

Arbitration - Turkey

New Code of Civil Procedure regulates domestic arbitration

Contributed by **Cerrahoglu Law Firm**

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Introduction

The Code of Civil Procedure (Law 1086, introduced in 1927) and the International Arbitration Act (Law 4686, introduced in 2001) provide the statutory basis for the settlement of disputes by arbitration in Turkey. Domestic arbitration is subject to Law 1086 and international arbitration is governed by the act.

A new Code of Civil Procedure (Law 6100) was approved by the Parliament on January 12 2011 and published in the *Official Gazette* on February 4 2011. The new code will come into force as of October 1 2011.

New code

As is the case under Law 1086, the new code also contains a chapter on arbitration. The relevant provisions of the new code regulate the following issues in domestic arbitration:

- the scope of application of the provisions;
- the arbitrability of cases;
- the waiver of the right of objection to breach of arbitration agreement;
- the court of competent jurisdiction and court assistance;
- the definition and form of arbitration agreements;
- objections to arbitration;
- preliminary injunctions and preservation of evidence;
- the number, appointment, challenge and liability of arbitrators;
- competence;
- equal treatment and the parties' right to be heard;
- the determination of procedural rules;
- the location of arbitration hearings;
- the commencement and term of arbitrations;
- statements of claim and defence;
- hearings and proceedings without hearings;
- the failure of a party to attend arbitral proceedings;
- the appointment of experts;
- the collection of evidence;
- procedures for rendering an award;
- settlement;
- the termination of arbitral proceedings;
- the form, content and preservation of arbitral awards;
- the correction, interpretation and completion of arbitral awards;
- notifications;
- actions for cancellation of arbitral awards;
- arbitrators' fees;
- the costs of arbitral proceedings;
- the deposit of advance payments and payment of costs; and

- the restitution of arbitral proceedings.

The new provisions on arbitration are largely based on the act, which itself is based on the United Nations Commission for International Trade Law Model Law on International Commercial Arbitration 1985 and the Swiss Federal Act on Private International Law 1987. Thus, the most significant improvement of the new code with regard to arbitration is to bring the domestic arbitration procedure in Turkey closer to international arbitration standards.

Differences from the International Arbitration Act

There are still a number of differences between the new code and the International Arbitration Act. Some of these are detailed below.

Additions

The new code provides that where the arbitral tribunal consists of more than one arbitrator, one such arbitrator must have a minimum of five years' experience in his or her particular legal area. The act has no such requirement.

The new code provides for the restitution of arbitral proceedings based on limited grounds. If a Turkish court approves the request for restitution, it must cancel the arbitral award and direct the dispute to a Turkish court or to a request for a new arbitral procedure. The act does not provide for such mechanism.

Under the new code, the costs for the secretary for the arbitral tribunal are included in the costs of the proceedings, whereas the act does not list such costs among the costs of the proceedings.

The new code provides that where the relevant party does not object to a breach of a non-mandatory provision or a provision of the agreement that occurred during the arbitral proceedings within two weeks of the date on which the party became aware of such breach (or within the period that the arbitral tribunal grants for this matter), such party is deemed to have waived its right for such objection. The act does not include such time limits.

Omissions

Under the act, unless otherwise provided by the parties, the arbitral tribunal will prepare the terms of reference upon submission of a request for arbitration and the response to such request. The new code does not provide for the terms of reference.

According to the act, a party whose residence or ordinary seat is outside Turkey may waive its right to file an action for cancellation in part or in full by including a clear statement in the arbitration clause or by subsequently executing a written agreement. The new code does not provide for a waiver of the right to file an action for cancellation.

Amendments

Unlike under the act, filing for cancellation of an arbitral award does not stay execution of the award under the new code. Execution of an arbitral award may be stayed by the competent Turkish court under the new code only upon the request of a party and on condition that a guarantee to cover the value of the awarded amount or goods is provided.

Under the new code, arbitrators may request each party to make an advance payment for the costs of the proceedings, where necessary. The new code provides that unless otherwise agreed, such advance is paid equally by the parties. Under the act, arbitrators may request such an advance only from claimants.

For further information on this topic please contact [Eda Cerrahoğlu Balssen](#) at [Cerrahoğlu Law Firm](#) by telephone (+90 212 355 3000), fax (+90 212 266 3900) or email (eda.cerrahoglu@cerrahoglu.av.tr).