



Consequences of Late Payment in Commercial Transactions under the Turkish Commercial Code

Commercial transactions in Turkey used to be governed by the principle of *freedom of contract*. With the entry into force of the Turkish Commercial Code No 6102 (the “**Commercial Code**”) on 1 July 2012, *freedom of contract* in commercial transactions is restricted and reevaluated for the first time.

Article 1530 of the Commercial Code entitled *Consequences of Late Payments in Delivery of Goods and Provision of Services* aims to implement Directive 2011/7/EU of the European Parliament and of the Council into Turkish legislation. In a sense, this Article prohibits the use of *freedom of contract* principle to the disadvantage of the creditor. Although the language of Article 1530 is ambiguous, it is clear that the legislator’s intent is to protect small and medium-sized enterprises (“SMEs”), and producers in agricultural and animal sectors from *goliaths*.

- **Scope.** Article 1530 of the Commercial Code is applicable to transactions between commercial undertakings (*ticari işletme*). Therefore, transactions between commercial undertakings and public authorities do not fall within the scope of Article 1530.
- **Automatic default mechanism.** In commercial transactions, the creditor is entitled to interest for late payment without sending a *default* notice in accordance with Article 18 of the Commercial Code if (i) it has fulfilled its contractual and legal obligations and (ii) the debtor is responsible for delay. This is a significant deviation from the longstanding principles of Turkish law of obligations.
- **Maturity date.** The creditor is entitled to interest for late payment from the day following the date or the end of the period for payment fixed in the agreement. If the period for payment is not fixed in the agreement, the creditor will be entitled to interest for late payment upon expiry of any of the following periods set forth under Article 1530¹. In any case, the period for payment cannot exceed sixty (60) days², unless expressly agreed in the agreement and provided it is not grossly unfair to the creditor. Such exception will not apply if the creditor is an SME or a producer in agricultural and animal sector; or the debtor is a large-sized enterprise.
- **Unenforceability.** Contractual terms relating to interest rate for late payment are unenforceable if they are grossly unfair to creditor.
- **Amount of interest rate.** If the amount of interest rate is not provided in the agreement or the provisions relating to its determination are unenforceable, an additional 8% over the commercial interest rate shall apply.
- **Prohibition of payment in installments.** Article 1530 of the Commercial Code prohibits payment in installments in commercial transactions where the creditor is an SME or a producer in agricultural and animal sector; and the debtor is a large-sized enterprise.

¹ The payment periods (*maturity dates*) determined by Article 1530 are as follows:

- 30 days following the date of receipt by the debtor of the invoice or an equivalent request for payment; or
- If the date of the receipt of the invoice or the equivalent request for payment is uncertain, 30 days after the date of receipt of the goods or services; or
- If the debtor receives the invoice or the equivalent request for payment earlier than the goods or services, 30 days after the date of the receipt of the goods or services; or
- If a procedure of acceptance or verification, by which the conformity of the goods or services with the agreement is to be ascertained, is provided for by law or in the agreement and if the debtor receives the invoice or the equivalent request for payment earlier on the date on which such acceptance or verification takes place, 30 days after that date provided that if a procedure of acceptance or verification is to be ascertained for the conformity of goods or services with the agreement, the duration of this procedure will not exceed 30 days from the date of receipt of goods or services provided it is not grossly unfair to the creditor.

² 60 days following the date of (i) receipt by the debtor of the invoice or an equivalent request for payment; or (ii) receipt of the goods or services, or (iii) completion of procedure of acceptance or verification.