a sole arbitrator or arbitral tribunal are not enforceable on their own. The CCP and IAL provide that the parties may apply to the courts for the enforcement of interim relief issued by tribunals.

For international arbitration, IAL article 6 provides that parties may also apply to the court to seek provisional relief before or during the arbitration proceedings. Furthermore, the IAL reserves the parties' right to file a request before the courts under both the CCP and the Code of Execution and Bankruptcy. Therefore, in international arbitration, the parties still have access to interim measures provided by the courts.

In domestic arbitration, a party may apply to the court for interim measures if the tribunal or a mutually appointed third party is not in a position to act in a timely or effective manner. However, if those conditions do not exist, a party can only apply to the court if it is permitted to do so by the arbitrators, or if such an application is agreed upon in writing by the parties. In addition, in domestic arbitration, the CCP provides that injunction orders granted by a court may be altered or annulled by the arbitrators.

If one of the parties obtains preliminary relief (an interim measure or interim attachment order) from the court before the arbitration commences, that party must file an arbitration case within 30 days (or two weeks under the CCP) after obtaining the preliminary relief. Otherwise, the preliminary relief would automatically cease to have effect. The preliminary order given by the court, before or during the arbitration proceedings upon the request of one of the parties, will automatically cease to have effect once the arbitral award becomes enforceable, or upon dismissal of the case by the arbitrator or the arbitral tribunal.

(iii) To what extent may courts grant evidentiary assistance/provisional relief in support of the arbitration? Do such measures require the tribunal's consent if the latter is in place?

Under the IAL, the tribunal has the right to carry out inspections and may request assistance from the court in gathering evidence. In domestic arbitration, the tribunal may grant an order for the collection of evidence upon the request of a party. Moreover, a party may apply to the court for the collection of evidence when the tribunal or a mutually appointed third party is not in a condition to act timely or effectively. However, if this is not the case, an application to the court can only be made if it is decided by the arbitrators or agreed upon in writing by the parties. Furthermore, one of the parties may request the assistance of the court for the collection of evidence provided that this request is approved by the arbitrator or the tribunal.

VII. Disclosure/Discovery

(i) What is the general approach to disclosure or discovery in arbitration? What types of disclosure/discovery are typically permitted?

The IAL and CCP do not contain any specific provisions on disclosure or discovery. The parties are allowed to determine the procedural rules to be applied

during the arbitration proceedings, or make reference to a law or a set of international or institutional arbitration rules, save for the mandatory provisions of the IAL and CCP. Hence, the parties are free to determine a specific set of rules that regulate and permit disclosure or discovery.

It is also important to note that there is no explicit provision restricting disclosure or discovery, as discussed below.

(ii) What, if any, limits are there on the permissible scope of disclosure or discovery?

Neither the IAL nor the CCP contains any specific limits on the permissible scope of disclosure or discovery. The arbitral proceedings must be conducted according to the principle of equality, and parties are required to be given the opportunity to present their claims and defences. Moreover, the parties are free to determine the procedural rules, save for the mandatory provisions. Thus, the permissible scope of disclosure or discovery depends on the rules chosen by the parties.

(iii) Are there special rules for handling electronically stored information?

There are no special rules for handling electronically stored information in either the IAL or the CCP.

VIII. Confidentiality

(i) Are arbitrations confidential? What are the rules regarding confidentiality?

There are no specific provisions regarding the confidentiality of arbitration proceedings in either the IAL or the CCP. However, parties may decide to keep the arbitration proceedings confidential and, as a result, can refer to certain institutional rules that contain provisions regarding confidentiality. They may also include provisions concerning confidentiality in the arbitration agreement or in the terms of reference.

(ii) Are there any provisions in your arbitration law as to the arbitral tribunal's power to protect trade secrets and confidential information?

The CCP and IAL do not have any provisions regarding arbitration which address the protection of trade secrets and confidential information.

(iii) Are there any provisions in your arbitration law as to rules of privilege?

There are no special provisions regarding rules of privilege as it relates to arbitration in either the IAL or the CCP. However, the CCP and the Code of Criminal Procedure both provide privilege to persons of a certain status. Certain professionals, such as attorneys and medical doctors, are exempted from testifying in regard to the information they obtain as a result of their profession.

Additionally, persons who have kinship with persons involved in the proceedings also have the right to avoid testifying. Moreover, attorneys also have a right to avoid testifying in accordance with their confidentiality obligations. As a result, attorneys cannot testify regarding the matters that have been entrusted to them or that they have come upon in the course of performing their duties as an attorney without the consent of their clients. Attorneys may refrain from testifying even if they have their clients' consent.

IX. Evidence and Hearings

- (i) Is it common that parties and arbitral tribunals adopt the IBA Rules on the Taking of Evidence in International Arbitration to govern arbitration proceedings? If so, are the Rules generally adopted as such or does the tribunal retain discretion to depart from them?**

The parties and arbitral tribunal are entitled to determine the procedural rules that will govern the arbitration proceedings. As part of this, they are allowed to make reference to a law or a set of international or institutional arbitration rules, and determine the extent to which they are bound by them.

- (ii) Are there any limits to arbitral tribunals' discretion to govern the hearings?**

In accordance with the general principle set out in the IAL and the CCP, the parties must be afforded equal rights and should be given the opportunity to present their claims and defences. The arbitral tribunal may choose to hold hearings for the submission of evidence, oral statements or explanations from experts. But it may also choose to conduct the proceedings on the basis of the case file. Unless otherwise agreed by the parties, the arbitrator or tribunal will hold a hearing at an appropriate stage of the arbitration upon the request of one of the parties.

- (iii) How is witness testimony presented? Is the use of witness statements with cross examination common? Are oral direct examinations common? Do arbitrators question witnesses?**

Absent an agreement by the parties to the contrary, the arbitral tribunal may hold a hearing where party evidence, including any witnesses or experts, is examined. The IAL and CCP do not include any specific rules regarding how such examinations should be conducted. In accordance with the general principle of party autonomy, the procedure for such examinations may be determined by the parties and the arbitral tribunal.

- (iv) Are there any rules on who can or cannot appear as a witness? Are there any mandatory rules on oath or affirmation?**

Neither the IAL nor the CCP contains any specific rules as to who can or cannot appear as a witness. They do not impose any mandatory rules relating to oath or affirmation in arbitration proceedings. The parties may consider these issues when establishing the procedural rules.

- (v) **Are there any differences between the testimony of a witness specially connected with one of the parties (eg legal representative) and the testimony of unrelated witnesses?**

The IAL and CCP do not recognize such a difference.

- (vi) **How is expert testimony presented? Are there any formal requirements regarding independence and/or impartiality of expert witnesses?**

Unless otherwise agreed by the parties, the tribunal can call tribunal-appointed experts to attend a hearing where the parties are free to question them. In addition, the parties may have their own experts heard at the hearing.

- (vii) **Is it common that arbitral tribunals appoint experts beside those that may have been appointed by the parties? How is the evidence provided by the expert appointed by the arbitral tribunal considered in comparison with the evidence provided by party-appointed experts? Are there any requirements in your jurisdiction that experts be selected from a particular list?**

Arbitral tribunals have the discretion to appoint experts, who will then report and give evidence during the hearing on issues relevant to the dispute. It is for the tribunal to decide how much weight to give to any evidence, including the testimony of tribunal-appointed and party-appointed experts. The IAL and CCP do not require the selection of experts to be made from any particular list. In general, the tribunal and the parties are free to select an expert based on their own considerations.

- (viii) **Is witness conferencing ('hot-tubbing') used? If so, how is it typically handled?**

The IAL and CCP do not explicitly restrict the use of witness conferencing. Whether this type of examination is necessary or preferable primarily depends on the procedural rules accepted by the parties.

- (ix) **Are there any rules or requirements in your jurisdiction as to the use of arbitral secretaries? Is the use of arbitral secretaries common?**

There are no specific rules or requirements as to the use of arbitral secretaries. However, the use of arbitral secretaries is implied under the legal costs section of both the IAL and the CCP, as the fees of persons from whom the tribunal seek assistance, such as arbitral secretaries, are considered part of arbitral costs.

X. Awards

(i) Are there formal requirements for an award to be valid? Are there any limitations on the types of permissible relief?

The IAL and CCP provide that arbitral awards should contain the names, surnames, titles and addresses of the parties, representatives and, if any, attorneys as well as the, legal grounds on which the award is based, the reasoning thereof, quantum of damages, place of arbitration; date of award, and a statement that an action for annulment can be brought against the award. For domestic arbitration, the rights and obligations imposed on the parties and the procedural costs should be set out clearly and definitively in a numbered sequence. According to the IAL, an award should bear the names, surnames, signatures and any dissenting opinion of the tribunal rendering the award. However, the CCP considers the signatures of those arbitrators who are in the majority to be sufficient.

There is no comprehensive list of final remedies provided in the legislation. But both the IAL and CCP allow for costs awards, as it is provided that, unless agreed otherwise, the costs of proceedings are borne by the losing party. Where both parties prevail, the cost allocation is split between them in accordance with their degree of success.

(ii) Can arbitrators award punitive or exemplary damages? Can they award interest? Compound interest?

The type of award that the tribunal can render is related to the substantive law being applied to the dispute. However, punitive damages or exemplary damages are not recognized under Turkish law. Therefore, an arbitration award including punitive damages may be subject to annulment and may not be enforceable in Turkey on the ground that it is contrary to the Turkish public order.

The issue of interest is also determined by the substantive law. According to Turkish law, the tribunal may award interest and compound interest if the conditions for awarding compound interest are met. On this matter, the Court of Appeals found that court decisions and arbitral awards must meet the same requirements for enforcement. Where an arbitral award called for interest but did not specify the amount or rate of the interest, the Court found that the award did not meet the requirements for enforcement and ruled that the arbitral tribunal must specify the calculated amount of interest and the interest rate in the award.

(iii) Are interim or partial awards enforceable?

Partial awards are enforceable considering that the tribunal is free to render partial awards, unless otherwise agreed by the parties. However, interim awards regarding procedural issues, which do not finally settle the dispute in whole or in

part, are not enforceable. Interim measures ordered by a tribunal are not enforceable without a court decision, as stated in Section VI(i) above.

(iv) Are arbitrators allowed to issue dissenting opinions to the award? What are the rules, if any, that apply to the form and content of dissenting opinions?

Arbitrators are allowed to issue dissenting opinions. The IAL states that the award should contain the dissenting opinions, if any. Yet there are no provisions regarding the form or content of the dissenting opinion. However, the CCP states that the dissenting opinion should be mentioned in the award, provided that the dissenting opinion is also attached to the award.

(v) Are awards by consent permitted? If so, under what circumstances? By what means other than an award can proceedings be terminated?

Awards by consent are regulated in article 12/D of the IAL and article 434 of the CCP. Following these articles, if the parties settle the dispute during the arbitral proceedings, the proceedings may be terminated by an award. For international arbitrations, settlement shall be recorded in the form of an arbitral award, if the tribunal finds the parties' request appropriate. The settlement request of the parties in domestic arbitration shall be recorded as an award, unless it is contrary to morality or public order, or contains an issue which is not arbitrable.

Arbitral proceedings shall be terminated without an award in cases when: (i) the claimant withdraws his claim, unless the arbitrator or the tribunal concludes upon the request of the respondent that the respondent has a justified interest in obtaining a final settlement of the dispute, (ii) the parties agree on the termination of the proceedings or (iii) the arbitrator or the tribunal finds that the continuation of the proceedings becomes for any other reason unnecessary or impossible. Furthermore, unlike the Model Law, it is also provided that the proceedings shall be terminated if: (i) an award cannot be rendered unanimously by the tribunal although it is agreed by the parties that such an award is required, (ii) the request for an extension of the arbitration term is rejected by the court or (iii) the advance payment of costs for the proceedings is not deposited in the prescribed time. The IAL provides another reason for termination that is not set forth in the CCP: If the arbitral proceedings cannot be completed within the prescribed time on the ground of the 'loss of capacity to be party to arbitration' by one of the parties, the proceedings are terminated.

There are additional circumstances where the proceedings shall not continue. The arbitral tribunal shall terminate the proceedings if: (i) the statement of claim is not submitted within the prescribed period and the party does not provide any justified reason for this, (ii) the statement of claim does not meet the legal requirements and if such deficiencies are not corrected in the given time or (iii) rendering the award becomes impossible by the majority of the tribunal or by the

sole arbitrator due to a deficient number of arbitrators, in the event that the duty to act as an arbitrator ceases due to a challenge or for any other reason.

(vi) What powers, if any, do arbitrators have to correct or interpret an award?

In international arbitration, arbitrators may correct any computational, clerical or other similar errors in the award. They may also interpret the entire award or specific parts of it upon the request of one of the parties, after soliciting the opinion of the other party. Domestic arbitration is mostly in accordance with IAL in terms of correcting an award; however, it allows the parties to request the ‘explanation’ (*tavzih*) of an award in regard to a certain issue or section. ‘Interpretation’ (*yorum*) of the award is not provided for in the CCP.

Additionally, each party, with notice to the other party, may request a limited time period after the receipt of the award for the arbitral tribunal to make an additional award in regard to claims that were presented in the arbitral proceedings but not settled in the original award. If the arbitral tribunal considers the request to be justified, it shall make an additional award.

XI. Costs

(i) Who bears the costs of arbitration? Is it always the unsuccessful party who bears the costs?

According to the IAL and the CCP, unless otherwise agreed between the parties, the unsuccessful party bears the costs. However, if both parties prevail partially, the costs are apportioned in accordance with the degree of success.

(ii) What are the elements of costs that are typically awarded?

The elements of costs under the IAL and CCP are:

1. fees of arbitrators;
2. travel and other expenses of arbitrators;
3. fees of tribunal appointed experts and other persons from whom the tribunal sought assistance, along with site inspection costs;
4. to the extent approved by the tribunal, travel and other expenses of witnesses;
5. attorney fees of the prevailing party awarded by the tribunal in accordance with the attorney minimal fee schedule;
6. court fees pertaining to applications to courts; and
7. notification costs.

In addition, under the CCP, arbitration costs include the fee for arbitral secretaries as determined by the arbitral tribunal.

(iii) Does the arbitral tribunal have jurisdiction to decide on its own costs and expenses? If not, who does?

Unless otherwise agreed upon by the parties, arbitrators' fees are determined by both the arbitral tribunal and the parties, and they take into account the claim value, the nature of the dispute and the length of the proceedings.

The parties may determine arbitrators' fees by referring to established international rules or institutional arbitration rules.

In the absence of the above, arbitrators' fees are determined according to the tariff prepared by the Ministry of Justice each year.

(iv) Does the arbitral tribunal have discretion to apportion the costs between the parties? If so, on what basis?

The unsuccessful party bears the costs, unless otherwise agreed by the parties. If both parties prevail partially, the costs are apportioned in accordance with the degree of success.

(v) Do courts have the power to review the tribunal's decision on costs? If so, under what conditions?

Under the IAL and CCP, the only possible review of an award could be made during annulment proceedings. Both laws specify the grounds on which the courts will base their review. These grounds (specified below in section XII) do not include a specific reference to the tribunal's decision on costs. On the other hand, if it is claimed that the tribunal's decision on costs violates one of these grounds, the court may review such a cost decision.

XII. Challenges to Awards

(i) How may awards be challenged and on what grounds? Are there time limitations for challenging awards? What is the average duration of challenge proceedings? Do challenge proceedings stay any enforcement proceedings? If yes, is it possible nevertheless to obtain leave to enforce? Under what conditions?

Only an action for annulment may be brought against an arbitral award (excluding enforcement proceedings). The award may be annulled fully or partially. The grounds for annulment are:

1. Invalidity of the arbitration agreement or incapacity of one of the parties to the arbitration agreement.
2. Non-compliance with the arbitrator appointment procedure as defined in the parties' agreement or as prescribed by the law.

3. Failure to render the award within the specified or agreed period.
4. Unlawful decision made by the arbitrator or the tribunal regarding the competence of the arbitrator or the tribunal.
5. Decision made by the arbitrator or the tribunal on a matter that falls beyond the scope of the arbitration agreement, does not settle the entirety of the claim or exceeds the arbitrator's or tribunal's authority.
6. Non-compliance with the procedural rules agreed between the parties, or in the absence of an agreement, the procedures set out in the law, where such non-compliance has affected the merits of the case.
7. Violation of the principle of equality between the parties (and the right to be heard for domestic arbitration).
8. The subject matter of the dispute cannot be arbitrated under Turkish law.
9. The award is contrary to public order.

The IAL sets the time limit for filing an annulment action as 30 days, whereas the CCP sets it as one month. The duration of the annulment proceedings depends on the circumstances of each case and the workload of the court reviewing the case.

If a party applies for the annulment of an arbitration award rendered in an international arbitration governed by the IAL, the award is automatically stayed. In contrast, in domestic arbitration the filing of an annulment application does not itself stay the enforcement. However, if one of the parties provides collateral corresponding to the amount or property awarded, the execution may be stayed by the court.

(ii) May the parties waive the right to challenge an arbitration award? If yes, what are the requirements for such an agreement to be valid?

Parties may waive their rights to challenge the award by an express statement in the arbitration agreement or by a subsequent written agreement in international arbitration. According to the IAL, the parties with domiciles or habitual residences outside Turkey may waive all rights of proceedings for setting aside, or they may limit the grounds to challenge. The CCP is silent on this issue. Thus, the waiver of the right to challenge is not provided in domestic arbitration.

(iii) Can awards be appealed in your country? If so, what are the grounds for appeal? How many levels of appeal are there?

An action for annulment is the only method provided as a way to challenge the award. Arbitral awards cannot be appealed. However, the decision regarding the annulment is subject to appeal.

(iv) May courts remand an award to the tribunal? Under what conditions? What powers does the tribunal have in relation to an award so remanded?

Courts cannot remand an award to the tribunal under Turkish law. However, the parties may, unless agreed otherwise, appoint arbitrators under the terms of the arbitration again, or they may appoint the previous arbitrators when either (a) the award is annulled and the annulment decision is not appealed or (b) the annulment is based on specific grounds as determined by law.

XIII. Recognition and Enforcement of Awards

- (i) **What is the process for the recognition and enforcement of awards? What are the grounds for opposing enforcement? Which is the competent court? Does such opposition stay the enforcement? If yes, is it possible nevertheless to obtain leave to enforce? Under what circumstances?**

A certificate of enforcement is required to enforce an award rendered in accordance with the IAL. This certificate is issued by the competent court, upon request, provided that certain conditions exist. In case an annulment application is filed on time, the decision rejecting the application must become final before the certificate of enforcement can be issued. In regard to international arbitration, the filing of an annulment suit stays the enforcement of an award.

In cases where the time limit for applying for the annulment of the arbitration award expires or the parties have waived their right to apply for annulment, the party seeking to enforce the award should apply to the competent court to receive a certificate of enforcement. The competent court then accords a limited review, which assesses whether the dispute was arbitrable according to Turkish law and whether the award was made against the public order. If the court is satisfied, then a certificate of enforcement is issued.

The competent court that issues the certificate of enforcement is the same court that receives the annulment application pursuant to the IAL.

The IAL does not have any provisions on the recognition of awards. Recognition and enforcement of foreign court decisions and arbitral awards are regulated under the IPPL and the New York Convention. Arbitral awards rendered in countries that are party to the New York Convention will be recognized and enforced under Article V of the Convention. Awards rendered in countries that are not party to the New York Convention will be recognized and enforced under the IPPL. Following these laws, the party requesting the enforcement of a foreign arbitral award should apply with a petition along with the necessary documents.

The grounds for opposing recognition or enforcement are stated as follows under article 62 of the IPPL:

1. There is neither an arbitration agreement nor an arbitration clause in the main contract.
2. The arbitral award contravenes public morals or public order.

3. According to Turkish law, the dispute is non-arbitrable.
4. One of the parties is not duly represented and afterwards has not explicitly assented to the conducted proceedings.
5. The party against whom enforcement is sought is not duly notified of the appointment of arbitrators or is deprived of its right to due process.
6. The arbitration agreement or clause is null and void in accordance with the agreed applicable law, otherwise the *lex loci arbitri*.
7. The appointment of arbitrators or the procedures applied by the arbitrators is contrary to the parties' agreement, otherwise the *lex loci arbitri*.
8. The arbitral award covers an issue not provided in the arbitration agreement or clause or the award is beyond the scope of the arbitration agreement or clause. In the latter, the court only refuses to enforce the part that exceeds the scope of the arbitral agreement.
9. The arbitral award, according to provisions of the applicable law, the law of the seat of arbitration or the applicable procedure, is not final, enforceable or binding, or has been annulled by the competent venue of the seat of arbitration.

Request for the enforcement of foreign arbitral awards shall be made by a petition from the court of first instance of the location agreed upon by the parties. In the absence of such an agreement, the competent court shall be the court of the location where the losing party is domiciled in Turkey. In cases where there is no domicile, the court of the location where the losing party habitually resides, and in the absence thereof, the court of the location where the assets which may be subject to enforcement, shall be the competent court.

Execution of enforcement decisions are conducted pursuant to the Code of Execution and Bankruptcy (CEB).

(ii) If an exequatur is obtained, what is the procedure to be followed to enforce the award? Is the recourse to a court possible at that stage?

The appeal procedure and the execution of the enforcement decisions of foreign awards are regulated under IPPL, Article 57. According to this, foreign arbitral awards that the Turkish courts decide to enforce are executed as if they were judgments originally rendered by a Turkish court. Article 57/2 of the IPPL provides that the appellate review of the decisions regarding the acceptance or dismissal of the enforcement applications are subject to the general provisions of appeal which are provided in the CCP. Article 57/2 of the IPPL also provides that appeal of an enforcement decision automatically stays the execution of the judgment.

However, the general provisions of appeal were amended with the new CCP, which established the Regional Judicial Courts. The Regional Judicial Courts began to operate on 20 July 2016. Before that, the appeals of the first instance court decisions on enforcement were examined by the Court of Appeals, which

would stay the execution of the enforcement decision pursuant to IPPL, as stated above. On the other hand, there is no provision in the new CCP stating that the appeals before the Regional Judicial Courts would automatically stay the execution of the enforcement decision. Certain commentators are of the opinion that the general rule in the CCP, which is that the appeals before the Regional Judicial Courts do not stay the execution of the decision (CCP, Article 350), shall apply. On the other hand, it may be considered that the provision in article 57/2 of the IPPL, which states that an appeal stays the execution of an enforcement decision, refers to the concept of legal remedy (instead of referring to the competent judicial authority to review the appellate requests). Further, it could be argued that the rationale behind article 57/2 of the IPPL (which calls for a stay during an appeal) is to prevent a foreign arbitral award from being executed before the enforcement decision of the Turkish court becomes final. However, it is possible that the courts may decide otherwise. Since the application of this new procedure has only started very recently, the Court of Appeals does not have an established view regarding this issue yet.

An enforcement that has become final can be executed in accordance with the CEB, with no recourse to a court.

(iii) Are conservatory measures available pending enforcement of the award?

The IPPL does not address whether it is possible to request interim attachment. However, according to Article 257 of the CEB, a court may order an interim attachment of the debtor's movable and immovable property which is held by either the debtor or third parties, to secure the creditors' monetary claims that are not secured by a pledge.

The Court of Appeals declared that an interim attachment order may be granted based on a foreign arbitral award before applying for an enforcement decision.

The requesting party is required to provide sufficient evidence to the court in order to show that the grounds for interim attachment exist and it must present a guarantee, such as a bank guarantee, that has been assessed by the court in order to satisfy the damages of the debtor or third parties in case the interim injunction is later regarded as unjust. However, if the interim attachment request is based on a document deemed as a court decision, the court decides whether such guarantee is necessary.

(iv) What is the attitude of courts towards the enforcement of awards? What is the attitude of courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

The courts review enforcement applications and oppositions on their own merits. To do so, they apply the grounds for opposing recognition or enforcement as provided in the IPPL (explained under XIII(i) above) and the New York Convention.

(v) How long does enforcement typically take? Are there time limits for seeking the enforcement of an award?

Requests for enforcement of foreign court decisions are investigated and finalized through simplified proceedings set out in the CCP, which offer reduced time limits for such a process. The length of enforcement proceedings depends on the complexity and nature of the matter and whether appellate courts are involved. The relevant laws do not specify a time limit for seeking enforcement of awards.

XIV. Sovereign Immunity

(i) Do state parties enjoy immunities in your jurisdiction? Under what conditions?

State parties may only enjoy immunity in relation to their sovereign powers. Therefore, state parties do not enjoy immunity in disputes concerning private law relations. State parties may enter into arbitration agreements, provided that the matter is arbitrable.

(ii) Are there any special rules that apply to the enforcement of an award against a state or state entity?

No specific rules apply to the enforcement of an award against states or a state entity. The CEB provides that Turkish public property cannot be attached.

XV. Investment Treaty Arbitration

(i) Is your country a party to the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States? Or other multilateral treaties on the protection of investments?

Turkey is a party to the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States, which came into force on 2 April 1989. Turkey is also a party to the Energy Charter Treaty, which has been in force since 4 July 2001.

(ii) Has your country entered into bilateral investment treaties with other countries?

Turkey is a signatory to 76 bilateral investment treaties that are currently in force.

XVI. Resources

(i) What are the main treatises or reference materials that practitioners should consult to learn more about arbitration in your jurisdiction?

There are limited treatises and reference materials in English on the topic of arbitration in Turkey. Practitioners could consult the below references, which are mostly in Turkish:

Prof. Dr. Cemal Şanlı, *Milletlerarası Ticari Tahkimde Esasa Uygulanacak Hukuk*, 1986.

Prof. Dr. Cemal Şanlı, *Uluslararası Ticari Akitlerin Hazırlanması ve Uyuşmazlıkların Çözüm Yolları*, 2016.

Prof. Dr. Ergin Nomer, Prof. Dr. Nuray Ekşi, Prof. Dr. Günseli Öztekin Gelgel, *Milletlerarası Tahkim Hukuku, Cilt I*, 2016.

Prof. Dr. Kemal Dayındarlı, *International Arbitration*, 2010.

Prof. Dr. Nuray Ekşi, *ICSID Hakem Kararlarının Tanınması, Tenfizi ve İcrası*, 2009.

Prof. Dr. Turgut Kalpsuz, *Türkiye’de Milletlerarası Tahkim*, 2010.

Prof. Dr. Ziya Akıncı, *Milletlerarası Tahkim*, 2016.

Prof. Dr. Ziya Akıncı, *Milletlerarası Ticari Hakem Kararları ve Tenfizi*, 1994.

(ii) Are there major arbitration educational events or conferences held regularly in your jurisdiction? If so, what are they and when do they take place?

Conferences, symposiums and other educational events are held regularly in Turkey. Most recently, Global Arbitration Review held its 5th Annual GAR Live conference in Istanbul, and ICC-FDIC held its Annual Conference on International Construction Contracts and Dispute Resolution in Istanbul. In general, educational events and conferences are regularly organized by bar associations, the Istanbul Arbitration Centre, the Turkish Union of Chambers and Commodity Exchanges, universities, international organizations and chambers of commerce.

XVII. Trends and Developments

- (i) Do you think that arbitration has become a real alternative to court proceedings in your country?**

The preference for arbitration over litigation has increased significantly since 2000. A preference for international arbitration as the method for dispute resolution is very common in contracts where a foreign investor is a party.

- (ii) What are the trends in relation to other ADR procedures, such as mediation?**

Currently, the foremost ADR option in Turkey is arbitration. The use of mediation on the local disputes is also increasing.

- (iii) Are there any noteworthy recent developments in arbitration or ADR?**

The CCP provisions governing domestic arbitration came into force on 1 October 2011 and they amended the old provisions. Additionally, since the new CCP came into force in 2011, another amendment has been made to the CCP that requires the court to encourage parties to settle or mediate during the preliminary investigation stage. This article entered into force on 22 June 2013, the same day as the Law on Mediation in Civil Disputes (which was published in the Official Gazette). This law will be applicable to both foreign and local disputes arising from private law matters. Article 5 of this law specifies that certain documents used for the mediation process cannot be submitted as evidence in the court or arbitration proceedings. Moreover, on 12 October 2017, the draft law on Labor Courts with Law No. 7036 was adopted by parliament, and was published in the Official Gazette on 25 October 2017. It requires parties to apply to mediation before going to court in cases regarding the receivables or compensation of employees or employers that are based on a statutory, individual or collective labor agreement, as well as in cases with a claim of reemployment. The provisions of this law regarding such a requirement shall be effective starting on 1 January 2018.