Bringing Fee Claims in Turkey

Our understanding of the Turkish court system is that there is a relatively clear court procedure in place in Turkey for fee claims and the like, which bears some limited resemblance to that followed under the Civil Procedure Rules in the UK. There are also established arbitration procedures if the parties decide that they do not want to rely upon the court system.

In relation to fee claims and other matters, we understand that the Turkish courts operate as follows:

- **Commencing Proceedings** - There is no requirement under Turkish law as regards pre-action conduct. Proceedings are commenced by the submission of a claim “petition”, following service of which the defendant has two weeks to serve its response (although this can be extended).

- **Investigation and Decision** - After the exchange of petitions (which may involve the submission of rejoinders etc.) the court undertakes a “preliminary investigation”, which includes an initial hearing, following which the parties are given the opportunity to settle the case. The court will then undertake further investigations and conduct a further hearing before making its decision.

- **Time** - There are no fixed time limits for the various stages and we understand that obtaining an enforceable decision can take at least three years. Expert opinion can be particularly problematic as up to three experts can be appointed, which prolongs the resolution of the dispute and increases costs. This may not necessarily be an issue in relation to a fee claim, unless the client makes allegations in connection with the performance of the services.

- **Legal Fees** - As is the position under English law, legal fees are paid by the unsuccessful party, although this is subject to a cap and therefore the successful party will not necessarily recover all of its costs.

- **Enforcement** – If the defendant fails to comply with the decision of a Turkish court the claimant can apply to the bailiff’s office for an enforcement order. If the defendant fails to comply with the enforcement order the claimant can apply for an attachment over the defendant’s assets.

- **ADR** – Alternative dispute resolution (i.e. mediation) is not a compulsory part of the Turkish court procedure, but during proceedings parties are asked to state their intentions regarding settlement.

- **Arbitration** - The most common form of ADR in Turkey is arbitration. An international arbitration law based on the UNCITRAL Model Law came into force in 2001. Although not as commonly used as litigation, arbitration is used more regularly in contracts involving non-Turkish entities, particularly in the construction, energy and infrastructure industries, as parties seek to avoid some of the uncertainty associated with the Turkish courts. It is common for contracts involving international parties to now specify arbitration as a form of dispute resolution. Turkey is a party to the New York Convention and therefore a Turkish arbitration award would be enforceable in England and Wales (and vice versa).

It should be borne in mind that the Turkish legal system is not a common law system and although some of the above is similar to the approach under English law, there are a number of differences (for example, we understand that there is no obligation to disclose all material documents; the parties can “pick and choose” which documents they wish to rely on). In addition, we understand that it can take significant time to get into a position to be able to enforce a decision and the Turkish courts are not entirely predictable, particularly in cases involving public bodies. This is the reason why a number of contracts are subject to arbitration, which in some circumstances can be much quicker than litigation in Turkey.
We have acted and are currently acting for companies operating in Turkey in relation to construction and engineering issues. However, please note that we cannot advise specifically on Turkish law or the Turkish legal system, including appearing before the Turkish courts; to the extent that such advice is required, we would work with a local firm on such issues. Our network of law firms, through Lexicom and other relationships, allows us to source and work closely with leading local law firms. Through combining our own expertise with the local expertise of our international law firm contacts, we are able to offer an end to end service.

If you would like any further information in relation to the above please contact Sheena Sood by e-mail at s.sood@beale-law.com or by telephone on +44 (0)20 7240 3474.