



AUSTRIA IST ÜBERALL



WEBINAR

RECHTSWEBINARSERIE | INTERNATIONALER KAUFVERTRAG TÜRKEI

24.10.2023

AußenwirtschaftsCenter Istanbul

Mag. Nil Kaynak
Rechtsberaterin

PROGRAMMABLAUF

- Alles rund ums Thema: **Internationaler Kaufvertrag**

Rechtsanwältinnen **Sezen Ergen Breitegger** und **Burçin Develioğlu**, von der
Rechtsanwaltskanzlei **Breitegger-Develioğlu**

- Anwendbares Recht
- Zuständigkeit der Gerichte
- Schutzmethoden vor Nichterfüllung und Zahlungsausfällen
(Bankgarantien/Akkreditive)
- Zahlungskonditionen, Schutz vor Wechselkursschwankungen
- Zwangskonvertierungen und deren Folgen

- **Q&A:** Haben Sie Fragen?

Wir sind für Sie da!

- Forderungsangelegenheiten
- Interventionen
- Unterstützung bei Vertragsgestaltungen
- Rechtsanalysen und -recherchen
- Firmenprüfungen
- Sanktionsprüfungen
- Neues im türkischen Recht



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BREITEGGER
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International Sales Contracts

International Sales Contracts in Türkiye and its practical aspects

Av. Sezen Ergen Breitegger
Av. Burçin Yıldırım Develioğlu
Prof. Murat H. Develioğlu

Remarks

- **Good preparation in the beginning**
- **Signing of a contract if possible**
- **If not, alternative guarantee methods**



Components of an International Sales Contracts

- Free will of the parties
- Sales price
- Delivery method
- QUALITY!
- Payment method



Incoterms

- A set of standards used in international and domestic contracts for the delivery of goods.
- Not a full contract! Just a clause!



Letter of Credit / Bank Guarantee

- No regulations under Turkish law regarding the content or the requirements of bank letters of credits. In this sense, the decisions of the Court of Appeals are crucial. According to the decisions of the Court of Appeals, bank letters of credit are not subject to any formal requirements, and consolidation of the intentions would be sufficient to create the guarantee.
- To issue bank letters of credit, in writing, has been established in order to avoid problems. In the written document, the details of the beneficiary and the addressee, the date and the amount undertaken should be specified, together with the signature of the guarantor, *i.e.*, the bank.

Letter of Credit / Bank Guarantee

The practice of bank guarantees in Turkey has a number of peculiarities, which require the parties to a bank guarantee to scrutinize the details of the guarantee in the course of its preparation. Parties are strongly advised to consider the limitation period set out in Turkish Code of Obligations and to incorporate a clause stipulating that the bank guarantee will become null and void unless a written claim is made before the expiry date.



Letter of Credit / Bank Guarantee

- **Subjects of guarantees**
- Bank guarantees may relate to different subjects, such as:
- **Tender guarantees.** Tender guarantees, also known as bid/tender bonds, provide assurance of the intention of the principal to join a tender and ensure the execution of the contract if its offer is accepted. Tender guarantees are generally issued as a requirement of domestic or international tenders.
- **Performance guarantees.** Performance guarantees, also known as performance bonds, are issued to guarantee the risk of non-performance of the obligations of the principal undertaken under a contract.
- **Advance payment guarantees.** Advance payment guarantees provide protection for the rights of the beneficiary for an advance payment made by it to the principal before the principal fulfils its obligations under the contract.

Applicable law

- The applicable law is determined by national private international law (PIL) rules
- Each legal system has its own PIL Code
- Each court will apply its own PIL Code
- Today the predominant rule is party autonomy: choice of law
- If not: PIL Code determines the applicable law

Applicable law

- For contracts:
 - Turkey: International Private and Procedural Law Art. 24 & 25
 - EU: Rome I Regulation (No. 593/2008) Art. 3 & 4
- The contract will be governed by the law that it is most closely connected to
- This is in principle the habitual residence or workplace of the debtor of the characteristic obligation (that defines the contract)

Dispute Resolution

- The applicable law will be applied by the relevant dispute resolution mechanism
- Dispute resolution mechanisms:
 - Litigation
 - Arbitration
 - Mediation
- Party autonomy in determining the dispute resolution mechanism



Choice of Court

- Parties prefer home courts
- Bargaining power is determining
- Conditions of a valid choice
 - Turkey: International Private and Procedural Law Art. 47
 - EU: Brussels I Regulation (No. 1215/2012) Art. 25
- Exclusivity of the choice

Arbitration

- An impartial (!) alternative to courts
- What to choose when choosing arbitration?
 - Place of arbitration
 - Institution / ad hoc
 - International or local institution
 - Number of arbitrators
 - Language of arbitration



Turkey as Place of Arbitration

- Modern code of arbitration: International Arbitration Act based on Model Law
- Modern arbitration community: skilled arbitrators & lawyers
- Modern arbitral institutions:
 - ISTAC and ITOTAM
 - Possibility to choose Turkey as place of arbitration under international arbitration institutions (ICC, LCIA...)
- Means no enforcement

Turkey as Place of Arbitration

- Turkey is a signatory of the NY Convention
- What to be careful about?
 - Language of the arbitration agreement
 - Official form requirements
 - Inclusion of court and arbitration agreements at the same time
 - Arbitrability (esp. intra-corporate disputes)
 - Review on the merits (esp. public order defense)
 - Fees, expenses and length of proceedings



Thank you for listening!

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Thank you for listening!

Q&A Do you have questions?