

## Turkey

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### 1. What are the basic criteria for the courts of your jurisdiction to allow enforcement of a foreign judgment?

- *[In this part, please describe the rules for the enforcement of foreign judgments, list the criteria and describe them briefly.]*

Under Turkish law, the International Private Law and Procedure Code No. 5718 (“**IPPC**”) is the main piece of legislation regulating the recognition and enforcement of foreign judgments (i.e., court decisions and arbitral awards) concerning private law transactions and relationships involving a foreign element.

The IPPC stipulates that foreign judgments for civil law matters are enforceable as long as they are final under the laws of the foreign country. Under Turkish law, an “*enforcement decision (exequatur)*” rendered by a competent Turkish court is required for the execution of a foreign judgment in Turkey.

The IPPC provides that a foreign judgment must fulfil certain requirements in order for a Turkish court to render an enforcement decision without a review of its merits. Under Article 54 of the IPPC, a judgment rendered by a foreign court following a fully contested trial would be enforced by Turkish courts *without re-examination* of the merits if the following criteria are satisfied:

1. The judgment must have become “*final and binding*” with no recourse to appeal or similar review processes under the laws of the country in which the decision was rendered.
2. There must be *de facto* or *de jure* reciprocity between Turkey and the country in which the decision is rendered. This reciprocity can be satisfied with either (i) a bilateral treaty between Turkey and the relevant country, or (ii) a statute in the law or *de facto* practice of the foreign court as to the enforcement of Turkish court rulings.
3. The subject matter of the judgment must not fall under the exclusive jurisdiction of the Turkish courts. For instance, under Article 12 of the Civil Procedural Law No. 6100 (“**CPL**”), Turkish courts enjoy exclusive jurisdiction over disputes regarding *real estate* related matters.
4. “Due process” must have been observed under the laws of the country in which the court decision was rendered. As such, the person or entity against whom the enforcement of the judgment is sought must have been “duly served” or must have been made fully aware of the proceedings and been given the full opportunity to represent/defend himself/herself at trial.
5. The judgment must not be incompatible with a judgment rendered by a Turkish court in a lawsuit between the same parties and relating to the same subject matter or, in certain circumstances, with an earlier foreign judgment that satisfies the same criteria and is enforceable in Turkey.
6. The judgment must not be clearly contrary to Turkish public policy.

Likewise, for the enforcement of foreign arbitral awards, as per Article 62 of the IPPC, the following criteria are grounds for refusal of enforcement:

1. The nonexistence of an arbitration agreement or an arbitration clause
2. The award is contrary to public order or public morality
3. The subject matter of the dispute is not capable of settlement by arbitration under Turkish law
4. A party was not duly represented before the arbitral tribunal or did not explicitly agree to the actions taken
5. The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or was otherwise unable to present their case
6. The arbitration agreement or arbitration clause is null and void according to the choice of law of the parties, or in its absence, the law of the seat of arbitration
7. The composition of the arbitral tribunal or the arbitral procedure was not done in accordance with the agreement of the parties, or in its absence, the law of the place of arbitration
8. The part of the award that deals with disputes was not contemplated by or does not fall within the terms of the submission to arbitration or contains decisions on matters beyond the scope of the submission to arbitration
9. If the award is not finalized and enforceable under the law of the seat of arbitration or the applicable procedural law or has not yet become binding or has been set aside by the competent authority of the seat of arbitration

- *If your jurisdiction uses a model treaty on enforcement of foreign judgments, which creates a uniform framework, please also describe the relevant criteria.*

There are no model treaties adopted for the enforcement of foreign judgements. However, the International Arbitration Code no. 4686, which is the main legislation for setting aside procedures for arbitral awards, was drafted in line with the 1985 UNCITRAL Model Law.

It is also worth mentioning that the enforcement of foreign arbitral awards in Turkey is subject to two main pieces of legislation: (i) The 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards (the “**NY Convention**”) and (ii) The International Centre for Settlement of Investment of Disputes (“**ICSID**”) Convention. The IPPC applies in cases where a party to the arbitration case is not a party to any of the international treaties, bilateral or multilateral, ratified by Turkey.

Pursuant to Article 90 of the Turkish Constitution, “*international treaties duly put into effect (ratified by the Grand National Assembly) shall enjoy all of the legal effect of internal statutory law...In the case of a conflict between international agreements, duly put into effect, that concerns fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.*” In this respect, provisions of international treaties will have the same force of law as other Turkish statutory provisions and will be regarded as part of the domestic legal system. Accordingly, Turkish law gives precedence to

	<p>the application of international treaties over the IPPC in terms of the enforcement of foreign judgments.</p> <p>The enforcement of a foreign arbitral award may be refused by the competent Turkish court with respect to the legal grounds regulated in the NY Convention. The IPPC and the NY Convention provide for almost the same grounds for refusal of the recognition and enforcement of a foreign arbitral award. These are: i. The nonexistence of an arbitration agreement or an invalid arbitration agreement under the law that the parties have selected, or in its absence, under the law of the country where the award was rendered; ii. Violations of public policy; iii. The subject matter of the dispute is not arbitrable; iv. Lack of due process; v. Improper arbitral procedure or composition of the arbitral tribunal; vi. The award, or a non-severable part of it, exceeds submission to arbitration; or vii. The award is not yet binding or has not yet been set aside or suspended by a court.</p> <p>Additionally, the enforcement of ICSID arbitration awards has a unique importance to protect the interests of investors against states. In contrast with other arbitral awards, which must be subject to recognition or enforcement proceedings if the award is made in a country other than the country where the recognition or enforcement is sought, ICSID arbitral awards do not require such a court involved enforcement process. Therefore, for the enforcement of ICSID arbitral awards against states, there are no such criteria.</p> <ul style="list-style-type: none"> <li>• <i>If your jurisdiction has concluded treaties on enforcement of foreign judgments, but does not use model treaties, please do NOT describe each treaty separately. Please simply make a note in your answer that such treaties exist.</i></li> </ul> <p>In addition, Turkey has concluded multinational treaties on the enforcement of foreign judgments such as The Convention Concerning the Recognition and Enforcement of Decisions Relating to Maintenance Obligations Towards Children dated 1958, The Convention on the Recognition and Enforcement of Decisions relating to Maintenance Obligations dated 1973, The Convention on the Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children dated 1996, as well as bilateral treaties regulating the enforcement of foreign judgements.</p>
<p>2.</p>	<p><b>What other considerations may apply to enforcement of a foreign judgment against a state in your jurisdiction, e.g. notice provisions?</b></p>
	<ul style="list-style-type: none"> <li>• <i>[In this part, please describe if in your jurisdiction, the enforcement of judgments against a state requires any formal notices or any other actions.</i></li> </ul> <p>If a foreign judgment rendered against a state is an arbitral award rendered under ICSID, then for the enforcement of such award in Turkey, as per the Convention, no conventional court procedure exists for enforcement, and thus, the following shall be considered.</p> <p>The ICSID Convention requires contracting states to notify the ICSID Secretariat along with the relevant authority. Turkey has designated its competent authority</p>

as “*The commercial court of first instance belonging to the subject place, as designated in the written agreement between the parties, and in case of the absence of such agreement, the commercial court of first instance with jurisdiction over the place of the losing party's domicile, if not residence, or in the absence of both, over the place of the subject property of the claim, or in places where a commercial court of first instance does not exist, the civil court of first instance of the subject place.*” However, in practice, there is still ambiguity with the enforcement of ICSID arbitral awards in Turkey as recently experienced through a Court of Appeals decision (12<sup>th</sup> Civil Chamber., Case No. 2021/875 Decision No. 2021/4586 Date. 28.4.202). Although Turkey had filed the relevant notice regarding the competent authority to the ICSID Secretary on 1 February 2017, the Turkish Court of Appeals ruled that the Convention does not provide for the direct execution of an ICSID award in the absence of the appointment of a relevant authority by the contracting state and ruled that ICSID arbitral awards cannot be directly submitted to the execution offices, and a determination must first be made by the relevant national authority. Thus, even though the ICSID Convention does not stipulate any enforcement mechanism, in practice, an application must be made to court to obtain an enforcement decision.

For other foreign judgments rendered against states other than ICSID, the Turkish court will consider sovereign immunity and notice provisions. As per Article 49 of the IPPC, foreign states are not given an exemption of sovereign immunity [*which will be explained in detail under question 3*] in disputes arising from private law. In such disputes, notices may be served to the diplomatic representative of that foreign state against which the decision has been rendered. It is argued in scholarly opinions that the ability of a Turkish court to directly serve a decision to the diplomatic representative of a foreign state is not in line with the diplomatic privileges and exemptions of states. In practice, the court decision to be served must be duly translated to the language of the state that will be served and submitted to the Directorate General for International Law and Foreign Relations of the Turkish Ministry of Justice. The Directorate will then deliver the decision and its translation to the Turkish Ministry of Foreign Affairs, which will subsequently serve it to the ministry of foreign affairs of the receiving state.

- *Please describe if this is a purely court process, or if the consent of a political body (such as for example, Minister of Foreign Affairs, Government) is necessary for the enforcement proceedings to be conducted. If the latter, describe the process and if possible the frequency of such consents being granted.]*

Pursuant to the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations, the Convention of Privileges and Immunities of the United Nations, and the Circular dated 16.11.2011 No. 63/3 published by the Directorate General for International Law and Foreign Relations of the Turkish Ministry of Justice, any notice to be made to foreign states must be served through diplomatic channels by the Turkish Ministry of Foreign Affairs. In practice, the court decision to be served must be duly translated to the language of the state that will be served and submitted to the Directorate General of International Law and Foreign Relations of the Turkish Ministry of Justice. The Directorate will then deliver the decision and its translation to the Turkish Ministry of Foreign Affairs,

	<p>which will subsequently serve it to the ministry of foreign affairs of the receiving state.</p>
<p><b>3.</b></p>	<p><b>What special considerations apply where the defendant/debtor in enforcement proceedings is a state, e.g. doctrine of sovereign immunity?</b></p>
	<ul style="list-style-type: none"> <li>• <i>In this part, please describe any sovereign immunity or other defense specific to states.</i></li> </ul> <p>If one of the parties in the enforcement proceedings is a state, then the sovereign immunity will be evaluated by Turkish courts. Turkey abandoned the principle of <i>absolute</i> sovereign immunity once the IPPC was enacted. As mentioned above, the IPPC regulates that foreign states are not subject to sovereign immunity for disputes arising from private law relations.</p> <p>As per Paragraph 1 of Article 49 of the IPPC, private law acts and relations of states are not within the scope of jurisdictional immunity. In this context, it is possible to analyze the legal actions that can be carried out by states on the basis of the law of the court (<i>lex fori</i>) that hears the case by evaluating whether legal actions are “sovereign disposition” or “private law disposition”. Transactions that are carried out as a requirement of being a state and that are the direct result of the state's enjoyment of its sovereign right are accepted as sovereign disposition, whereas legal acts that have consequences within the scope of private law that are not intended for exercising the sovereign right and that are not carried out in order to fulfill the state function are accepted as private law dispositions. (See. Court of Appeals 4th Civil Chamber Case No: 2013/10023 Decision No: 2013/13933 Date: 10.09.2013; Court of Appeals 6th Civil Chamber Case No: 2009/10643 Decision No: 2009/10361 Date: 01.12.2009; Court of Appeals 10th Civil Chamber Case No: 2010/15750 Decision No: 2012/5611 Date: 22.03.2012.)</p> <ul style="list-style-type: none"> <li>• <i>Please focus your description the sovereign immunity/other defenses specific to states in the context of enforcement proceedings, rather than jurisdictional proceedings. Of course, should you consider it useful to discuss jurisdictional immunity, you may do so, but bear in mind that the main aim of this publication is to discuss enforcement of already rendered foreign judgments.</i></li> </ul> <p>Foreign court decisions that are enforceable under the IPPC are related to private law matters. Therefore, the judge enforcing the decision primarily examines whether sovereign immunity must be granted. If there is no sovereign immunity, the court continues with examining whether the enforcement criteria is fulfilled.</p> <ul style="list-style-type: none"> <li>• <i>Please describe whether these defenses may be relied on by the courts ex officio (on their own) or only if the state raises the defense in course of the enforcement proceedings. If the latter, please describe if there is an obligation to raise this defense at a specific time during the proceedings, beyond which the defense will be considered waived.</i></li> </ul> <p>In terms of enforcement proceedings before the Turkish courts, jurisdictional immunity is a cause of action, meaning that the relevant Turkish court must</p>

	<p>examine whether the state in question is subject to jurisdictional immunity <i>ex officio</i>. The presence of jurisdictional immunity disables the Turkish Court to render an enforcement decision. In the doctrine, it is also argued that although the existence of jurisdictional immunity could be asserted at any stage of the case, if the foreign state makes substantive defenses without putting forward any defense of jurisdictional immunity at the beginning of the proceedings, the judge will reject the immunity claim by accepting that the foreign state implicitly waived it in the beginning of the proceedings.</p>
<p>4.</p>	<p><b>What exceptions may apply where the claim results from improper actions of the defendant state, e.g. wars of aggression?</b></p>
	<ul style="list-style-type: none"> <li>• <i>In this part, please describe the exceptions to sovereign immunity and/or any other defense specific to states.</i></li> </ul> <p>The foreign state will not be subject to jurisdictional immunity if (i) the foreign state voluntarily, expressly, or implicitly waives jurisdictional immunity and/or (ii) the subject of the legal dispute is related to a right regarding immovable property located in the state benefiting from jurisdictional immunity. It is possible to waive jurisdictional immunity due to an international treaty between the states (should such treaty be entered into before the lawsuit be filed) and by an express waiver statement before the court during the proceedings.</p> <p>“The Convention on State Immunity” dated 1972 was accepted within the framework of the Council of Europe, to regulate the terms of immunity of foreign states as well as the United Nations Convention on Jurisdictional Immunities of States and Their Property dated 2004 but Turkey is not a contracting state to the said conventions.</p> <ul style="list-style-type: none"> <li>• <i>If such exceptions exist, please describe the criteria for applicability.</i></li> </ul> <p>As Turkey accepts the principle of limited jurisdictional immunity, the scope is mainly determined by whether there is an <i>acta iure imperii</i> or an <i>acta iure gestionis</i>. In other words, jurisdictional immunity is not applied to the foreign state itself but to its functions and actions. In this regard, the distinction between <i>acta iure imperii</i> and <i>acta iure gestionis</i> relies on the nature of the action. The main question to be raised must be “whether an individual could take the same action on its own,” and if the answer is yes, there will be no need to grant jurisdictional immunity. In Turkish law, while applying this principle, it is necessary to consider the “nature” of the legal relationship that is the subject of the lawsuit as a criterion for granting immunity to a foreign state. If the action in question is one that could only be taken by the government, then that action is said to be <i>acta iure imperii</i>.</p> <p>The law to be applied while determining the nature of the action is <i>lex fori</i>. If the legal relationship that is the subject of the lawsuit is of a private law nature under Turkish law, then it is not possible for the foreign state to benefit from jurisdictional immunity. For example, the Turkish Court of Appeals accepts that jurisdictional immunity cannot be granted in disputes related to immovables.</p> <ul style="list-style-type: none"> <li>• <i>If not, please state as such.</i></li> </ul>

	<ul style="list-style-type: none"> <li>• <i>Please discuss the issue of war of aggression and whether it is a basis for an exception to the applicability of the sovereign immunity. Please also describe if breach of international law is considered to be such an exception.</i></li> </ul> <p>Under Turkish law, in case of a breach of public international law principles such as war of aggression, the principle of sovereign immunity is applied; therefore, it is not a basis for exception to the applicability of the principle. The general tendency of Turkish courts in torts committed by armed forces of foreign countries is to include such acts within the scope of jurisdictional immunity. For instance, The Turkish Court of Appeals, in a case regarding the damage caused by Iraqi jets to a Turkish tanker and its personnel during the Iran-Iraq War, reasoned its decision on the principle that the immunity of states is based on the understanding that one between two equals cannot have jurisdiction over the other. Therefore, the Court of Appeals examined whether the defendant state’s tort caused by the armed attack of warplanes could be considered as a private law relationship. The Court came to the conclusion that, due to the nature of the dispute, no damage had been incurred by an individual but rather a disposal was caused by the sovereignty of one of the two states who were at war. As a result, it was rendered that the decision that the State of the Iraqi Arab Republic cannot be tried before the Turkish judicial organs was made in accordance with the procedure and law.</p> <ul style="list-style-type: none"> <li>• <i>Please describe who bears the burden of proving the applicability of these exceptions.</i></li> </ul> <p>The jurisdictional immunity of a foreign state is envisaged as an exception to the unrestricted jurisdiction rule of the forum state. This matter is examined <i>ex officio</i>. However, it is possible for one of the parties to raise this issue at every stage of the proceedings.</p>
<p><b>5.</b></p>	<p><b>What due process standards and exceptions may apply in proceedings for enforcement of judgment against a state?</b></p>
	<ul style="list-style-type: none"> <li>• <i>In this part, please describe any due process standards which the courts in your jurisdiction require the foreign court to uphold in order to enforce a judgment from that foreign court against a state.</i></li> </ul> <p>Under the IPPC, one of the criteria for enforcing a foreign judgement is to abide by the standards of due process. The due process standards that the Turkish courts require the foreign court to uphold in order to enforce a judgment include: the defendant whom the enforcement is requested against should have been duly summoned to the foreign court (service requirements should have been met), the defendant should have been granted due representation before the court, and the foreign court should not render its decision in a party’s absence. In addition, if a party is not granted the right to due process, if such breach is found to be fundamentally against the due process standards under Turkish law, then the Turkish court may interpret the absence of the right to due process would violate Turkish public policy; thus, the enforcement of the foreign judgment may be refused.</p>

	<ul style="list-style-type: none"> <li>• <i>If such standards exist, please describe the requirements to satisfy them.</i></li> </ul> <p>The Turkish Court that will decide on the enforcement of a foreign court decision cannot examine due process standards <i>ex officio</i>. Therefore, the defendant state must raise an objection before the Turkish Court that due process standards were not abided by. In addition, any irregularities and/or breaches with due process should be able to be deducted from the enforcement case file.</p> <ul style="list-style-type: none"> <li>• <i>If no such standards exist in your jurisdiction, please state as such.</i></li> <li>• <i>Please comment on whether deference is given to the law or courts of the jurisdiction in which the judgment was issued, and in what circumstances (for example, lack of objection to the service raised in course of the foreign court proceedings, lawfulness of the service under the foreign law of the jurisdiction in which the judgment was issued, etc).</i></li> </ul> <p>During the examination of due process in enforcement proceedings, as a rule, deference is given to the laws of the jurisdiction in which the judgment was issued. Turkish courts cannot conduct a review of expediency of the foreign court decision in terms of Turkish law. Therefore, the examination will be made based on whether the due process standards of the law of the state in which the decision was rendered were duly applied. The exception to this principle is when there is a fundamental breach to one of the parties' right to defense. In this case, such breach may be found against Turkish public policy under Article 54/c of the IPPC and this may be grounds for refusal of an enforcement. Public policy is not defined under Turkish legislation and is decided by Turkish courts on a case-by-case basis. In this respect, the IPPL stipulates that only explicit violations of public policy may be considered as grounds for refusal of enforcement.</p> <ul style="list-style-type: none"> <li>• <i>Please also ensure to describe who bears the burden of proving that due process requirements have been met.</i></li> </ul> <p>Under Turkish Law, the general principle is that the party asserting a claim is also under the burden of proof. There are no exceptions to this rule in terms of enforcement of foreign court decisions, and the party that claims that due process standards were not met must raise an objection and bears the burden of proving that due process requirements have not been met.</p>
<p><b>a.</b></p>	<p><b><i>What standard will the court apply in the enforcement proceedings when assessing whether the service requirements have been met in the original proceedings against a state?</i></b></p>
	<ul style="list-style-type: none"> <li>• <i>In this part, please describe what are the accepted means of service under the above described standards of due process applicable in deciding enforcement of judgments against foreign states.</i></li> </ul> <p>The standards for assessing whether the service requirements were met in the original proceedings shall be determined pursuant to the law of the state (domestic law as well as bilateral/multilateral treaties) where the court decision subject to the enforcement was rendered.</p>

	<p>Turkish courts could determine whether the service standards in the foreign state were met by examining only the evidence and documents already presented to the enforcement case file. Courts may also request the parties to provide additional related evidence. In addition, as Turkey is a contracting state to the European Convention on Information on Foreign Law, the Turkish Court may request information from the Directorate General of International Law and Foreign Relations of the Turkish Ministry of Justice, The Turkish Ministry of Foreign Affairs, or the embassy/consulate of the foreign state to determine whether there is any infringement in terms of due process standards of that state.</p> <ul style="list-style-type: none"> <li><i>Please describe whether it is an exhaustive list, or whether other means of service would be acceptable. Please ensure to comment on whether less conventional means (such as email or any other electronic means of communicating with a defendant state) would fall under this standard.]</i></li> </ul> <p>N/A</p>
<b>b.</b>	<p><b><i>What exceptions may apply where conventional forms of service against a state are impossible, e.g. due to absence of diplomatic relations?</i></b></p>
	<ul style="list-style-type: none"> <li><i>In this section, please describe if there are any exceptions to the standard described in section 5.a above.</i></li> <li><i>If not, please state as such.</i></li> </ul> <p>There are no exceptions applied by the Turkish courts to the standard described under question 5.a above. Turkish courts examine whether the decision was duly served under the laws of the state rendering the decision. For example, if the state where the decision was rendered has no diplomatic relations with the defendant state, and therefore, there are no conventional service methods, the law of the country where the decision was made must be examined to determine whether there is an exception on this matter.</p> <ul style="list-style-type: none"> <li><i>If yes, please describe the exceptions, considering issues such as absence of diplomatic relations, or lack of physical possibility of service by mail or courier. Please describe the requirements for the applicability of these exceptions.</i></li> </ul>
<b>c.</b>	<p><b><i>What standard will the court apply in the enforcement proceedings when assessing whether the right to representation requirements have been met in the original proceedings against a state?</i></b></p>
	<ul style="list-style-type: none"> <li><i>In this part, please describe what is the standard of availability of representation for a foreign state required for the due process applicable in deciding enforcement of judgments against foreign states to be satisfied.</i></li> </ul> <p>The standards for assessing whether the right to representation requirements have been met in the original proceedings shall be determined pursuant to the law of the state (domestic law as well as bilateral/multilateral treaties) where the court decision subject to enforcement was rendered.</p>

	<p>Turkish courts may determine whether the right to representation requirements in the foreign state were met only by examining the evidence and documents already presented in the enforcement case file. Courts may also request for the parties to provide additional related evidence. In addition, as Turkey is a contracting state to the European Convention on Information on Foreign Law, the Turkish Court may request information from the Directorate General of International Law and Foreign Relations of the Turkish Ministry of Justice, The Turkish Ministry of Foreign Affairs, or the embassy/consulate of the foreign state to determine whether any infringement exists in terms of the due process standards of that state.</p> <ul style="list-style-type: none"> <li>• <i>If there is no standard, please state as such.</i></li> <li>• <i>If yes, please describe the requirements.</i></li> <li>• <i>Please describe whether these requirements are formal, or are focused on the effectiveness of the right to representation. If the latter, please explain to what extent the effectiveness must be ensured.</i></li> </ul> <p>N/A</p> <ul style="list-style-type: none"> <li>• <i>Please comment on whether deference is given to law or courts of the jurisdiction in which the judgment was issued (for example if the law does not provide for obligatory representation, or when no objection as to the lack of representation has been raised).</i></li> </ul> <p>In principle, whether the right to representation was duly provided is examined pursuant to the law of the state where the decision was rendered. However, as issues against Turkish public policy are regarded as grounds for refusal of enforcement under Article 54 of the IPPC, if the Turkish court decides that the the right to representation was not duly exercised, as this is a fundamental violation of Turkish public policy, it may result in the refusal of enforcement.</p>
<b>d.</b>	<b><i>What exceptions may apply where the defendant state cannot find legal representation, or chooses not to be represented?</i></b>
	<ul style="list-style-type: none"> <li>• <i>In this section, please describe if there are any exceptions to the standard described in section 5.c above.</i></li> <li>• <i>If no, please state as such.</i></li> </ul> <p>There are no exceptions to the standards described in section 5.c. above</p> <ul style="list-style-type: none"> <li>• <i>If yes, please describe the exceptions. Please describe the requirements for the applicability of these exceptions.</i></li> </ul>
<b>6.</b>	<b>What assets may be subject of enforcement if the claim is against a state and what are the requirements, e.g. enforcement against assets of state owned entities?</b>
	<ul style="list-style-type: none"> <li>• <i>In this section, please describe if there are any types of assets that are excluded from enforcement, irrespective of, or in addition to, the state's enforcement immunity.</i></li> </ul>

In accordance with the theory of limited enforcement immunity generally accepted in international law, the nature and purpose of using the assets subject to enforcement must be taken into account. As a result, assets that belong to a foreign state and are not allocated by that state for public purposes, such as assets related to private law or those that are in the ownership of that state due to commercial activity, may be subject to enforcement.

Under Turkish law, Paragraph 2 of Article 82 of The Enforcement and Bankruptcy Code No. 2004 (“EBC”) stipulates that “a state that enforcement proceedings have been initiated against due to a court decision, without prejudice to international agreements, must be notified that its assets are subject to compulsory enforcement.” Thus, under Turkish law, it has been clearly accepted that a court decision rendered against foreign states could be enforced and assets of the debtor state are subject to enforcement. However, if the asset in question is accepted to have been allocated for public purposes as per public international law, it will not be subject to enforcement proceedings even though the court decision is based on *acta iure gestionis*. Enforcement proceedings without judgment against foreign states cannot be pursued as per Article 42 of EBC.

In addition, if an asset in the ownership of a foreign state is granted immunity from enforcement under public international law, such immunity should be granted in Turkey as well.

Furthermore, a court decision that violates the jurisdictional immunity of a foreign state cannot be enforced in Turkey.

- *If no, please state as such.*
- *If yes, please describe the assets excluded and the standards applied to assess whether the exclusion is applicable.*

Bank accounts dedicated to conducting the business of an embassy of a foreign state cannot be the subject of enforcement. The assets of a bank owned by a foreign state that operates in Turkey are subject to enforcement as banking activity is not accepted to be dedicated to a public purpose. In a decision rendered by the Turkish Court of Appeals (12th Civil Chamber, Case No. 2004/6469, Decision No. 2004/13007, Date 24.5.2004), it was stated that jurisdictional immunity and enforcement immunity are different from one another, and when determining jurisdictional immunity, the nature or purpose of the disputed legal relationship or transaction must be taken into account. However, in the determination of enforcement immunity, the nature and use of the property subject to enforcement must be taken into account. Immovable property that belongs to a foreign state that is not used for diplomatic or consular purposes is subject to enforcement. For example, if the foreign state owns a commercial business in the territory of the other state and has assets for such purpose, those assets are subject to enforcement. Railway wagons of the foreign state in which tobacco is stored; money of the foreign state reserved for a commercial enterprise deposited in a local bank; money deposited in the bank as a guarantee for a contract made by a foreign state with an individual; and an aircraft used by the foreign state for commercial purposes are some examples of assets that are subject to enforcement, and therefore, may be

seized. On the other hand, considering Articles 22, 23, and 24 of the Vienna Convention on Diplomatic Relations, the bank account of a foreign embassy or consulate that is held solely to cover the expenses and costs of such embassy or consulate is not subject to enforcement.

- *Please describe any exceptions if applicable. Please describe the requirements for the applicability of these exceptions.*
- *Please describe which party bears the burden of proof with regard to the exclusion and/or lack of exclusion of specific assets from enforcement.*

A court decision to be enforced against a foreign state may result in the seizure of assets that are not subject to enforcement immunity. If the asset to be seized is in the possession of the debtor state itself, it may be presumed that it is an asset allocated for public purposes. On the other hand, if the asset subject to seizure is in the possession of a party other than the debtor state, then the contrary may be presumed, and the debtor state is under the burden of proof and must assert and prove the enforcement immunity of its assets.