

MAY 2020

## Covid-19: The Impact of Law No. 7226 on Arbitral Proceedings

The Act to amend some provisions in other Acts ("Act", Law No. 7226) was published in Official Gazette on March 26, 2020. The Act makes amendments and additions in various areas of legislation for minimizing the potential negative impact of the coronavirus ("COVID-19"). The Presidential Decision published on April 30, 2020 based on the Provisional Article 1 of the Act has once more suspended the time limits in legal proceedings until 15<sup>th</sup> of June as the pandemic continues. Whether arbitral proceedings are within the scope of application of the Provisional Article 1 of Act or not appears as a question that should be answered.

### Peculiarity of Arbitration Process

Free will of parties is a prevalent principle in the arbitral proceedings. Due to this principle, parties may agree on suspending the duration of arbitration process. Ad hoc arbitration grants this flexibility to the parties; however, institutional arbitration is bound with the institutional rules and can only take into consideration the parties' requests as long as it complies with its rules.

Article 17 of the Turkish International Arbitration Code ("Law No. 4686") states that "*With respect to the matters regarding this Law, unless otherwise stated, the provisions of the Code of Civil Procedure shall not be applicable.*" Article 444 of the Code of Civil Procedure ("Law No. 6100") brings a similar rule as well. Provisional Article 1 of the Act, on the other hand, does not expressly state that the arbitral time limits are within the scope of it. Therefore, whether arbitral proceedings are within the scope of the suspension or not is a question that must be answered by reference to all relevant regulations.

### Applicable Law for Time Limits

The applicable law for time periods should be identified in order to make sure whether arbitral proceedings are in the scope of the Act or not. The law which applies to the substance of the dispute also applies to the procedural rules about time periods.

Accordingly, if the Turkish Law applies to the dispute, the Provisional Article 1 will also be applicable to the arbitral dispute and time periods concerning filing a lawsuit, statutes of limitation, foreclosure terms etc. will be suspended until June 15, 2020 even if the arbitral proceeding takes place in a foreign country.

Nonetheless, “directly applicable rules”, which are regulated in Article 6 and 31 of the International Private and Civil Procedure Code (“Law No. 5718”), have a compelling effect on the subjects which they cover. There are two approaches on whether the Provisional Article 1 is a “directly applicable rule” or not if the Turkish Law is not applicable to the dispute. If it is a “directly applicable rule” on the ground that its aim is protecting the public interest, then the Provisional Article 1 will be applied to arbitral proceedings. This is valid for both situations where the proceedings take place at Turkish courts or before Turkish arbitral tribunals where the foreign law is enforced. However, it is also possible to conclude that the Provisional Article 1 has not compelling kind of effect when the arguments in the doctrine and various judgments on how to categorise similar provisions are taken into consideration. Therefore, if the Provisional Article 1 is not considered as a “directly applicable rule”, it will not be enforced on disputes where foreign law is applied.

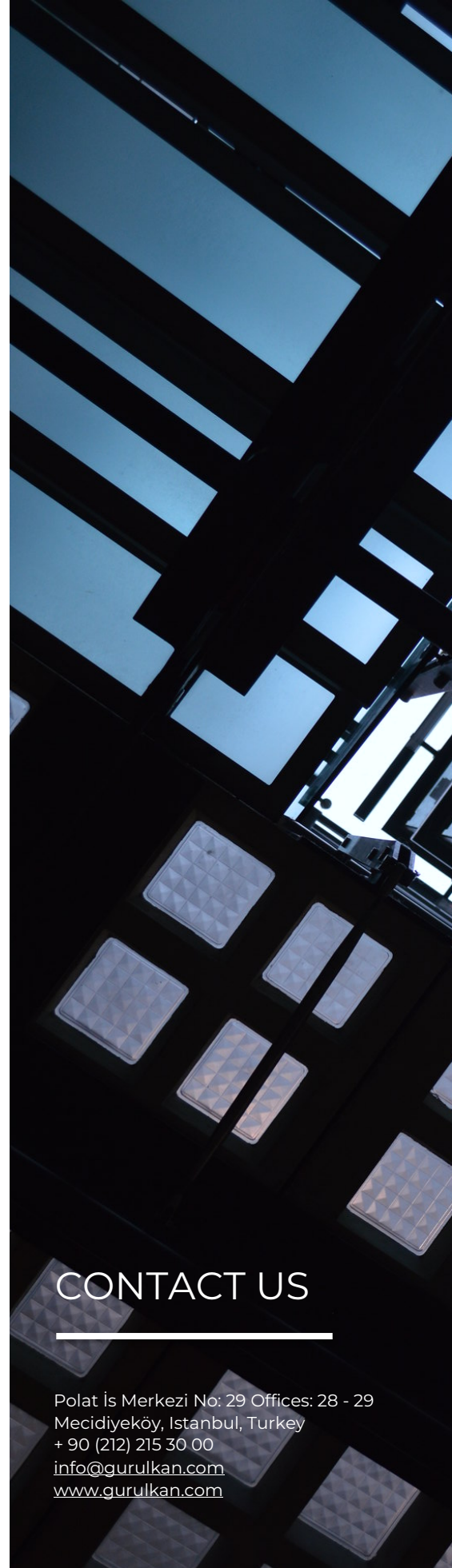
### **Procedural Time Limits at Courts for Arbitral Agreements**

Law No. 6100 is applicable if the dispute does not contain a foreign element in a court proceeding. On the other hand, if there is a foreign element, then the Law No. 4686 will be applicable to arbitration process. However, there are several different time periods regulated in the Law No. 6100 and Law No. 4686. These time periods are included in the scope of the Provisional Article 1 of the Act.

Pursuant to the Article 5 of the Law No. 4686, if an action is brought before the court in a matter, which is the subject of an arbitration agreement, the respondent may raise an objection as to the arbitration. The acceptance or denial by the court of that objection and disputes concerning the validity of the arbitration agreement are subject to the provisions of the Law No. 6100 concerning preliminary objections. In a case where such objection is accepted, the court shall dismiss the action on procedural grounds. In a court proceeding where there is an arbitration agreement, the time bar for the preliminary objection as to the arbitration will be suspended on the grounds of the Provisional Article 1 of the Act since the Law No. 6100 is in the scope of the mentioned suspension.

Time periods regulated in the Law No. 4686 are also in the scope of the suspension as a result of the phrase “...within the scope of the laws containing procedural provisions including but not limited to...” which is found in the Provisional Article 1 of the Act.

Number of countries including Turkey has suspended the time periods on legal proceedings. Examinations should be made on a case-by-case basis by following an express legal opinion when detecting whether these suspensions apply to arbitration proceedings or not. In order to do that, arbitration practitioners should conscientiously analyse the court precedents concerning time periods in judicial proceedings of the country where the arbitration proceedings take place.



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