GAR KNOW HOW CONSTRUCTION ARBITRATION

Turkey

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Legal system

1. Is your jurisdiction primarily a common law, civil law, customary law or theocratic law jurisdiction? Are the laws substantially derived from the laws of another jurisdiction and, if so, which? What instruments have legal force and effect? Who are the lawmaking bodies? How and where are new laws published? Can laws be passed with retrospective effect?

Turkey is a civil law jurisdiction like most continental law countries, deriving a large portion of its laws from European states. Turkey's Commercial Code is derived from Germany; the Turkish Civil Code, Code of Obligations and Code of Civil Procedure are derived from Switzerland, while the Turkish Penal Code is derived from Italy.

The following instruments have legal force and effect: the Constitution, international treaties, laws or codes, decrees, by-laws and regulations, all of which are published in the Official Gazette.

As per article 87 of the Constitution, Turkish Grand National Assembly (the Parliament) has the power to enact, amend and repeal laws. By-laws and regulations, on the other hand, are made by administrative bodies. The President of the Republic may issue presidential decrees on matters regarding executive power.

Laws cannot be passed with a retroactive effect. In fact, as per the principle of non-retroactivity of laws, the codes are enacted in principle to be applied to events, transactions, and actions after the effective date, save for some exceptional cases such as the protection of vested rights and improvement in financial rights, which are required by the public interest and public order. (See: Decision of the Turkish Constitutional Court Lawsuit No. 2007/44; Decision No. 2009/148; Date of Decision: 15 October 2009.)

Contract formation

2. What are the requirements for a construction contract to be formed? When is a "letter of intent" from an employer to a contractor given contractual effect?

Turkish contract law places a great emphasis on the principle of freedom of contract and party autonomy. The first article of the Turkish Code of Obligations numbered 6098 (TCO) sets the basic requirement to form a legally binding contract: the mutual declaration of intention of the parties to form a contract. According to article 26 of the TCO, the parties are free to determine the content of a contract, subject to limitations set forth in the laws.

Construction contracts are classified as "Contracts for Work" in the Turkish law of obligations. In construction contracts, one party (the contractor) undertakes to construct the work while the other party (the employer) undertakes to pay a price, (and sometimes provide materials and equipment) for such work. As a result, for a construction contract to be established, the contractor must undertake to construct a work, the employer must undertake to pay the price, and these mutual declarations of intent of the parties must be compatible with each other.

The letter of intent is a stage that emerges during the negotiation of the contract. By means of a letter of intent, the parties express their willingness to enter into a contractual agreement.

In the letter of intent, the parties set forth the purpose of the legal relationship, the desired results of the legal relationship,correct the undesirables, may specify the certain negotiated aspects of the contract such as the essential and agreed points, the details that have not yet been agreed upon, the involvement of third parties in the contract or the nature of these, if there is any benefit to be obtained from the contract.

A letter of intent, by nature, is a unilateral and non-binding statement of will and has no binding effect under Turkish law; in fact, it is only a tool for interpretation of the parties' will regarding the contract that is intended to be entered. The contractual effect of a letter of intent would depend on its content; conduct of the parties, and the context of the relationship between the contractor and the employer. If the letter of intent contains clear and unambiguous terms, and the parties intend to be bound by those terms, it may

be considered a valid and enforceable contract. If both parties start performing their obligations under the terms set forth in the letter of intent, it can indicate their intention to be bound by the contract. Turkish courts usually focus on the objective intent of the parties when determining whether a letter of intent creates a legally binding agreement.

Choice of laws, seat, arbitrator and language

3. Are parties free to choose: (a) the governing law of their contract; (b) the law of the arbitration agreement; (c) the seat of the arbitration; (d) any arbitral rules; (e) anyone to act as arbitrator; and (f) the language of the contract and the arbitration? If not, what are the limitations on choice and what happens if the parties act contrary to them?

In Turkish law, "freedom of contract" principle is adopted as the general rule. Therefore, in accordance with the general rule, the parties are free to choose all of the above. There are, however, some exceptions to this general rule.

In cases where there is a foreign element in a contract, then this contract is included in the scope of the Code of International Private and Civil Procedure (CIPCP) numbered 5718, and in accordance with its article 24(1), "The obligations arising from a contract are subject to the law explicitly chosen by the parties", rules of Turkish law can be eliminated by choosing a foreign law in a contract.

Code No. 805 on "Compulsory use of the Turkish Language by Economic Enterprises" governs in its article 1 that "All types of companies and enterprises having Turkish origin, shall make all transactions, agreements and notifications, and keep records and ledgers within Turkey, in Turkish." This code states that in the contracts where there is no foreign element, then the parties are not free to choose the language of the contract. As per its article 7, a punitive fine may be imposed to those acting contrary to the provisions of Code No. 805.

Implied terms

4. How might terms be implied into construction contracts? What terms might be implied?

The concept of "implied terms" does not exist under Turkish law. However, Turkish law contains certain statutory provisions that may imply terms in construction contracts. For example, the duty of good faith and fair dealing between the parties or the requirement of contractor's performance with reasonable duty and care may be implied into the construction contracts. The areas where a party's agreement remains silent is to be construed in line with the TCO and other relevant legislation.

Having said that, the TCO gives legal consequences to a party's silence under certain circumstances, such as the explicit or implied acceptance of the works by the employer as per article 477 of the TCO.

Certifiers

5. When must a certifier under a construction contract act impartially, fairly and honestly? To what extent are the parties bound by certificates (where the contract does not expressly empower a court or arbitral tribunal to open up, review and revise certificates)? Can the contractor bring proceedings directly against the certifier?

Certifiers are not regulated under Turkish law. However, construction inspectors and building inspectors have the same role as a certifier.

The employer is obliged to enter into a contractual relationship with a building inspection firm for construction projects.

According to article 31 of the Code of Public Procurement Contracts No. 4735 (CPPC) on the Responsibility of Building Inspectors, administrative officers who carry out the building inspection are jointly and severally liable with the contractor for the loss and damage arising from the lack of inspection due to the lack of supervision and the failure to do the work in accordance with the rules of science and art, for a period of fifteen years. In addition, the provisions of article 28 of the CPPC, which regulates criminal liability, are applied to those officials.

As per article 4 of the General Specification for Construction Works (GSCW), the building inspection officer is an officer or a committee to be appointed by the Administration for the supervision of the works and/or the real or legal person or persons appointed to carry out these works from outside the administration.

Building inspection is required for the buildings specified in Code No. 4708 on Building Inspection. In accordance with article 31 of the Building Inspection Implementation Regulation issued for the implementation of Code No. 4708, a building identity certificate is provided by the Ministry for buildings determined by the Ministry that are at the completion stage.

Competing causes of delay

6. If an employer would cause (eg, by variation) a two-week critical delay to the completion of the works (which by itself would justify an extension of time under the construction contract) but, independently, culpable delay by the contractor (eg, defective work) would cause the same delay, is the contractor entitled to an extension?

There are no specific references to concurrent delay in Turkish law, nor there is a reference for an automatic extension of time If both the contractor and the employer have a concurrent delay, then the dispute arising from such delay must be resolved in accordance with the contract. However, if the contract is silent, then the concept of default under article 117 of the TCO may be applied by analogy.

The Turkish Supreme Court interprets this concept in line with the contributory fault under article 52 of the TCO, which stipulates that if the aggrieved party contributed to the occurrence or otherwise exacerbated the position of the party liable for it, then the judge may decrease or abolish the damages.

Consequently, the dispute would be handled in accordance with the facts of the case at hand, considering the contributory fault of the employer.

Disruption

7. How does the law view "disruption" to the contractor (as distinct from delay or prolongation to the completion of the works) caused by the employer's breaches of contract and acts of prevention? What must the contractor show for a disruption claim to succeed? If an entitlement in principle can be shown (eg, that a loss has been caused by a breach of contract) must the court or arbitral tribunal do its best to quantify that loss (even if proof of the quantum is lacking or uncertain)?

Disruption in construction means inefficiency in a contractor's work. Apart from the delay, disruption can occur even when the project is completed on time. Turkish law generally treats disruption as a breach of contract. The contractor must show evidence that the progress of work has been disrupted, of which elements have been disrupted and where or when the damages occurred, the amount of additional cost and cause of disruption that constitutes a breach of contract.

Principally courts and tribunals have no additional duty to quantify the damages themselves. The parties may bring in experts or request the courts or arbitral tribunals to appoint an expert for this purpose.

Disruption claims are difficult to prove; the contractor must provide daily reports, photo documentation, any evidence that the sequence of works has been disrupted, etc.

Acceleration

8. How does the law view "constructive acceleration" (where the contractor incurs costs accelerating its works because an extension of time has not been granted that should have been)? What must the contractor show for such a claim to succeed? Does your answer differ if the employer acted unreasonably or in bad faith?

The concept of constructive acceleration is not recognised under Turkish law. However, the concept can be incorporated into a construction contract.

If the delay caused by the acceleration is attributable to the employer, then the employer is under the obligation to compensate damages according to the general provisions of the TCO. A claim for unreasonable conduct or bad faith will be interpreted as a violation of the contract, and the degree of fault reparation sought, therefore, and the degree of fault will be assessed.

Force majeure and hardship

9. What events of force majeure give rise to relief? Must they be unforeseeable and to whom? How far does the express or implied allocation of risk under the contract affect whether an event qualifies? Must the event have a permanent effect? Is impossibility in performing required or does a degree of difficulty suffice? Is relief available where only some obligations (eg, to make a single payment or carry out one aspect of the works) are affected or is a greater impact required? What relief is available and does it apply automatically? Can the rules be excluded by agreement?

TCO does not explicitly refer to cases of force majeure, the concept however is recognised under Turkish case law. Although it has not been defined in TCO, some of the provisions refer to the force majeure without defining it such as articles 228, 576, and 579. However, it is not possible to legally define the term "force majeure" with regard to construction contracts.

Force majeure has generally been used to refer to extraordinary situations that are not possible to avoid and that may prevent the performance of the contractual obligations.

Although the wording of the law does not specify the situations amounting to force majeure, the doctrine and the case law give a degree of guidance. There is a general definition that is accepted by both the doctrine and the relevant case law. According to this, a force majeure event is an extraordinary event that occurs outside of the responsible or debtor's activity and operation, which leads to the violation of a general norm of behaviour or debt in an absolute and unavoidable manner, and which cannot be foreseen and resisted. This definition has been accepted by the Supreme Court (see: HGK., E. 2017/90 K. 2018/1259 T. 27.6.2018).

Pursuant to the precedence of the Supreme Court concerning force majeure, the existence of which is determined on a case-by-case basis, natural disasters such as earthquakes, flood, fire or epidemic are considered within the scope of the concept. In accordance with the principle of freedom of contract, the parties to a contract are free to determine the events to be accepted as force majeure and the consequences thereof. The parties are free to allocate the respective risks in the contract due to unavoidable and unforeseen events.

The party that fails to fulfil its obligations due to force majeure may refer to the concept of hardship as per article 138 of the TCO.

10. When is a contractor entitled to relief against a construction contract becoming unduly expensive or otherwise hard to perform and what relief is available? Can the rules be excluded by agreement?

In cases where the construction costs become excessive or commitments become extremely hard to perform, the contractor may invoke article 138 of TCO and argue hardship in performance and request adaptation of the contract from the court.

As per article 138 of the TCO, a party that has not performed his or her obligations at all, or has performed his or her obligations by reserving the right to seek this relief, may apply to the courts and request the adaptation of the contract terms in view of the new circumstances if an extraordinary event, which was not and could not have been anticipated by the parties at the time of the contract occurs due to reasons not attributable to the party seeking relief, alters the conditions present at the time of the contract to the detriment of such party in so far that requesting performance of the contract will no longer be in good faith. If adaption is not available, the party seeking relief may terminate the contract.

Since the relevant norm is of complementary character, it is possible for the parties to agree otherwise within their contracts and bring negative adaptation records that decide the contract will survive despite changing conditions.

Impossibility

11. When is a contractor entitled to relief if after the contract is concluded it transpires (but not due to external events) that it is impossible for the contractor to achieve a particular aspect of the contractual specification? What relief is available?

According to article 136 of the TCO, if the fulfilment of an obligation becomes impossible to perform, due to reasons for which the debtor cannot be held responsible, the debtor in this case, the contractor, will not be held liable for its failure to fulfil such obligation. Nevertheless, the contractor here has the duty to notify the employer and mitigate the damage, otherwise it is obliged to remedy the damages arising therefrom.

The contractor, who is released from its commitments due to impossibility in performance of the contract, that attributes reciprocal debt, is obliged to return the consideration it received from the other party, as the consideration in question qualifies as unjust enrichment.

If the performance of the debt becomes partially impossible for reasons for which the debtor cannot be held responsible, the debtor gets rid of only the part of the debt that has become impossible. However, if this partialimpossibility of performance had been foreseen beforehand and if it was clear that such a contract would not have been made by the parties, the entire debt would come to an end. In contracts that impose a mutual obligation, if the debt of one party becomes partially impossible and the creditor consents to partial performance, the counter performance is performed at that rate. If the creditor does not consent to such a performance or the counter act is indivisible, the provisions of total impossibility shall be applied.

Clauses that seek to pass risks to the contractor for matters it cannot foresee or control

12. How effective are contractual provisions that seek to pass risks to the contractor for matters it cannot foresee or control, for example, making the contractor liable for: (a) a specified event of force majeure; (b) ground conditions that no reasonably diligent contractor could have foreseen; or (c) errors in documents provided by the employer, such as employer's requirements in design and build forms?

In principle, the parties to a construction contract are free to specify certain risks, which include force majeure, responsibility from the ground conditions and errors in project documents.

If the contract is silent on these matters, then article 114 of the TCO can be applied to the liability and reparation. As per article 114 of the TCO, the debtor is liable for all defects and the scope of the debtor's liability is determined according to the specific nature of its commitments and will be shaped by the common will of the parties.

If the materials, ground conditions (the land) and the project document provided by the employer has errors OR are defective, then the employer cannot claim any rights against the contractor due to the defects that arose from these. Nevertheless, the contractor has a duty to inspect and notify the employer as soon as becoming aware of the defective materials or unsuitable ground conditions.

Article 472(3) of the TCO expressly stipulates that if it is understood that the materials provided by the employer or the land or site conditions are defective, then the contractor must immediately notify the employer, otherwise the contractor will be liable.

"Immediate" means that the defect is notified to the employer "without delay" by the contractor at a time that allows the defect to be corrected at no additional cost to the employer or with the least possible impact.

Duty to warn

13. When must the contractor warn the employer of an error in a design provided by the employer?

Article 471(2) of the TCO provides that the extent of duty of care owed by the contractor is determined by taking due account of the behaviour demonstrated by compliance with the occupational and technical rules of a prudent contractor who undertakes similar works.

Article 472(3) of the TCO, the provision regarding the materials, requires an immediate warning to be issued by the contractor, which can also be applied to design that was provided by the employer.

Precedence sets forth that if, after being notified by the contractor that the plans, design or project is not in compliance with the purpose of the project or is erroneous, the employer instructs the contractor to proceed with the erroneous design, then the employer must bear the damages that might arise from the implementation of such erroneous design (Turkish Supreme Court, 15th HD, 22.04.1991 T 4761 E. 1956 K).

Good faith

14. Is there a general duty of good faith? If so, how does it impact upon the following (where they are otherwise permitted under the construction contract): (a) the level of intervention in the works that is allowed by the employer; (b) a party's discretion whether to terminate or suspend the contract; or (c) the employer's discretion to claim pre-agreed sums under the contract, such as liquidated damages for delay?

The principle of good faith is an established general principle of Turkish law, whereas good faith performance or enforcement of a contract emphasises faithfulness to an agreed common purpose and consistency with the justified expectations of the other party. The principle of good faith is codified under articles 2 and 3 of the Turkish Civil Code (TCC), pursuant to which parties "shall act in accordance with the principle of good faith when exercising their rights and performing their contractual obligations, and that an explicit abuse of right shall not be protected under the law".

As per article 473(2) of the TCO, the employer may interfere with the work if it is understood that, due to the fault of the contractor, the work will be defective, or not in accordance with the construction contract. In these cases, the employer shall give the contractor additional time to remedy the defective work and take the necessary measures; if the contractor does not remedy these defects within the given additional time, and provided that the employer gives the contractor, then the employer has the right to have another contractor remedy the defects or continue the work.

The right to termination for convenience is regulated under article 484 of the TCO, although it is a right recognised within the statute, its exercise shall be made in line with the principle of good faith.

Regarding pre-agreed sums, Turkish courts have the right to reduce liquidated damage amounts as per the good-faith principle.

Time bars

15. How do contractual provisions that bar claims if they are not validly notified within a certain period operate (including limitation or prescription laws that cannot be contracted out of, interpretation rules, any good faith principles and laws on unfair contract terms)? What is the scope for bringing claims outside the written terms of the contract under provisions such as sub-clause 20.1 of the FIDIC Red Book 1999 ("otherwise in connection with the contract")? Is there any difference in approach to claims based on matters that the employer caused and matters it did not, such as weather or ground conditions? Is there any difference in approach to claims for (a) extensions of time and relief from liquidated damages for delay and (b) monetary sums?

If the parties decide on a notification regime for their claims in their construction contract, failure to comply with these notification requirements does not automatically preclude the claim from being successful. There is no statutory provision yielding respondent the right to file a procedural objection to a claim solely on grounds that the contractual notification scheme has been violated.

As per article 116 of the Code of Civil Procedure No. 6100 preliminary objections, a respondent may raise are limited to objection on grounds of arbitration, jurisdiction and division of work.

The limitation period under Turkish law commences on the first date on which a notification is admissible. The limitation period is a defence tool that precludes the right to be claimed. As per article 152 of the TCO, when the principal claim becomes time-barred, so too do all claims for interest and other accessory claims.

Suspension

16. What rights does the employer have to suspend paying the contractor or performing other duties under the contract due to the contractor's (non-)performance, or the contractor have to suspend carrying out the works (or part of the works) due to the employer's (non-) performance?

If a contractor does not perform in accordance with the contract, the employer can terminate the contract but cannot suspend paying the contract without sending a termination notice due to non-performance. This may vary depending on the provisions of the relevant contract.

If a contractor fails to complete the work within the contract period and goes into default, the employer may grant a time extension to the contractor to complete the work within a reasonable time frame according to article 123 of the TCO, but if the contractor does not complete the work in such time, the employer may terminate the contract within the scope of article 125(2) of the TCO.

On the other hand, the contractor may suspend carrying out the works if the employer does not pay the due amounts to the contractor. If the payment agreed in the contract is not made, the contractor cannot be requested to continue the work. In this case, the contractor may suspend the work for a reasonable period of time and request the payment of the receivable with interest if there is a default, or the contractor may also use its right to terminate the contract pursuant to article 125 of the TCO.

Omissions and termination for convenience

17. May the employer exercise an express power to omit work, or terminate the contract at will or for convenience, so as to give work to another contractor or to carry out the work itself?

Pursuant to article 484 of the TCO, the employer may terminate the contract at any time before the work is complete provided that the contractor is compensated for the work carried out before the completion and that the contractor is indemnified in full. This mechanism is called "termination for convenience". For this provision to be applicable, the works must be incomplete. The contractor may claim both positive and negative damages.

There is nothing precluding the employer to carry out the remaining works by itself of via another contractor, after fulfilling its obligations arising out of the termination for inconvenience. Principles of good faith and venire contra factum proprium should be observed.

Termination

18. What termination rights exist? Can a construction contract be terminated in part? What are the practical and financial consequences?

Under Turkish law, construction contracts are classified as contracts for works and services, therefore the provisions of TCO applicable to the termination of the contracts will be applied to the termination thereof unless the parties have agreed otherwise. As a principle, the parties are at liberty to regulate the termination provisions in their contract.

A construction contract may be terminated by the employer pursuant to general provisions:

- As per article 475 of the TCO, the employer may terminate the contract due to defects in the construction.
- The contract may be terminated by the employer without a cause upon full compensation and indemnification of the contractor as per article 484 of the TCO.
- As per article 485 of the TCO the contractual relationship may be deemed terminated due to impossibility of performance attributable to the employer.
- As per article 486 of the TCO the contractor's loss of ability to complete the works or the death of the contractor will result in termination.

As per article 475 of the TCO, the employer, under circumstances where the contractor is found liable for the defects in the construction may (i) withdraw from the contract, if it becomes evident that the works will be performed in a manner that are defective or otherwise deviates from the contract or the works are so defective that the employer cannot equitably be expected to accept them (ii) ask for the reparation of the works free of charge or at the risk and expense of the contractor (iii) may request a reduction of the contract price (iv) claim damages in accordance with general provisions of the TCO.

Unless the parties' agreement provides otherwise, the employer that terminated the contract will be only entitled to damages.

Partial termination of a contract is also possible in accordance with the general provisions of the TCO.

19. If the construction contract provides for the circumstances in which each party may terminate the contract but does not expressly or impliedly state that those rights are exhaustive, are other rights to terminate available? If so, what are they and what are the practical and financial consequences?

Yes, complementary provisions of the TCO apply. Please refer to the response to question 18.

20. What limits apply to exercising termination rights?

Other than contractual limitations, parties to a contract are bound to act in good faith and not to exercise their rights in an abusive manner.

Completion

21. Does the law of your jurisdiction deem the works to be completed (irrespective of what the contract says) if, say, the employer takes beneficial possession of the works and starts using them?

Under Turkish law, the works are only deemed to be complete once the contractor has duly executed whole agreed works under the construction contract and delivered them to the employer accordingly. The mere taking of beneficial possession of the works and the start of use by the employer is not considered completion of the works as long as the works are not duly completed.

According to article 477 of the TCO, once the completed work has been expressly or implicitly approved by the employer, the contractor is released from all liability, save in respect of defects that could not have been discovered on normal inspection or those that were deliberately concealed by the contractor. Implicit approval is deemed where the employer refrains from inspecting the work and giving notice of any defects.

22. Does approval or acceptance of work by or on behalf of the employer bar a subsequent complaint? What constitutes acceptance? Does taking over the work by the employer constitute acceptance? Does this bar subsequent complaint?

According to article 477(1) of the TCO, the employer's acceptance relieves the contractor from liabilities arising from visible defects. The acceptance can be made explicitly and implicitly. Unless the contract provides otherwise, taking over the work (physically) is construed as acceptance. Employer before acceptance has the statutory burden to examine visible defects. If the examination is omitted or executed poorly, the work will be deemed accepted as it is (ie, with the defects). The claims for latent defects may be raised later.

Liquidated damages and similar pre-agreed sums ('liquidated damages')

23. To what extent are liquidated damages for delay to the completion of the works treated as an exhaustive remedy for all of the employer's losses due to (a) delay to the completion of the works by the contractual completion date; and (b) delays prior to the contractual completion date (in the absence of, say, interim milestone dates with liquidated damages for delay attaching to them)? What difference does it make if any critical delay is caused by the contractor's fraud, wilful misconduct, recklessness or gross negligence? If so, what constitutes such behaviour and can it be excluded by agreement?

The concept of liquidated damages is not regulated specifically under Turkish law, which is why it is hard to determine the difference between liquidated damages and penalties.

Performance of a contract means the full and due performance of the obligations thereunder. The debtor who fails to fulfil a debt that is possible and due on time is delayed in execution. If certain conditions are met, this delay is described as "default of debtor". In other words, the default of a debtor is a qualified delay of the debtor in performance and the debtor is liable for damages.

As a rule, the parties to a contract can carve out the contractor's liability regime to the extent article 115 TCO allows, meaning that contracts releasing parties from liability where the degree of fault reaches or exceeds gross negligence are null and void.

24. If the employer causes critical delay to the completion of the works and the construction contract does not provide for an extension of time to the contractual completion date (there being no "sweep up" provision such as that in sub-clause 8.4(c) of the FIDIC Silver Book 1999) is the employer still entitled to liquidated damages due to the late completion of works provided for under the contract?

As per article 112 of TCO, a reparation is only owed to a creditor (ie, employer), if the fault that resulted in damages is attributable to the debtor (ie, contractor) of the contract, who failed to perform its commitments.

In cases where the employer had a role in the emergence or increase in the damage perpetrated by the contractor, the judge may, according to article 52 of the TCO, either reduce or completely remove the reparation owed by the contractor to the employer.

25. When might a court or arbitral tribunal award less than the liquidated damages specified in the contract for delay or other matters (eg, substandard work)? What factors are taken into account?

There are two principles for damages under Turkish law: the damage must be fully compensated, and that the compensation cannot be a tool for enrichment.

In cases where the employer had a role in the emergence or increase in the damages perpetrated by the contractor, the judge can, according to article 52 of the TCO, either reduce or completely remove the reparation owed by the contractor to the employer.

26. When might a court or arbitral tribunal award more than the liquidated damages specified in the contract for delay or other matters (eg, work that does not achieve a specified standard)? What factors are taken into account?

Turkish law prohibits the enrichment from compensation, which is why, in principle, the defendant is principally only obliged to pay compensation for the liquidated damages. Nevertheless, some special law provisions allow claimants to demand compensation exceeding the mere loss suffered. An example of this is damages quantified by calculating loss of profits.

Assessing damages and limitations and exclusions of liability

27. How is monetary compensation for breach of contract assessed? For instance, if the contractor is liable for a defect in its works is the employer entitled to its lost profits? What if the lost profits are exceptionally high?

In addition to the compensation for the same performance and delay as stipulated in the general provisions regarding the default of the debtor in the TCO, the creditor may refuse the performance of the contract and claim for the indemnification of its positive loss. In one of its decisions, the General Assembly of the Court of Cassation (CoC) defined the positive loss as "the damage arising from the failure to fulfil the contract at all or as it should be" and accepted that the positive damage also includes the loss of profit.

There is no provision regulated under Turkish law for the cases where the lost profits are exceptionally high. To determine the loss of profit or other compensation claims, the court appoints experts or conducts an on-site examination to determine the accurate amount.

28. If the contractor's work is technically non-compliant, is the contractor liable for remedying it if the rectification cost is disproportionate to the benefit of the remedy? Can the parties agree on a regime that is stricter for the contractor than under the law of your jurisdiction?

As per TCO 475, the employer has several options for the remedy it may seek in cases where the work is technically non-compliant:

- withdraw from the contract where the work is so defective or deviates from the contractual terms to such an extent that the employer has no use for it or cannot equitably be expected to accept it;
- take delivery of the work without having to wait for completion and reduce the price in proportion to the defect; or
- require the contractor to rectify the work at his or her own expense, provided that such rectification is possible without excessive cost to the contractor.

In this situation, it is at the employer's discretion to decide the way to remedy the defects.

29. If there is a defects notification period (DNP) during which the contractor must or may remedy any defect in its works that appears during a certain period after their completion, if the construction contract is otherwise silent, does it affect the employer's rights to claim for any defects appearing after the DNP expires?

DNPs are usually set forth in the construction contract since there is no obligatory limitation of time ruled by the law. The statutory DNP applicable to a defect depends on the type of defect in question.

According to article 477, once the completed work has been expressly or implicitly approved by the employer, the contractor is released from all liability, save in respect of defects that could not have been discovered on normal inspection or those which were deliberately concealed by the contractor. Therefore, it is important for employers to carry out a proper examination at the time of acceptance.

Apart from the above, the defects that were not visible at the time of acceptance, including the latent defects should be notified immediately upon their occurrence.

According to article 478 of the TCO, the statute of limitations applicable for immovable works is five years. If there is contractor's gross negligence, then the employer's right to claim extends to 20 years from the date of acceptance.

The statute of limitations can be invoked as an objection; however, it will not be taken into regard ex officio by the courts.

30. What is the effect of a construction contract excluding liability for "indirect or consequential loss"?

Turkish law requires a casual relationship for both direct and indirect loss claims. Accordingly, if there is an adequate casual relationship between the action and the loss; whether direct or indirect, the party causing such damage may be held liable according to the general provisions.

Pursuant to article 475 of the TCO, in cases where the contractor is liable due to the defects in the work, the employer is entitled to exercise one of its rights of choice that are listed in article 475. These are, namely, the recission of the contract, request for a discount at the rate of defect, and request for free repair of the work. In addition to these, the employer is entitled to claim for damages in accordance with the general provisions of the TCO.

According to the main principle set under article 115 of the TCO, contract provisions that are restricting liability for indirect or consequential loss are valid and enforceable unless it has resulted from an action that constitutes gross negligence. Therefore, a construction contract provision excluding liability for indirect or consequential loss, such as loss of profits, will be valid and enforceable provided that the losses do not arise from gross negligence of the injuring party.

31. Are contractually agreed limits on – or exclusions of – liability effective and how readily do claims in tort or delict avoid them? Do they not apply if there is fraud, wilful misconduct, recklessness or gross negligence: (a) if the contract is silent as to such behaviour; or (b) if the contract states that they apply notwithstanding such behaviour? If so, what causation is required between the behaviour and the loss?

In principle, it is possible to make contracts restricting or excluding liability for direct or indirect losses. The TCO allows parties to limit their contractual liability depending on the negligence level. Any contractual provision that restricts or excludes liability in advance for degrees of fault reaching or exceeding gross negligence is void as per article 115 of the TCO, while provisions limiting liability for direct or indirect losses arising from slight negligence are valid and enforceable.

Moreover, article 116 of the TCO allows the restriction of contractor's liability resulted from the actions of auxiliary persons regardless of the negligence level. Accordingly, a contract clause excluding the liability of the injuring party for indirect or consequential losses resulted from the actions of auxiliary persons will be valid and enforceable even if it arises from an action that constitutes gross negligence or wilful misconduct.

Liens

32. What right does a contractor have to claim a lien (or similar) in the works it has carried out? If so, what are the limits of the right if, for example, the employer has no interest in the site for the permanent works? How is the right recognised and enforced?

Article 893(3) of the TCC stipulates that the contractors or subcontractors who have receivables from the property owner or the contractor, may request for a lien on the property on which they performed their work or provided material. Such lien can be registered in the land register starting from the moment that the contractors started to perform their work or provide material for the construction (article 895(1) of TCC) and it must be requested within three months of the completion of the work at the latest (article 895(2) of TCC). However, registration cannot be requested in the event that the property owner shows sufficient security (article 895(4) of TCC).

For a lien registration to be completed, the remuneration claim must be accepted by the property owner or approved by the court. After officially registering the lien, the contractor may then exercise its rights and collect its receivables from the sale of the seized property. It is also important to note that article 896 of the TCC states that the contractors whose lien has been registered on different dates are deemed to be in the same order in terms of their right to benefit from the lien.

Subcontractors

33. How do conditional payment (such as pay-when-paid) provisions operate under the law of your jurisdiction (including interpretation rules, any good faith principles and laws on unfair contract terms)?

Turkish law does not explicitly regulate or restrict the conditional payment provisions in contracts. In accordance with the freedom of contract, parties of a construction contract are free to agree on pay-when-paid scheme and enforce them as long as there is no default or breach according to the principles of good faith. Accordingly, a contractor can collect its payments relying on a conditional payment provision under the general contract, unless there is a default or breach resulting from its own actions.

In its decision dated 1 March 2018 (15th Chamber of the Turkish Court of Cassation's decision dated 1 March 2018 No. 2016/5713 E. 2018/841 K), the Turkish CoC clarified that it is possible to make a construction contract containing conditional payment provisions. However, the Court drew the lines of the issue by underlining that the subcontractor's receivable will eventually become due if the conditional amount is not collected from the owner or the relevant third party within a reasonable time.

34. May a subcontractor claim against the employer for sums due to the subcontractor from the contractor? How are difficulties with the merits and proof of the subcontractor's claim addressed, including any rights the contractor has to withhold payment? What if aspects of the project suggest that the law of your jurisdiction should not apply (eg, the parties to both the main contract and the subcontract have chosen a foreign law as the governing law)?

In principle, it is not possible for subcontractors to claim against the employer for sums due to the subcontractor from the contractor since there is no direct relationship between the employer and the subcontractor. Yet such a scenario may be contractually arranged.

35. May an employer hold its contractor to their arbitration agreement if their dispute concerns a subcontractor (there being no arbitration agreement between the contractor and the subcontractor or no scope for joining two sets of arbitral proceedings) or can the contractor, for example, require litigation between itself, the employer and the subcontractor? Does it matter if the arbitration agreement does not have its seat in your jurisdiction?

As in many other jurisdictions, arbitration is also consensual in Turkey; and the arbitral awards are of inter partes character. Pursuant to article 4 of the Turkish International Arbitration Act No. 4686, the arbitrations agreement shall be concluded in writing.

Principally the parties who did not have explicit written consent to an arbitration cannot be dragged into proceedings unless the substance of the relationship between the signatories requires otherwise. This, in particular, frequently occurs in insurance and guarantee claims.

However, the answer to this question depends on the nature of the substantive agreement and the arbitration agreement between the parties.

Under exceptional circumstances, the arbitration agreement can be extended to non-signatories. The tribunals, to the extent rules allow, have the authority to consolidate two arbitration proceedings if the contracts are deemed to be related.

Given that the vast majority of jurisdictions have adopted UNCITRAL Model Law, the issue would be handled by Turkish courts in a similar fashion to other jurisdictions.

Where the arbitration is seated is of crucial importance while determining the law applicable to the arbitration agreement and its extension to third parties.

Third parties

36. May third parties obtain rights under construction contracts? How readily can those connected with the employer (such as future or ultimate owners) bring claims against the contractor in respect of (a) delays and (b) defects? To what extent are exclusions and limitations of liability in the construction contract relevant?

As a general approach, rights under construction contracts exist only between the parties in accordance with the privity of contracts principle. However, in some cases, third parties may also obtain certain rights when the third party is a beneficiary of the contract.

37. How readily (absent fraud, wilful misconduct, recklessness or gross negligence) can those connected with the contractor (such as affiliates, directors or employees) face claims in respect of (a) delays (b) defects and (c) payment? To what extent are exclusions and limitations of liability in the construction contract relevant?

In general, a person who is not a party to a contract cannot be held liable for it under the principles of privity of contract. Therefore, claims in respect of delays, defects or payments raised pursuant to the construction contract do not extend to the affiliates, directors and employees of the contractor.

Contrary to the general approach, in exceptional cases such as the parent company guarantee has given to the employer for all or part of the affiliate's obligations, then such an affiliate may be held liable. In the same vein, if the contractor as a limited liability company becomes insolvent, its directors also may face claims if they have been in breach of their fiduciary duty.

Limitation and prescription periods

38. What are the key limitation or prescription rules for claims for money and defects (and insofar as you have a mandatory decennial liability (or similar) regime, what is its scope)? What stops time running for the purposes of these rules (assuming the arbitral rules are silent)? Are the rules substantive or procedural law? May parties agree different limitation or prescription rules?

According to article 478 of the TCO, the statute of limitations for bringing a defects claim under a contract of work for an immovable is five years as of the date of delivery. This period may be decreased or increased by the parties but cannot be longer than 10 years, which is the general statute of limitations under the TCO. If the defect in question is caused by a degree of fault exceeding gross negligence, the statute of limitations applicable to the employer's right to claim increases to 20 years as of the date of acceptance, which cannot be decreased by the parties.

As per article 147(6) of the TCO, the statute of limitations for claims other than defects claims is five years for contracts of work, which includes construction contracts. However, as per article 156 of the TCO, if the debt is acknowledged by the debtor or awarded by a court or arbitral tribunal, a new 10-year period will start, which is the general statute of limitations under the TCO defined under article 146 of the TCO.

As per article 154 of the TCO the statute of limitation is deemed interrupted if the debtor has: acknowledged its debt, performed partial payment (including interest), provides a pledge or security. The statute of limitation can also be interrupted through the conduct of the creditor, such interruption occurs if the debtor raises its claim at courts or tribunals or initiates a debt collection proceeding by means of debt execution or an application to bankruptcy administration.

The rules regarding the periods of limitations are considered substantive law. However, the periods of limitations will be only considered by a court or arbitral tribunal upon the respondent's objection.

Other key laws

39. What laws apply that cannot be excluded or modified by agreement where the law of your jurisdiction is the governing law of a construction contract? What are the key aspects of, say, the FIDIC Silver Book 1999 that would not operate as its plain words suggest?

There are no distinct regulations concerning construction contracts in Turkish law. However, articles 470–486, under the 'Agreement for Work' section of the TCO is the main legislation for construction contracts. In circumstances where the contract is silent, relevant laws, such as the TCO or the Turkish Civil Code apply by virtue of their gap-filling role.

The mandatory provisions of Environment Law, Zoning Law, Public Procurement Law, and State Bidding Law, Law No. 3996 on Commissioning Certain Investments and Services within the Framework of Build-Operate-Transfer Model, Law No. 6428 on Construction, Renovation and the Purchase of Services by the Ministry of Health by way of the Public-Private Partnership Model and Amendments to Certain Laws and Decrees with the Force of Law are reserved.

40. What laws of your jurisdiction apply anyway where a foreign law governs a construction contract? What are the key aspects of, say, the FIDIC Silver Book 1999 that would not operate as its plain words suggest?

Foreign laws are applicable to the extent they do not violate Turkish public policy. Public policy in this regard is interpreted narrowly, meaning that a mere violation of a mandatory norm under Turkish law does not amount to a violation of public policy, but rather that a fundamental breach of values upon which the Turkish legal system is based would amount to a breach in this respect. This, however, is a rare situation, in construction projects.

Besides that, technical standards, regulations on work safety, environmental law as well, as the legislation on construction permits, will be directly applicable to the project in question if the project is located in Turkey.

Enforcement of binding (but not finally binding) dispute adjudication board (DAB) decisions

41. For a DAB decision awarding a sum to a contractor under, say, sub-clause 20.4 of the FIDIC Red Book 1999 for which the employer has given a timely notice of dissatisfaction, in an arbitration with its seat in your jurisdiction, might the contractor obtain: a partial or interim award requiring payment of the sum awarded by the DAB pending any final award that would be enforceable in your jurisdiction (assuming the arbitral rules are silent); or interim relief from a court in your jurisdiction requiring payment of the sum awarded by the DAB pending any award?

The DAB decisions alone do not have the res judicata effect. Therefore, any DAB decision on the matter cannot be enforced unless an arbitral tribunal renders a final and binding award on the matter.

Nevertheless, the parties have tools available under Turkish law to make the terms of a DAB decision enforceable by agreement, such as a mediation agreement where the statutory conditions are met.

Courts and arbitral tribunals

42. Does your jurisdiction have courts or judges specialising in construction and arbitration?

The 15th Civil Chamber of the Supreme Court previously handled the disputes arising from contracts of work, including construction contracts. The First Presidency Board of the Supreme Court decided with its decision dated 22 June 2021 that the 15th Civil Chamber of the Supreme Court be changed to the 6th Civil Chamber. Accordingly, the 6th Civil Chamber of the Supreme Court looks at the cases relating to construction law at the final appeal stage.

43. What are the relevant levels of court for construction and arbitration matters? Are their decisions published? Is there a doctrine of binding precedent?

The nature of the construction dispute determines the court of competent jurisdiction, depending on the parties to the dispute the matter may be handled by consumer courts, civil courts or commercial courts.

Turkey has a three-tiered judicial system composed of courts of the first instance, courts of appeals and the CoC. Although the judicial processes carried out by courts are constitutionally open to the public in principle, not all court judgments are available on open sources. However, there are online services that provide their subscribers with judgments made by higher courts, such as the CoC and courts of appeals. Decisions made by first instance courts – although rare – are available too.

The Supreme Court, composed of 12 individual chambers for civil law matters, operates on a division of work basis. Each chamber has its own share of the division. The disputes arising from contracts of work are assigned to 6th Civil Chamber.

There is no chamber in the Supreme Court that is specifically assigned to settle matters relating to the enforcement or setting-aside of foreign arbitral awards and court judgments. These matters are assigned to the substance of the initial dispute, meaning that matters relating to the enforcement of foreign judgments in relation to construction contracts are also assigned to the 6th chamber.

The decisions made by the highest court, the Supreme Court, are principally not binding for other disputes, yet they are taken as guidelines for the interpretation of the law by lower courts. However, decisions on the unification of conflicting judgments made by the Supreme Court are legally binding.

44. In your jurisdiction, if a judge or arbitrator (specialist or otherwise) has views on the issues as they see them that are not put to them by the parties, can they raise them with the parties? Is the court or arbitral tribunal permitted or expected to give preliminary indications as to how it views the merits of the dispute?

No, the judges and arbitrators are strictly prohibited from expressing their views on a dispute. Expressing of views prior to the conclusion of the dispute may give rise to challenges against both judges and arbitrators.

The judges must be impartial and independent. Pursuant to Article 36 of CCP, one of the parties may reject the judge or the judge may refrain from the case. Specific reasons for the rejection of the judge or the refusal of the judge from the case are regulated in the article, as follows:

- Giving advice or guidance to either party in the case.
- Expressed opinion to one of the two parties or to a third party, even though it is not required by law.
- Being heard in the case as a witness or expert or acted as a judge or arbitrator or acting as a mediator or conciliator in the dispute.
- The case belongs to the minor relatives, including the fourth degree.
- Having a lawsuit with one of the two parties or there is an enmity between them, during the lawsuit.

As per article 12 of the Turkish International Arbitration Act, the arbitrators may only settle a dispute ex aequo et bono or as amiable compositeur only if they are explicitly authorised to do so by the parties.

45. If a contractor, say, wishes to arbitrate pursuant to an arbitration agreement, what parallel proceedings might the employer bring in your jurisdiction? Does it make any difference if the dispute has yet to pass through preconditions to arbitration (such as those in clause 20 of the FIDIC Red Book 1999) or if one of the parties shows no regard for the preconditions (such as a DAB or amicable settlement process)?

Within the scope of the principle of freedom of contract, the parties can freely determine the dispute resolution method in the contract. Accordingly, if a procedure (amicable settlement meetings, expert report, etc.) is specified in the contract before arbitration, this procedure must be implemented first.

In cases where the pre-arbitration process is not completed, the arbitral tribunal may decide to suspend the arbitration in order for the pre-arbitration process to be conducted.

46. If the seat of the arbitration is in your jurisdiction, might a contractor lose its right to arbitrate if it applied to a foreign court for interim or provisional relief?

No.

Expert witnesses

47. In your jurisdiction, are tribunal- or party-appointed experts used? To whom do party-appointed experts owe their duties?

In parallel with the international arbitration practice, most commonly the experts are appointed by the parties. Particularly in domestic arbitrations, the parties sometimes request the tribunal to appoint experts, which is a practice that is most used in litigation in Turkey. Party-appointed experts are liable towards the party who appointed them.

State entities

48. Summarise any specific limitations or requirements that apply when the employer is a state entity or public authority (including, for example, public procurement rules, limits on rights to suspend or terminate, excluded lien rights and arbitrating – as well as enforcing an award – against such an employer).

In terms of tenders and determining the terms of contracts, state entities and public authorities in Turkey are bound by the public procurement legislation. Once the contract is signed it is governed by private law under which the employer and the contractor are equal.

For construction contracts, there are no regulations preventing Turkish public entities from settling disputes by arbitration. According to article 82/1 of the Bankruptcy and Enforcement Law, both public and private properties of the state are non-seizable on the grounds of the continuity and non-disruption of public services. Immunity of state entities from enforcement is limited to the assets necessary for the due conduct of public services.

Settlement offers

49. If the seat of the arbitration is in your jurisdiction, on what basis can a party make a settlement offer that may not be put before the arbitral tribunal until costs fall to be decided?

A settlement offer in an arbitral dispute seated in Turkey is subject to article 12 of the Turkish International Arbitration Act, as per which parties are free to submit their settlement offers until the issuance of the final award or a tribunal's order that concludes arbitral proceedings. Deferral and acceptance of claims are to be construed as an integral part of the concept of settlement.

Privilege

50. Does the law of your jurisdiction recognise "without prejudice" privilege (such that "without privilege" communications are privileged from disclosure)? If not, may it be agreed that a sum is payable if communications to try to achieve a settlement are disclosed to a court or arbitral tribunal?

The concept of "without prejudice" privilege is recognised for the stage of settlement. Parties cannot use that correspondence or offers exchanged during settlement negotiations later in the court proceedings.

Similarly, parties cannot submit statements or documents obtained during the mediation process as evidence and cannot testify about them during a lawsuit or an arbitration. This prohibition is regulated in article 5 of the Law on Mediation in Civil Disputes.

Under the principle of freedom of contract, the parties may agree on a sum payable if such communications are disclosed to a court or arbitral tribunal.

51. Is the advice of in-house counsel privileged from disclosure under the law of your jurisdiction? Is the relevant law characterised as substantive or procedural law?

Under Turkish law, there is no specific law on the relationship between in-house counsels and their employers. In a decision (Decision No.15-42/690-M), the Turkish Competition Board found that documents and correspondence between an in-house counsel and their employer will not be considered privileged and will not be protected, since an in-house attorney and his or her "client" have a regular employment relationship. This decision can only be considered as soft law.

Guarantees

52. What are the requirements for a guarantee under the law of your jurisdiction? Are oral guarantees effective?

Under Turkish law, a guarantee scene can be set by the employment of two different types of contracts. The first of them being suretyship agreements and the other being guarantee agreements.

The surety contracts are regulated in article 581 et seq of the TCO, whereby guarantee contracts are governed under article 128.

In accordance with article 582, a suretyship contract can only be made for existing and valid debt. Article 583 regulates that the suretyship contract must be made in writing and the maximum amount for which the surety will be held liable and the suretyship date must be specified in own handwriting. In the case of a joint guarantor, it should be stated in his or her own handwriting.

For guarantee contracts, no special form requirements have been stipulated; however, in accordance with article 603 of the TCO, the terms sought in surety contracts shall be applicable for guarantee contracts where real persons act as guarantors.

Oral guarantees may be valid as there is no form requirement for legal entities in guarantor contracts.

53. Under the law of your jurisdiction, will the guarantor's liability be limited to that of the party to the underlying construction contract, if the guarantee is silent? Can the guarantee's wording affect the position?

According to the mandatory statutory regime, the surety may in any case be held liable with the maximum amount specified in the underlying contract.

However, the liability under the guarantee contract, although it rarely exceeds the limit in the underlying contract in practice, but is not subject to a mandatory regulation as in TCO 589/1 and may exceed the limit in the underlying contract. Here, the wording of the guarantee will affect liability.

54. Under the law of your jurisdiction, in what circumstances will a guarantor be released from liability under a guarantee, if the guarantee is silent? Can the guarantee's wording affect the position?

By signing a surety agreement, the surety undertakes to indemnify the creditor for the damages that arise from the initial debtor's failure to fulfil its contractual commitments. Suretyship is of subordinate nature; thus the suretyship will be invalid under circumstances where the principal contract is invalid (article 598 of

TCO). Similarly, under circumstances where the principal contract is duly performed by the initial debtor, the surety will be released from liability.

In contrast with suretyship, guarantee agreements are not of subordinate nature and the liability of guarantor, for the performance of the initial debtor, is autonomous within itself.

A guarantee scheme's wording can alter the liability regime for the surety or guarantor by making it subject to contractual conditions. Moreover, in a suretyship scheme – due to the subordinate nature of the suretyship – the surety may raise the objections that the initial debtor has raised (article 591 of TCO). The guarantor in that case is not allowed to raise the same objections as the initial debtor, whereby it has the freedom to raise its own individual arguments arising from the contract.

On-demand bonds

55. If an on-demand bond is governed by the law of your jurisdiction on what basis might a call be challenged in your courts as a matter of jurisdiction as well as substantive law? Assume the underlying contract is silent on when calls may be made.

Under Turkish law, on-demand bonds scheme can be established by suretyship or guarantee agreements. Therefore, objections against the call for a bond can be raised, depending on the specific statutory requirements.

If the on-demand bond is provided as an ordinary suretyship, the creditor should request the payment from the debtor first (article 585 of TCO). In the event that the creditor requests the payment from the surety prior to the debtor, the surety can refuse to pay. In cases where an on-demand bond is provided as a joint surety, such requirement is not applicable and the creditor can request the payment from both the debtor and the surety at the same time (article 586 of TCO). The surety benefits from all substantive defences available to the debtor.

If the on-demand bond is provided as a guarantee agreement, the call can be made at the discretion of the creditor. Theoretically, the debtor may apply for an injunctive relief against the guarantor or the surety arguing that the creditor will be abusing its right to call.

In principle, the guarantor or the surety is required to litigate the merits of the matter after the completion of the call or liquidation of the bond.

56. If an on-demand bond is governed by the law of your jurisdiction and the underlying contract restrains calls except for amounts that the employer is entitled to (such as sub-clause 4.2 of the FIDIC Red Book 1999), when would a court or arbitral tribunal applying your jurisdiction's law restrain a call if the contractor contended that: (i) the employer does not have an entitlement in principle; or (ii) the employer has an entitlement in principle but not for the amount of the call?

Only the occurrence of the event prescribed under the on-demand bond can result in an on-demand bond or bank guarantee. The employer is not allowed to call the bond if such an event has not occurred.

The court may prohibit the employer from calling the bond in whole or to the extent that the amount of the call is regarded as disproportionate, to the extent the contractor can establish that the requirements for calling the on-demand bond are not met.

Since the purpose of on-demand bonds is to protect the employer's rights, the court will not prevent the employer from calling the bond in principle, even if there are controversies arising from the grounds underlying the call. Therefore, the "pay first, litigate later" rule is adopted by Turkish law.

Further considerations

57. Are there any other material aspects of the law of your jurisdiction concerning construction projects not covered above?

Not applicable.

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Cetinel Law Firm

We proudly lead in construction. We provide legal consulting services to local and international companies with a specific focus to construction law and disputes along with the respective business law matters. As a result of our specialization and focus on construction and business law issues, we fully understand and appreciate the requirements and demands of its clients and therefore offer creative, result-oriented and high-quality legal solutions. Our client-orientation dictates that every client issue receives all due attention and care whether it is part of a continuing client relationship or a single transaction. We work in concert with each client to develop comprehensive strategies that addresses the respective client's business goals.

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