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CONTRACTS, NEGOTIATION AND ENFORCEMENT GLOBA

Contracts, negotiation and enforcement in Turkey: overview

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FORMATION OF CONTRACTS

Authority and capacity

1. What are the authority/capacity rules for entering contracts, for different commercial entities?

Individuals

To be capable of entering into a contract, an individual must fulfil the following conditions:

- Be capable of discernment.
- Be 18 or more.
- Not be under any incapacity.

Individuals who are capable of discernment but do not meet any or both of the other two criteria can enter into a contract with the prior consent or subsequent approval of their legal representative(s).

Companies

Trading companies, including joint stock companies (*anonim şirket*) and limited companies (*limited şirket*), qualify as legal entities under Turkish law. Duly established legal entities have the capacity to enter into contracts if they have the organs required by law. For trading companies, these organs mainly consist of a general assembly and board of directors/managers.

During the liquidation process, a company's capacity is limited to acts relevant to the liquidation, which will be carried out by the liquidation officer(s). In other words, a company in liquidation must not enter into contracts that are not relevant to the liquidation process.

Foreign companies

There are no separate provisions on the capacity of foreign companies under Turkish law. The capacity of a foreign company must primarily be assessed under the law of its country of establishment. However, certain restrictions apply to foreign parties in relation to certain transactions, such as those involving ownership of real property. Therefore, a party should carry out a capacity check before entering into any transaction with a foreign company in Turkey.

Partnerships

Partnerships (*adi ortaklık*) are not legal entities under Turkish law. Accordingly, their capacity depends on the capacity of their partners, who may be individuals or legal entities. Under the Code of Obligations No. 6098, each partner is entitled to represent and act on behalf of the partnership, unless the partnership agreement provides otherwise.

Limited liability partnerships (LLPs)

LLPs do not exist under Turkish law.

Trustees

The common law trust structure does not exist under Turkish law. Custodians (*vasi)* or tutors (*kayyım*) can be appointed for individuals or legal entities by a competent court. The scope of their authority must be determined by the court and they will have full capacity to represent the principal within that scope.

Charities

Charities are the equivalent of foundations (*vakıf*) and associations (*dernek*) under Turkish law. Foundations and associations are legal entities. Therefore, they have the capacity to enter into contracts provided that they are duly established and have the necessary organs required by law (that is, a board of directors for foundations, and a general assembly, board of directors and board of auditors for associations).

Public bodies and local authorities

Some public bodies and local authorities have the status of public legal entity under Turkish law. Public legal entities and other public bodies that are not legal entities have the capacity to enter into contracts through their authorised representatives within the scope of the legislation governing their creation and operation.

Agency

An agent is the equivalent of a representative under Turkish law. The capacity of a representative is limited by the authorisation given by the principal, which can be in the form of a power of attorney, proxy or specific agreement. The legal basis of representation and underlying documents should be reviewed before entering into a contract with a representative.

Formal legal requirements

2. What are the essential requirements to create a legally enforceable contract?

The Code of Obligations generally regulates the formation and contents of contracts. Contracts are formed as a result of mutual and consistent declarations of intent (that is, there must be an offer and acceptance). A declaration of intent will only be considered as an offer if the offeror intends to form and be bound by a contract following acceptance by the other party. If the intention is only to initiate negotiations, the declaration will be considered as an invitation to offer. A contract is legally formed on acceptance of the offer.

An offer is binding on the offeror if it includes all material aspects of the proposed contract, unless the offeror clearly and expressly indicates that the declaration is not binding. If a time period is given for acceptance but acceptance has not been received within this period, the offeror can withdraw the offer and will not be bound by the offer anymore. An offer can otherwise be withdrawn if it is not accepted promptly.

Acceptance must be definite and certain. Conditional acceptance will be considered as a refusal of the initial offer and as a new offer.

3. When are written contracts legally required?

In principle, the validity of a contract is not subject to any formal requirements under Turkish law (freedom of contract principle). However, certain contracts must be in writing to be valid and enforceable.

A written contract can be either in an ordinary or official written form, as explicitly required by law. For example, the following types of contracts must be in ordinary written form:

- Assignments of receivables.
- Sureties.
- Certain consumer contracts.

An official written form (that is, a document prepared by a public officer) is mainly required for transactions concerning immovable property (such as sales of immovable property and creations of encumbrances over immovable property) that must be carried out before the relevant land registry. The following types of contract, among others, must also be in an official written form:

- Establishment of a company (before a notary public or the relevant trade registry).
- Sales of shares in a limited company (before a notary public).

4. Can oral contracts be valid and enforceable?

Oral contracts are valid and enforceable, unless the law imposes specific formal requirements (*see Question 3*). While a written form is not required for the validity of a contract, transactions with a value of TRY3,660 (for 2019) or more must be evidenced in writing before the courts. Therefore, it is advisable to enter into all types of transactions in writing for evidentiary purposes.

5. Can contract terms be inferred by the conduct of the parties or incorporated by reference?

Contract terms can be inferred by the conduct of the parties, unless such conduct is contrary to law. The parties can also incorporate terms and conditions by reference to another document, such as a party's general terms and conditions or local or international legislation. However, "general transaction terms" (that is, contractual terms prepared and imposed by one of the parties, and used as standard terms and conditions) are only valid and effective if the imposing party gives sufficiently clear information to the other party about these terms, and the other party expressly accepts them (*Code of Obligations*).

6. What mandatory terms can be implied into a contract by law?

The parties are generally free to determine the terms of a contract. However, mandatory terms are implied by law into certain contracts, such as administrative contracts and consumer contracts. More generally, contract terms must not be contrary to mandatory provisions of law.

7. Are contracts in electronic form (e-mail, web-based or otherwise) legally enforceable?

Contracts in electronic form are valid and enforceable, provided that they comply with the relevant provisions of e-commerce and other applicable legislation. For example, under Turkish legislation on e-signatures, secured e-signatures and handwritten signatures have the same evidential value.

8. How are preliminary agreements used in your jurisdiction?

Under Turkish law, a preliminary agreement is a mutual agreement to enter into an agreement in the future. Unless otherwise required by law, a preliminary agreement is subject to the same formal requirements as the agreement to be entered into in the future. A typical example of preliminary agreement under Turkish law is a promise to sell immovable property. Preliminary agreements are subject to the general provisions governing the validity and enforceability of contracts.

9. Can negotiations become legally binding in any circumstances? What are the principles and rules (if any) on pre-contractual liability?

In principle, negotiations are not binding unless a contract is formed by mutual agreement of the parties. However, pre-contractual liability can be triggered if a party causes damage or loss to the other party during negotiations. This liability is mainly based on tort, unless the negotiations lead to a contract and the misconduct during negotiations constitutes a breach of contract.

10. Is the concept of "good faith" in negotiations recognised and applied? If so, how?

The concept of good faith is recognised and applied under the Turkish Civil Code during both negotiations and formation of a contract. A contracting or negotiating party acting in bad faith may be pre-contractually liable or liable for breach of contract (as applicable). This may also lead to cancellation or annulment of the contract if it affects the intention of the innocent party.

Formalities for execution

11. What are the formalities for the execution of contracts?

Companies

There are no specific formalities for the execution of contracts under Turkish law. Except for written formal requirements that apply to certain types of contracts, the parties are free to enter into contracts in in writing or orally.

In practice, companies almost always enter into contracts in writing and contractual documents are executed by their authorised representatives under the company seal. Representatives can be authorised under:

- An internal directive determining the signatories of the company, which must be registered with the trade registry and made public.
- A power of attorney issued by the company's registered authorised representatives.

The handwritten signature of each representative is required for execution of the contract. It is also common practice to submit a proof of authority (generally a signature circular) to the counterparty, together with the corporate decision to enter into the contract (such as a board resolution) depending on the value or type of contract, for good corporate governance purposes. A company can also validate a contract following execution by an unauthorised person.

Foreign companies

There are no specific formalities for foreign companies. In practice, a proof of authority or certificate of incumbency will be requested to evidence the signatories' power. Depending on the value and type of contract, a legal opinion from a counsel of the foreign company's jurisdiction may also be required by the counterparty.

If the contract needs further legalisation in Turkey, the company representative's proof of authority must be notarised and apostilled (or must carry the seal of the Turkish consulate) in the country of origin to be duly legalised in Turkey.

Individuals

Execution of a contract by an individual usually requires the handwritten signature of the individual or his/her authorised representative. Authorisation can be in the form of a power of attorney issued by the principal before a notary public, which must be apostilled if notarisation takes place outside Turkey. The Code of Obligations also permits the use of a signatory stamp if this is customary for the transaction in question.

12. Are electronic signatures valid in your jurisdiction?

Electronic signatures are valid and binding under Turkish law. Under the Law on Electronic Signature, secured electronic signatures have the same legal effects as handwritten signatures. A secured electronic signature is an electronic signature that:

- Is attached to its signatory exclusively and refers to its signatory once inserted into an electronic document.
- Involves a tracking mechanism to determine whether there have been any changes made to the document after the secured electronic signature was inserted.

Secured electronic signatures are certified and issued by authorised institutions. They are unique and the data on such signatures cannot be used by third parties.

The following transactions cannot be executed by electronic signature, whether secured or not:

- Transactions that must be completed through specific official formalities required by law, such as issuance before a notary public.
- All security agreements, except for bank guarantee letters.

Deeds

13. When are deeds (or equivalent) required?

Although there is no exact equivalent of "deeds" under Turkish law, certain transactions are subject to specific formalities (*see Question 3*).

14. What are the legal formalities for a deed (or equivalent)?

Legal formalities (if any) vary depending on each transaction. When an official written form is required, the transaction must be concluded in writing before the relevant public authorities. Execution of the transaction before the public authority may be followed by a registration process. For example:

- Sales of immovable property and creations of encumbrances over immovable property are registered with the land registry.
- A promise to sell immovable property must be signed before a notary public to be valid and binding.
- Articles of association of a company must be signed before a notary public or the relevant trade registry, and then registered with the trade registry.

15. What are the legal requirements and formalities for the execution of deeds (or equivalent)?

Transactions that are subject to specific formalities must be executed by the individual/company concerned or their duly authorised representatives. In the case of individuals, the public authority will require identification through official documents. For companies, corporate representatives or other persons authorised through a notarised power of attorney must carry out the transaction.

Powers of attorney

16. What are the main types of powers of attorney in your jurisdiction?

Under Turkish law, a power of attorney is a document evidencing the delegation of representative authority by an individual or a legal entity to carry out transactions on their behalf. There are no specific types of powers of attorney. The scope and purpose of a power of attorney is determined by the party delegating its authority. Therefore, a power of attorney can be issued for general purposes or specific matters, with or without limitation of time. A delegation of representative authority is always revocable under Turkish law. No irrevocable powers of attorney can be issued.

If the power of attorney is based on an agreement, certain transactions determined by law must be clearly and explicitly permitted under the power of attorney. These include initiating lawsuits, settling disputes, referring a dispute to arbitrators, requesting bankruptcy, concordat and postponement of bankruptcy, making donations, making exchange commitments, becoming a guarantor, and transferring or placing restrictions on the use of real property.

17. What are the main transactions when powers of attorney are used?

Powers of attorney can be used for almost all types of transactions, unless otherwise provided by law. The main transactions for which powers of attorney are used include the following:

- Execution of contracts.
- Attending completion meetings.
- Carrying out transactions before land registries.

- Establishing companies before trade registries.

18. What are the key provisions in a power of attorney?

The essential provisions in a power of attorney are the identity of the principal/attorney(s) and the scope of authority, including the right to sub-delegate authority. It is possible to insert a time limit into a power of attorney under Turkish law. The principal cannot waive its rights to revoke a power of attorney, so that irrevocable powers of attorney are not valid under Turkish law.

19. What are the legal requirements and formalities for the execution of a power of attorney?

Although Turkish law only imposes formal requirements for powers of attorney relating to immovable property transactions before land registries, it is generally accepted that any power of attorney must be notarised. If notarisation takes place outside Turkey, the power must also be apostilled or approved by the relevant Turkish consulate abroad.

If the principal is a legal entity, the power of attorney must be executed by the handwritten signature of the entity's authorised corporate representatives. To duly execute the power of attorney, the principal (individual or representative) must appear before the notary public with a valid proof of identification. If the principal or its representative is a foreign national, a Turkish notary will also require a translated and notarised identification document.

Notarisation

20. When is notarisation required for contracts in your jurisdiction?

Contracts need not generally be notarised under Turkish law. However, certain types of contracts must be in an official written form (*see Question 3*) and notarisation is mainly required for the following types of transaction and document:

- Promise to sell immovable property.
- Sale of motor vehicle, ship or aircraft.
- Share sale and pledge agreement (for limited companies).
- Articles of association of a company (if not signed before the relevant trade registry).
- Movable pledge agreement.

In principle, the parties are free to execute any contract before a notary public, in which case additional notary costs will be payable. There are only public notaries in Turkey.

Notary fees are based on official tariffs published each year and consist of fixed and proportional fees, depending on the relevant action. Examples of transactions subject to fixed fees include certified translations and the issuance or approval of powers of attorney. Proportional fees depend on the amount of the transaction and apply to transactions such as contracts, deposits, and transactions relating to movable and immovable property.

Notarisation is the main official form requirement. Therefore, notarisation is a condition for the validity of contracts subject to official form requirements other than those required to be executed before specific public authorities (such as a land registry or trade registry). Further, notarisation provides an official authentication of documents, which is required for carrying out certain official transactions.

21. When is apostilling or legalisation required for contracts in your jurisdiction and how is it carried out?

Turkey is a party the HCCH Convention Abolishing the Requirement of Legalisation for Foreign Public Documents 1961 (Apostille Convention). Documents and contracts subject to notarisation that are notarised outside Turkey must either be:

- Apostilled in the country of notarisation.
- Legalised by the Turkish consulate in the country of notarisation, if that country is not a party to the Apostille Convention.

To be used in Turkey, a notarised and apostilled/legalised document must also be translated into Turkish and the translation must be notarised by a Turkish notary public.

If a document originally notarised by a Turkish notary public must be apostilled for use in a foreign jurisdiction, the apostille stamp must be obtained from the relevant district governorship in Turkey.

Other

22. Is virtual closing used and valid in your jurisdiction?

A contract that must be in writing must include the signature of the parties that are undertaking obligations. The signatures can be on separate copies of the document (that is, execution in counterpart is possible). Therefore, virtual closing can be used in Turkey.

23. What are the key issues in the conduct of completion meetings?

To be valid and enforceable, a contract must be executed by authorised persons. In practice, a proof of authority is required (generally a signature circular when the contracting party is a legal entity). The contract may include pre- or post-completion provisions, which are generally considered as conditional clauses. The contract will become enforceable on completion of the relevant conditions.

CONTENT OF CONTRACTS

24. What is the legal status of contractual terms in your jurisdiction?

Representation

A contracting party is liable for the express and implied representations in a contract. In the event of breach of a representation, the party relying on the representation will be entitled to claim damages from the breaching party. Representations are considered together with warranties provided by the same party when assessing a warranty claim.

Condition

Conditions are valid and binding on the contracting parties. A condition can be a:

- Condition precedent, in which case the relevant contractual provision(s) will be effective on fulfilment of the condition.
- Negative covenant, on the occurrence of which the contract will terminate.

Conditions must not be contrary to the law or morals.

Warranty

Warranties under sales contracts are generally regulated by the Code of Obligations. However, the Turkish Commercial Code No. 6102 and consumer protection legislation also apply to commercial sales and consumer transactions, respectively. In a sale of goods contract, the seller is liable for defects of the goods in accordance with the law, even where the parties do not include this warranty in the contract.

The concept of guarantee differs from that of warranty under Turkish law. A guarantee is provided by a guarantor for the performance of an obligation by a party. A guarantee can also be provided in the form of a surety, under which the surety provider will only be liable for a pre-determined amount.

VARIATION, ASSIGNMENT AND WAIVER

25. How can a party vary the contract terms agreed between them?

A contract can be varied by mutual consent of the parties. The variation must comply with the same formal requirements as the original agreement. Therefore, if a contract is required to be in writing, a variation of this contract will also need to be in writing.

26. What are the main ways to transfer contractual rights to a third party?

In principle, the parties can transfer contractual rights to a third party without any prior consent of the obligor, unless the contract prohibits or limits such transfer. A transfer must be made in writing to be valid and enforceable.

A contract can also be transferred in its entirety under Turkish law. In this case, the transfer must take the form of a tripartite agreement between the transferor, transferee and counterparty. The transfer agreement is subject to the same formal requirements as the original agreement (in other words, a writing is required if the original contract is required to be in writing).

27. What are the rules relating to waiver of contractual rights?

There is no general principle relating to waiver of contractual rights under Turkish law. Advance waivers are permitted for certain rights under some types of contracts (for example, set-off rights can be waived in advance, except in lease contracts), and prohibited for others (for example, the right to invoke a statute of limitations). Certain contractual rights can never be waived, whether in advance or on occurrence of the right (for example, an employee cannot waive its entitlement to paid annual leave). Therefore, legal provisions on waivers should be reviewed on a case-by-case basis.

ENFORCEMENT
Liability and remedies

28. What are the rules relating to invalidity, misrepresentation and mistake relating to contracts?

Under Turkish law, the general validity rules for contracts include the following:

- The parties must be capable and authorised to enter into a contract.
- The subject of the contract must not be contrary to mandatory provisions of law, public order, public morality and personal rights.
- The subject of the contract must not be actually or legally impossible.
- The declarations of intent of the parties must be sound.

The declaration of intent of a party will be invalid in cases of error, fraud/misrepresentation or duress (vices of consent). In these cases, the innocent party is entitled to invalidate the contract within one year from detecting the error or fraud, or from the end of duress.

In addition, the collusion of the parties when entering into a contract for the purposes of defrauding third parties will also result in the invalidity of the contract. Where an imbalance in the contract arises from a party's difficulties, inconsideration or inexperience, that party is entitled to request a re-balancing of the parties' obligations or invalidation of the contract within one year from becoming aware of such inconsideration or inexperience, or from disappearance of the difficulties, and in any case no later than five years following the contract date.

29. What are the main performance and discharge rules relating to contracts?

Where a party to a contract fails to duly perform its obligations, the other party is mainly entitled to request performance of the obligation and compensation for loss arising from inadequate performance. However, in bilateral contracts, a party can terminate the contract in the following situations:

- If the counterparty becomes insolvent or bankrupt.
- If the counterparty defaults on the contract, which entitles the innocent party to request either:
  - performance and compensation for loss arising from late performance; or
  - termination of the contract and damages.

In addition to the above general remedies, there are specific termination rights for certain types of contracts such as certain consumer contracts, under which the consumer has the right to terminate the contract even if the other party did not breach any provision of the contract.

The parties are also free to mutually agree on termination of a contract.

If the breach arises from a force majeure event or frustration, the breaching party will not be liable for such breach until the effect of force majeure or frustration disappears. If the force majeure event or frustration leads to impossibility of performance of an obligation, this obligation will be deemed terminated, provided that frustration is not attributable to the obligor.

30. What are the key rules on privity of contract and third party rights?

Under Turkish law, a contract is generally only binding on, and enforceable against, the parties. This derives from the principle of relativity of contractual obligations. However, the Code of Obligations allows parties to a contract to create rights in favour of a third party. This type of contract is called a third-party beneficiary contract. The beneficiary third party is entitled to request performance of the obligation provided that the request conforms with the contracting parties' intention or is customary. On such a

request, the original contracting party cannot release the debtor or alter the scope of the obligation.

31. What are the main rules relating to contractual liability?

The breaching party is primarily liable for damages arising from non-performance, unless it proves that it has not committed any fault. If there is more than one breaching party, they will only be jointly liable if this is expressly provided for in the contract or law.

Breach of a bilateral contract gives the innocent party the right to request one of the following:

- Performance and compensation for damages arising from late performance.
- Compensation for damages arising from non-performance.
- Termination of the contract and compensation for losses.

Although not expressly provided by law, it is generally accepted that the above options are only available for breach of main and essential obligations, but not for breach of secondary obligations (which are not deemed bilateral). In the event of breach of a secondary obligation, the innocent party is mainly entitled to request performance of the obligation and compensation for damages caused by non-performance (if any).

32. What are the main rules relating to excluding contractual liability?

Generally, a contract can only exclude liability for slight negligence. An exclusion of liability can be included either in:

- A clause of the contract.
- A separate agreement (non-liability agreement), which must be executed before the liability arises.

Provisions excluding liability for gross negligence are null (*Code of Obligations*). Additionally, it is not possible to exclude an employer's liability under an employment contract or liability of a licensed professional service provider, even for slight negligence. In a sales contract, any provision limiting or excluding the seller's liability will be null if the seller was grossly negligent in selling a defective product (*Code of Obligations*).

33. What are the main contractual remedies?

Contractual remedies depend on the performance status of the contract. If performance of a contract becomes impossible or the contract is poorly performed, the remedy will be damages. If a party has not performed its obligations without a valid reason but performance is still possible, the innocent party can request performance of the obligation and compensation for damages (if any) caused by non-performance. In a bilateral contract, the innocent party can also terminate the agreement and request compensation for damages.

The competent court and/or execution office can order performance of an obligation in enforcement proceedings. The court will order performance to the extent that the request for performance is made in good faith and fair. However, performance cannot be requested if the contract is terminated by the innocent party or in the case of breach of a secondary obligation. In these cases, compensation for damages should be requested instead.

Under Turkish contract law, damages include:

- **Positive damages.** These refer to losses suffered by the innocent party as a result of non-performance or inadequate performance, including loss of profit. They can be requested if the innocent party wishes to continue its contractual relationship with the breaching party.
- **Negative damages.** These can be claimed if a contract becomes invalid or impossible or is terminated by the innocent party. Negative damages are defined as losses suffered by the innocent party as a result of entering into a contractual relation in the expectation of proper performance by the other party.

34. Are penalty clauses valid in your jurisdiction? Are penalty clauses subject to any limitation?

Penalty clauses are valid and commonly used in Turkey. A penalty can be agreed for breach or inadequate performance of a primary obligation. If this occurs, the innocent party will be able to request payment of the penalty even if it has not incurred any damage. If the penalty is payable for non-performance of an obligation, the innocent party will be entitled to request either performance of the obligation or payment of the penalty amount, unless otherwise agreed in the contract. If the penalty is payable for non-performance of an obligation at a specific time or place, the innocent party will be entitled to request both performance and payment of the penalty, provided that it has not waived its right to claim the penalty or accepted performance without any reservation.

In principle, the parties are free to determine the penalty amount. The Code of Obligations does not place any limitations on the amount of penalties. However, the court can reduce the penalty amount if it considers that amount to be excessive, provided that the breaching party is not a merchant.

35. What are the main differences between indemnity and damages?

Under Turkish law, indemnity can be considered as a recourse claim, while damages can be claimed for loss of a contracting party. However, Turkish law does not specifically define these concepts and both are referred to as "compensation", although the legal grounds may vary. The Code of Obligations generally governs claims for damages (*see Question 33*). Various pieces of legislation govern specific types of indemnification, such as insurance indemnification, social security indemnification, and so on.

ENFORCEMENT AND CROSS-BORDER ISSUES

Choice of law

36. Is a foreign choice of law in a contract upheld by the local courts?

In principle, the parties are free to choose the governing law of a contract (*Article 24, Code of International Private and Procedural Law No. 5718*). The law chosen by the parties will apply unless otherwise decided by the parties. However, a choice of law will not apply if the relevant provisions are clearly contrary to Turkish public order. Additionally, the parties cannot choose a foreign law for matters that are mandatorily governed by Turkish law, such as matters related to ownership of immovable property in Turkey or employment-related matters under an employment contract.

The court must determine the content of the applicable law ex officio. However, the court can apply Turkish law if it cannot determine the relevant provisions despite all efforts, including seeking assistance from the parties to the dispute.

Jurisdiction

37. Is a choice of jurisdiction in a contract upheld by the local courts?

Merchants and public legal entities can refer disputes that may arise under a contract to courts other than those that are competent under the general Turkish rules on jurisdiction. In these cases, the relevant claims must be brought before the courts of the chosen jurisdiction. Parties cannot conclude jurisdiction agreements for matters that they cannot freely dispose of or if the Turkish courts have exclusive jurisdiction under Turkish law.

Parties can also choose the governing law for contractual disputes with a foreign element (*Article 47, Code of International Private and Procedural Law*). Disputes concerning employment, consumer and insurance agreements cannot be referred to a jurisdiction other than that determined under Articles 44, 45 and 46 of the Code of International Private and Procedural Law.

A jurisdiction agreement or clause is valid if the following conditions are met:

- The legal relationship from which the dispute may arise is clear or at least determinable.
- The agreement or clause is executed in writing.
- The agreement or clause specifies the courts of a specific place (that is, the courts of a city or town rather than a country or region).

The Turkish courts do not consider issues of jurisdiction ex officio. The court will only consider the existence and validity of a jurisdiction agreement if the defendant submits a jurisdiction opposition in its statement of defence. If the court decides that a jurisdiction clause or agreement is valid, it will dismiss the claim for lack of jurisdiction.

Enforcement of foreign judgments

38. When are foreign judgments recognised in your jurisdiction?

The recognition and enforcement of a foreign judgment requires a recognition and/or enforcement decision from a Turkish court. To be recognised in Turkey, a foreign court judgment must:

- Be issued by a foreign court.
- Relate to private law matters.
- Be final and definitive.

If the above procedural conditions are met, a Turkish court will enforce a foreign judgment if the following conditions are met:

- There is a reciprocity agreement between Turkey and the state where the judgment was issued, or a law or actual practice enables the enforcement of Turkish court judgments in that state.
- The judgment concerns a matter that is not within the exclusive jurisdiction of the Turkish courts and the foreign court has a genuine relationship with the case or the parties (this objection must be raised by the defendant).
- The judgment must not be manifestly contrary to public order.
- The person against whom enforcement is sought was properly summoned by the foreign court, represented before that court, and/or a judgment in his/her absence was not issued contrary to the foreign law (this objection must be raised by the defendant).

The party that seeks recognition or enforcement of a foreign court judgment must provide evidence to the Turkish court that the above conditions are met.

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