

The Legal Home of Arbitration: Why the Seat of Arbitration Matters?

Inside Arbitration | Vardar Şanlı



More Than a Geographical Choice

The seat of arbitration is the legal home of the arbitral proceedings. This is independent of where the arbitrators meet, where hearings or procedural meetings are held or whether the proceedings are conducted physically or online.

The seat of arbitration is the key connecting factor that determines the legal system with which the arbitration is associated, as well as the courts that may support and exercise limited supervision over the process. For this reason, the seat of arbitration is not merely a geographical or logistical choice; it is a strategic decision that shapes the legal framework of the arbitral proceedings.

For instance, the seat of arbitration may be Istanbul, while hearings may be held in London, witnesses may be heard online or the arbitral tribunal may deliberate in another country. None of these would, in itself, change the seat of arbitration.

Article 20 of the UNCITRAL Model Law provides that the parties may determine the seat of arbitration. At the same time, unless otherwise agreed by the parties, the arbitral tribunal may hold hearings and meetings at a place other than the seat of arbitration. Similarly, the ICC Arbitration Rules recognize that the seat of arbitration and the place where hearings or meetings are held may differ.

The Seat of Arbitration Determines the Procedural Framework

The seat of arbitration is one of the key elements that determines the procedural framework of the arbitral proceedings. By selecting the seat, the parties determine which jurisdiction's procedural rules (*lex arbitri*) will apply. The fact that the dispute is subject to institutional arbitration rules does not eliminate the effect of the law of the seat. The law of the seat remains relevant, particularly with respect to mandatory provisions, court assistance in support of the arbitral process, and judicial review. Therefore, when drafting an arbitration clause, the seat of arbitration should be assessed together with its procedural and jurisdictional consequences.



Although arbitration is an alternative dispute resolution mechanism, it is not entirely detached from state courts in practice. Accordingly, the seat of arbitration becomes particularly relevant in the following respects:

- **Court assistance:** Where court assistance is required, for instance in cases of interim measures or the taking of evidence, the competent state courts are generally determined by reference to the seat of arbitration.
- **Setting-aside proceedings:** The action for setting aside is the principal remedy against an arbitral award and is brought before the courts of the seat. Under Article 439/1 of the Turkish Code of Civil Procedure (Law No. 6100), an arbitral award may only be challenged by an action for setting aside, which is heard by the regional court of appeal at the seat of arbitration.



What Should Be Considered When Choosing the Seat of Arbitration?

Recognition and enforcement: The enforcement of an arbitral award in foreign jurisdictions generally requires a separate recognition and/or enforcement proceeding. Under the 1958 New York Convention, to which Türkiye is also a party, arbitral awards rendered in contracting states may be recognized and enforced. However, enforcement may be refused if the award has been set aside in the country in which, or under the law of which, it was made. Therefore, when choosing the seat of arbitration, it is important to prefer a seat that facilitates recognition and enforcement under bilateral and multilateral treaties such as the New York Convention.

Arbitration-friendly legal framework: The courts of the chosen jurisdiction should adopt a supportive and predictable approach to arbitration, as this directly affects the efficiency of the proceedings.

Neutrality: Choosing a seat that is independent from the parties' nationalities or registered addresses strengthens the perception of neutrality and trust in the proceedings.

Infrastructure: The availability of support services such as hearing rooms, interpretation services and technical facilities contributes to the efficient conduct of the arbitration proceedings.