



ANALYSIS OF THE STANDARD TERMS UNDER THE NEW TURKISH CODE OF OBLIGATIONS

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.

Standard Terms:

Due to the needs of today’s corporate life; some institutions such as banks, insurance companies and supply companies prefer to draft model contracts, ex parte, which they can use for numerous transactions. The pre-drafted provisions contained in these kinds of model contracts are named as “*standard terms*”.

The standard terms of model contracts are unilaterally drafted by one party, ex parte, and not subject to any negotiation. Because of this, the other party of a model contract should be protected by law. While under the current legislation, there is only one provision in the Law Regarding the Protection of the Consumer numbered 4077 regarding the unfair standard terms in consumer contracts, the New TCO sets forth restrictions on standard terms for any and all kinds of contracts. Below, the major aspects of the standard terms of contracts are examined pursuant to the New TCO.

Scope of Application:

The provisions regarding the standard terms of contracts are set forth under Articles 20-25 of the New TCO and these are applicable to any and all kinds of contracts (*e.g. general credit agreements, form financial leasing agreements etc.*). Moreover, the provisions regarding the

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standard terms of transactions are mandatory in nature and the parties of the contract can not agree on the contrary.

Content:

Provisions of a contract which are

- (i) used in numerous transactions, and
- (ii) drafted by one of the parties, ex parte,

are by law deemed as “*standard terms*”. It should be noted that the above mentioned two criteria must be present at the same time. In other words, provisions of a contract which are prepared by one party, ex parte, with regards to only one specific transaction (and not to be used in numerous transactions) shall not be deemed as “*standard terms*”.

Furthermore, if a contract is partially negotiated and the rest is drafted by one of the parties, ex parte, the provisions of the part which is not negotiated will still be deemed as “*standard terms*”.

Validity:

Standard terms of a contract are valid under Turkish Law as long as they comply with the provisions of the New TCO, which are briefly explained below.

- Pursuant to Article 21 paragraph 1 of the New TCO, the standard terms are valid, only if the party; whose interests are violated, is aware of and has the opportunity to get information regarding the standard terms of the relevant contract. Otherwise, those standard terms will be deemed as ***not written***.
- Pursuant to Article 21 paragraph 2 of the New TCO, if there are any standard terms in a contract which are not relevant with the nature and the characteristics of the relevant contract; those terms will be deemed as ***not written*** even if the party whose interests are violated has been informed of and accepted them.

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- If a standard term in a contract is not explicit and clear enough or have different meanings, that provision will be interpreted against the party who has drafted it but in favour of the other party.
- The standard terms in a contract should not contain, *by breaching the principle of good faith*, any provision which is against the interest of the counter party and which causes that party to be in a bad condition.

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.