



## **Enforcement of Foreign Arbitral Awards in Turkey**

Arbitration is usually a more favored dispute resolution mechanism in the international arena compared to national courts for its many advantages, such as cost efficiency, speed, and confidentiality. That being said, an enforcement procedure also needs to be pursued if and when the arbitral award is not performed willingly by the losing party – which is usually the case. Accordingly, if an arbitral award is rendered in a foreign country or it is considered to be “foreign” according to Turkish law [as explained below], a court process will have to be followed for the enforcement of the award in Turkey.[1]

The main Turkish legislation regulating the enforcement of foreign arbitral awards is the Private International Law and Procedure Act No.5718 [“PIL”]. Turkey is also a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards [“Convention”]. Foreign arbitral awards are generally enforced [or recognized] pursuant to the latter, as it is signed and ratified by many countries. Nevertheless, it should be noted that the provisions of PIL are quite similar to those of the Convention regarding the enforcement procedure.

The Convention is applicable if the award was granted in a signatory country <other than Turkey> or if the award is considered “foreign” according to Turkish law, although it was rendered in Turkey. The latter is the case when in a dispute bearing an element of foreignness, the place of arbitration is Turkey, but the compulsory rules of the International Arbitration Act of Turkey [“MTK”] are not applicable pursuant to the agreement of the parties.

## **Competent Court[s] to Render the Enforcement Decision**

As the Convention refers to the rules of procedure of the territory where the award is relied upon, the competent court will be determined as per the same rules whether the Convention or the PIL provisions are applied.

As per the Law No. 5235 on the Establishment, Duties and Jurisdiction of the Courts of First Instance and Regional Courts of Justice, commercial courts of first instance are authorized to decide on enforcement of the foreign arbitral awards. Pursuant to the PIL, the enforcement of a foreign arbitral award shall be requested [i.] from the commercial court of first instance agreed in writing by the parties, [ii.] if there is no such agreement between the parties, from the court of the place of residence of the party against whom the award is granted, [iii.] if this party has not a place of residence in Turkey, from the court of its place of domicile, or [iv.] in the absence of all these, from the court where the property that is subject to execution is located.

## **Grounds of Refusal of the Enforcement Request**

According to the Convention, the enforcement of a foreign arbitral award may be refused, if the party against whom it is invoked proves that:

- a. The arbitration agreement is not valid,
- b. His/her right of defense has been violated [*i.e.* s/he was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his/her case],
- c. The arbitrator/s exceeded their authority by issuing an award on matters which are beyond the scope of the arbitration agreement or are not in accordance with the parties' claims [in this case a partial enforcement may be in question, if possible],
- d. The composition of the arbitral authority or the arbitral procedure was not in accordance with the arbitration agreement, or, in the absence of such agreement, was not in accordance with the law of the country where the arbitration took place,
- e. The award is not or has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which it was made, or

if the Turkish court *ex officio* finds that:

- f. The subject matter is not arbitrable under Turkish law, or
- g. The enforcement of the award would be contrary to the public order.

The grounds of refusal set forth in the PIL are also in line with the above-listed conditions of the Convention.

### **Costs That May Incur During the Enforcement Proceedings**

According to the Turkish Act on Fees, if the subject matter of the award is monetary, a proportional fee [68,31 per thousand of the amount awarded] shall be charged. If the subject matter of the award is not monetary, then a fixed fee [around 6 Euros] is charged. Nevertheless, the application of this principle is widely criticized as the Convention and the PPL prohibit *révision au fond* [the principle which precludes the judge from reviewing the substance of the award].

Furthermore, a certain amount of security to be determined by the Turkish court must be deposited to cover the potential loss or damages of the other party. Although there is no specific provision regarding the amount and form of the security, it is generally determined around 10-15% of the subject matter by the courts. This automatized approach is highly criticized, but it should also be noted that foreign citizens may also be exempted from security on the basis of reciprocity.

### **Statute of Limitations for Enforcement of a Foreign Arbitral Award**

There is no specific statute of limitation for the enforcement of foreign arbitral awards under Turkish law. According to the PIL, legal transactions and relationships are subject to the law applicable to them in terms of statute of limitation. On the other hand, once a decision of enforceability is rendered by a Turkish court, then it must be executed within 10 [ten] years from the finalization of the decision of enforcement.

[1] In certain cases, especially in a pending case, a foreign arbitral award may need to be recognized as a conclusive evidence, and such recognition is subject to the same conditions as for its enforcement.

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