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## **Turkey Adopts The UNCITRAL Model Law**

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by  
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*London*

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**Commentary****Turkey Adopts The UNCITRAL Model Law**

By  
**Serdar Bezen**

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After waiting one and half years, the Turkish International Arbitration Law was published in the Official Gazette on 4th July, 2001 and came into force on that date. The previous commentary, published in the March issue of Mealey's International Arbitration Report, stated that the draft differed from the UNCITRAL Model Law (ML), to some extent, by adopting some provisions of the Swiss International Arbitration Law. It seems that during the negotiations on the draft, a small number of changes have been made by the Parliament in favour of the ML. This commentary intends to reflect the changes made on the draft, and to provide a supplementary article to the previous commentary.

The changes made to the draft can be divided into three sub-headings;

**Scope Of The Law**

Under the draft, parties were free to choose the law applicable to their dispute. In the absence of any choice, the law applicable to arbitration processes taking place in Turkey only if at least one of the parties had neither its domicile nor its habitual residence in Turkey at the time when the arbitration agreement was concluded. However, the law applies to any dispute containing a "foreign element" and taking place in Turkey. The concept of foreign element is defined in the law, which is wider than the definition of "internationality of arbitration" provided by Article I of the ML. The law also applies to a dispute if it is chosen by the parties or arbitrators. Following this provision, the law states that the articles of the law regarding court intervention and interim measures will be applicable to disputes even if the place of arbitration is determined outside of Turkey. In other words, parties may agree to settle their disputes under the law anywhere outside of Turkey and therefore this provision of the law also ceases the outstanding discussion regarding the nationality of an arbitral award delivered outside the territory of Turkey. Some prior awards,<sup>1</sup> delivered by Turkish arbitrators under Turkish law in foreign territories, were evaluated as foreign arbitral awards and, consequently, the enforcement of awards had some difficulties. By this provision, the law does not only clarify any possible ambiguity in the future, it also takes one step towards the ML in this respect.

### **Interim Measures**

In addition to the draft, the law provides that any party, who obtained an interim measure from state courts, must proceed to the arbitration process within 30 days following the date of such an interim measure. Otherwise, such an interim measure will be void.

Another notable point, briefly stated above, is that the requesting party has the right to seek court assistance to enforce interim measures, even if the interim measures were ordered by an arbitral tribunal meeting in another sovereign territory.

The law also adopts Article 9 of the ML word by word regarding interim measures ordered by courts.

### **Time Limits**

The law adjusted some time limits set out in the draft. Under the law an application for setting aside can be made within thirty days, which was previously three months in the draft, following the date of an award. Consequently, the legislature worked to prevent any delay in arbitration proceedings under the law.

On the other hand, the law increases the time limit from fifteen days to thirty days on challenging an arbitrator, in the absence of any relevant provision provided by the parties.

In addition to the above changes the law provides for the liability of arbitrators. Article 8 states that unless otherwise agreed to by the parties, an arbitrator is under an obligation to compensate the loss of parties, caused by refraining from performing his/her duties.

Another provision regarding the validity of arbitral agreements states that the validity of an arbitration agreement will be determined in accordance with the law applicable to the substance of the dispute chosen by the parties. In the absence of such a choice it will be determined in accordance with the provisions of Turkish law.

Finally, the law provides that a regulation regarding arbitration fees will be determined within six months following the publication of the law. Such a regulation would be important for practicing arbitrators and parties in choosing the law.

To conclude, the legislature came a step closer to the ML with the law, compared with the draft. The law also tried to obviate the long challenge and court intervention process set out in the draft. Provisions with regard to the place of arbitration and interim measures intend to answer the contemporary problems of commercial international arbitration.

Despite some points still of concern, the law has nevertheless succeeded in filling a gap in the Turkish legal system. With this legislation, Turkey as a host country for foreign investment will be able to further comfort foreign investors.

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### **ENDNOTE**

1. See details in Serdar Bezen, "Recent Developments in International Commercial Arbitration in Turkey" 3 **Mealey's International Arbitration Report** [2001]. ■