

Kluwer Arbitration Blog

Turkmenistan Accedes to the New York Convention

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On 17 April 2022, the president of Turkmenistan signed a law on accession of Turkmenistan to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention” or “Convention”). The Government of Turkmenistan deposited the instrument of accession with the Secretary-General of the United Nations on 4 May 2022. In accordance with Article XII (2) of the Convention, [it entered into force for Turkmenistan on 2 August 2022, and the country became the 170th State Party to the Convention.](#)

Following the [presidential announcement](#), Turkmenistan’s [accession](#) to the Convention was made subject to several [declarations and reservations](#). In accordance with Article I (3) of the [Convention](#), Turkmenistan will apply the Convention only to recognition and enforcement of awards made in the territory of another contracting State. Turkmenistan also declared that it would apply the Convention only to differences arising out of legal relationships, whether contractual or not, that are considered commercial under the laws of Turkmenistan. In addition, it has expressed a reservation with regard to retroactive application of the Convention such that the Convention only applies to awards that are issued after its entry into force for Turkmenistan.

This article explores the semantic peculiarities of Turkmenistan’s commercial arbitration laws that are a vestige of the country’s Soviet era and discusses the possible impact that Turkmenistan’s accession to the Convention will have for arbitration in the country.

Commercial Arbitration in Turkmenistan

Employing international arbitration as a means of settling disputes is a [relatively new idea in Central Asia](#).¹⁾ For a while, the domestic law of Turkmenistan did not identify arbitration as a means of dispute resolution. Turkmen law formally established a procedure for settlement of certain civil disputes through arbitral tribunals in the Directive on the Arbitral Tribunal, published as Annex 1 to the Civil Procedure Code of 1963. [The Directive was redrafted to be effective from July 1, 2016](#).²⁾ On the other hand, international commercial arbitration is governed by the [International Commercial Arbitration Law \(ICA\)](#) and other relevant domestic laws of the country.

Several sources of law form the body of arbitration law of Turkmenistan, the operation of which is supplemented by the state-run arbitration courts system (see previous post [here](#)). State arbitration courts, a.k.a. state commercial dispute settlement courts, are but one example of the deeply rooted

Soviet legacy in the legal systems of many post-Soviet States. Arbitration in the domestic legal system of the Soviet Union was almost unknown: the state run quasi-judicial system of arbitrazh courts resolved disputes between state enterprises while disputes involving individuals were settled in state courts.³⁾

In theory, there is a [clear distinction](#) between arbitration as a means of private dispute settlement, and the state judicial system and its Arbitration Courts, a.k.a. Arbitrazh Courts, which are part of the judiciary. However, courts do not seem to discern the difference between the two systems in practice, especially when enforcing a foreign arbitral award or a judgment issued by foreign courts. To a large degree, this has to do with the phonetic resemblance between arbitration and arbitrazh. Originally, state arbitration courts were designed to assist the Soviet government in supervising central plans; they were neither part of the judiciary nor were they independent from any state institution.⁴⁾ After the fall of the Soviet Union, many post-Soviet States reformed their legal systems and abolished arbitration courts altogether. Others, like Turkmenistan, by contrast, kept them in place under the title of “economic courts,” or preserved the denomination “arbitration court.”⁵⁾ It is important for Turkmenistan to implement further reforms to avoid semantic confusion because in practice the confusion that has arisen from use of such similar terms (i.e., “arbitration tribunal” v. “arbitration court”) has led to [misapplication of the Convention on several occasions](#) by courts of various different countries.

The Impact of the Convention on Arbitration in Turkmenistan: An Opinion

Turkmenistan’s accession to the New York Convention represents the country’s latest step in the direction of upgrading its foreign arbitration laws. [In September of 2021 the president of Turkmenistan ordered the Ministry of Justice to establish an International Arbitration Center under the Chamber of Commerce and Industry of Turkmenistan.](#) These changes are primarily motivated by the desire to attract investment into the country and improve the business climate. However, the desire to improve foreign arbitration laws does not necessarily translate into the desire to improve the domestic arbitration laws. There is a discrepancy in the level of development and modernity between the domestic and foreign arbitration laws in Turkmenistan.

Turkmenistan does not have national arbitration law regulating the functioning of domestic arbitral tribunals and their procedure.⁶⁾ The establishment and functioning of domestic arbitral tribunals are subject to [the Civil Procedural Code of Turkmenistan \(2016\)](#) and [the Directive on the Arbitral Tribunal, published as Annex 1 to the Civil Procedure Code \(“Directive”\).](#) The Directive consists of 19 articles and lays down general guidelines on functioning of ad hoc tribunals. Per Article 1 of the Directive, citizens of Turkmenistan can submit any disputes to arbitration except for labor and family ones. However, rather broad mandates to arbitrate can be limited by requirements found in other laws. For instance, Articles 113 and 114 of [the Land Code of Turkmenistan](#) provides that land disputes are to be solved by the Cabinet of Ministers of Turkmenistan, the state body on land management, local executive bodies, local self-governance bodies and the courts of Turkmenistan. Article 3 of the Directive reads that arbitration tribunals must be established *ad hoc* based on special agreement between the parties. Further, in relevant part, the Directive reads that parties cannot waive their right to arbitrate until the term specified in the arbitration agreement has expired.

The [Arbitration Procedural Code of Turkmenistan \(2021\)](#) regulates proceedings brought before local courts, the Arbitration / Arbitrazh Courts and the Supreme Court of Turkmenistan.⁷⁾ [If the practice of other post-Soviet states is any indication](#), it seems that some would qualify the Arbitration Courts of the country as a permanent arbitral body within the meaning of [Article 1.2 the New York Convention](#). Hence there is a confusion as to the material scope of applicability of the New York Convention in some post-Soviet states.

The desire of the Turkmen government to modernize its foreign arbitration system is driven by the need to improve the business climate to attract investment into the country. However, it is not clear what is holding the government of Turkmenistan back from reforming its domestic arbitration laws. One way to look at the issue is to examine the matter in the context of the exercise of political clout in the country. Totalitarian political structure of the state is another feature inherited from the Soviet Union. [The country holds the title of the most authoritarian of all former Soviet states](#). As such, it is reasonable to expect unwillingness of the government to develop its domestic arbitration system. This is because privatization of administration of justice could be seen as a threat to governmental authority. As Gary Born put it, “[t]o the totalitarian state, with its doctrine of the all-enslaving power of the state arbitration means an attempt of private individuals to free an important part of their activities from the dominating yoke of the governing group.”⁸⁾

Concluding Remarks

Turkmenistan’s accession to the Convention is a landmark event for the country that provides an [extra layer of assurance and certainty for international businesses](#) in the Turkmen jurisdiction. As it stands now it is too early to conclude what sort of effects the accession is going to have on Turkmenistan’s arbitration market. Political matters aside, the country needs to make further improvements to its laws for the development of its domestic arbitration market and to break away from legacy Soviet legal institutions.

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- ?3 Hobér Kaj, *Law and Practice of International Arbitration in the CIS Region* (Kluwer Law International BV 2017), p. 4.
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- ?5 *Ibid.*
- ?6 Noah Rubins and Gorsha Sur, ‘Application of Article V of the New York Convention: A Central Asian Perspective’ (2008) 25 *Journal of International Arbitration*, p. 810.
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