

LATEST COVID-19 MEASURES TAKEN IN TURKEY AND THEIR EFFECT ON ARBITRAL PROCEEDINGS

This note aims to provide a brief view on the latest official measures taken in Turkey due to the COVID-19 pandemic and the effect of such measures on arbitral proceedings.

Law on Amendment of Certain Laws, Numbered 7226 (“Law No. 7226”) was published in the Official Gazette dated 26.03.2020 and numbered 31080 (1st Duplicate).

According to the Provisional Article 1/1 of the Law No. 7226:

“Since COVID-19 pandemic disease has been seen in our country, in order to prevent loss of rights in the judiciary;

- a. All periods regarding the origination, execution or termination of a right, including filing a lawsuit, initiating enforcement proceedings, application, complaint, appeal, notice, notification, submission, statute of limitation period, period of prescription and mandatory administrative application periods; the periods determined for the parties and the periods determined by the judge within the scope of the Administrative Procedural Law No. 2577, the Criminal Procedural Law No. 5271, and the Civil Procedural Law No. 6100, and the periods determined in other laws which contain procedural provisions, and periods applicable in mediation and reconciliation shall, from March 13, 2020 (including this date),*
- b. The periods specified in the Execution and Bankruptcy Law No. 2004 and the periods specified in other laws related to the execution and bankruptcy proceedings, and the periods determined by the judge or enforcement and bankruptcy offices within the scope of these laws; except for the execution proceedings related to alimony, all enforcement and bankruptcy proceedings, party transactions and proceedings, receiving new claims for enforcement and bankruptcy proceedings, transactions regarding the enforcement and execution of provisional attachments shall, from March 22, 2020 (including this date),*

stop until 30/4/2020 (including this date). If the pandemic continues, the President may extend the duration of the stay for a maximum of six months or narrow its scope.”

The Provisional Article 1/1 of the Law No. 7226 affects not only court proceedings but arbitral proceedings as well.

Turkey has a dual arbitration system; domestic and international arbitrations are regulated under separate laws. The Turkish International Arbitration Act numbered 4686 and dated 2001 (“TIAA”) regulates international arbitrations and Section 11 of the Code on Civil Procedures numbered 6100 and dated 2011 (“CCP”) regulates domestic arbitrations.

CCP is applied for domestic arbitrations with a seat of arbitration in Turkey. On the other hand, for a dispute to be considered as international and governed by TIAA,

- the dispute must have a “foreign element” (TIAA provides a very broad definition of foreign element including foreign capital or cross-border movement of capital or goods.) and the seat of arbitration should be in Turkey; or
- the parties or the tribunal should choose to apply the provisions of this act as the governing procedural law of the arbitral proceedings. This makes it possible for the parties to agree on application of TIAA even if the seat of arbitration is not in Turkey.

The provisions of CCP and TIAA are very similar and both are based for the most part on the UNCITRAL model law. Both laws regulates the procedural rules to be applied in the arbitral proceedings as well as the actions for set aside of the arbitral awards.

Pursuant to the Law No. 7226, the periods determined for the parties and the periods determined by the judge within the scope of the CCP, as well as the periods determined in other laws which contain procedural provisions have stopped from March 13, 2020 (including this date) until 30/4/2020 (including this date).

Therefore, arbitral proceedings within the scope of both CCP and TIAA are both affected by Law No. 7226 in terms of including but not limited to the following procedural time limits set forth in or based on the said laws:

- appointment or challenge of arbitrators
- term of arbitral proceedings
- procedural time limits determined by the arbitrator or the arbitral tribunal
- requests for correction and interpretation of the award or for a supplementary award
- actions for set aside of the award

Please note that the information herein provides an overall assessment. It is advisable to seek specific legal advice before taking any actions based on the COVID-19 measures that have been implemented so far in Turkey.