



**ANALYSIS OF THE SURETYSHIP INSTITUTION  
UNDER THE NEW TURKISH CODE OF OBLIGATIONS  
PUBLISHED IN THE OFFICIAL GAZETTE  
NUMBERED 27836 AND DATED 04.02.2011.**

The New Turkish Code of Obligations numbered 6098 (the “**New TCO**”) and the Application Code of the Turkish Code of Obligations published in the Official Gazette numbered 27836 on 04.02.2011. The New TCO will take the place of the Code of Obligations numbered 818, published in the Official Gazette numbered 359 on 29.04.1926 which is still in use (the “**Current TCO**”). Article 648 sets forth that the New TCO will enter into force as of 01.07.2012.

Below, the major differences between the New TCO and the Current TCO are mentioned regarding the suretyship institution.

**Conditions:**

Articles 582, 583 and 584 of the New TCO set forth the conditions of the suretyship. Article 583 of the New TCO changed the provisions regarding the form of a suretyship contract. Pursuant to the relevant provisions of the Current TCO the suretyship contract should be executed in writing and the maximum amount of the responsibility of the surety should be written in the contract. However according to the New TCO;

- (i) the maximum amount of the responsibility of the surety,
- (ii) the date of the contract, and
- (iii) the expression of the joint and several suretyship, if it is a joint suretyship

must be written in the suretyship contract *by the surety's handwriting*. Furthermore, any amendment that expands the responsibility of the surety is subject to the abovementioned rules regarding the form of the contract.

Moreover, Article 584 of the New TCO brings a new condition for the validity of certain suretyship contract; which is in line with the Article 194 of the Turkish Civil Code<sup>1</sup>. If the real person surety is married, the written consent of the surety's spouse is mandatory for the valid execution of a suretyship contract. Such consent should be;

- (i) given prior the execution of the suretyship contract or at the same time of the execution;
- (ii) given in writing; and
- (iii) given for any amendment that expands the responsibility of the surety.

**Content:**

On the contrary to the relevant provisions of Current TCO, Article 591 of the New TCO sets forth that the surety can not waive his/her/it rights of defence (*def'i*). Due to this, any prior waiver of right of refusal (*def'i*) of the surety will not be enforceable and the surety will still be entitled to exercise his/her/it rights of defence (*def'i*).

**Termination:**

Pursuant to Article 598 of the New TCO, if the suretyship is granted by a real person, the suretyship itself will terminate at the end of 10 years following the execution of the suretyship contract. However the suretyship period may be extended with the consent of the surety for a new period of maximum 10 years. Such an extension should be done, earliest, one year prior the termination of the suretyship contract.

Article 599 of the New TCO sets forth the termination right of the surety. In case of a suretyship for future debts, if the debtor's prior financial condition;

- disrupts following the execution of the suretyship contract, or
- the debtor's financial condition is worse than the surety supposes

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<sup>1</sup> According to Article 194 of the Turkish Civil Code, the husband or wife can not terminate the lease contract or sell the house of family or grant any encumbrances on it, if his/her spouse does not consent for the relevant transaction.



the surety may terminate the suretyship contract at any time prior the occurrence of the debt. However, in such case the surety will be liable to compensate the damages of the debtor.

**Scope of Application:**

Pursuant to Article 603 of the New TCO, the relevant provisions of the New TCO regarding suretyship (*e.g.* the form of the suretyship contract, the capacity of the surety and the requirement to the consent of the spouse) are applicable to any kind of contract which is executed under any name with regards to granting personal security (*e.g.* guarantee).

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If you need any further assistance or seek for detailed information regarding the subject examined above please contact us. Gur Law Firm will be pleased to assist you.