THE TURKISH INTERNATIONAL ARBITRATION LAW

The exequatur procedure applicable to the foreign courts’ judgments was also applicable to the foreign arbitral awards in order to be enforceable in Turkey. The adoption of Turkish International Arbitration Law n°4686 on 21 June 2001 has however changed the situation. Prior to the entry into force of the new legislation’s advantageous provisions, despite the choice made in the arbitration clause, the negative impact of the state court’s interference could not as well be excluded or reduced and the above mentioned problems closely linked to this interference remained.

Significantly the new law replaces the principle of reciprocity for a more all encompassing principle of “foreign element”, thus enabling more arbitration to be conducted and enforced in accordance with the new Turkish law (itself modelled on the UNCITRAL Model Law).

The new law benefits the foreign joint venturers and foreign purchasers of shares or assets in or from Turkish companies, because they can shorten the resolution time of their dispute and prevent within limits the intervention of the state courts on their dispute being resolved.

An award rendered under the new law shall be definitive if there is no recourse initiated before the competent local court within thirty days after the notification date to the parties of the arbitral award. Moreover, the parties may waive partially or wholly their right of request for setting aside the arbitral award and they may agree that the arbitral award is the final stage of the procedure. This possibility is one of the greatest advantages in order to shorten the time spent to reach an enforceable final award.
In addition to this possibility to waive the right to recourse to a state court against the arbitral award, some other possibilities are set forth to minimize the state courts’ interference and to reach a final and enforceable award. The obligation to comply with limitative grounds as far as the setting aside is concerned and the appeal procedures can be quoted as examples illustrating this state of mind aiming at the reduction of scope of the state courts’ jurisdiction. Thus, the recourse to a state court does not imply a review of the merits of the arbitration. Moreover, the court has to handle the case with priority and apply an expeditious proceeding.

The new law presents also some undeniable advantages, particularly for the non-Turkish party. In procedural terms, the foreign party has the possibility to be represented by a non-Turkish lawyer and has the right to determine without restraint the language of arbitration.

1. **CONCLUSION**

As a conclusion, it is highly recommended for the parties to sign an arbitration agreement/clause and to choose expressly the application of the new Turkish law on international arbitration for the resolution of their future and/or present dispute. We do however recommend to “internationalizing” the future arbitration by providing in advance for the appointment of a foreign chairman.