

This second edition of *Commercial Litigation* aims to provide an updated first port of call for clients and lawyers to start to appreciate the issues in each jurisdiction. Each chapter is set out in such a way that readers can make quick comparisons between the litigation terrain in each country.

Foreword

Andrew Horrocks,
Andrew Horrocks Law Limited & Maurice Phelan Mason Hayes & Curran

Argentina

Gonzalo García Delatour & María Lucila Marchini,
Estudio Beccar Varela

Australia

Scott Chesterman & Vicki Bell,
Minter Ellison

Brazil

Carlos Roberto Siqueira Castro, Daniela Soares Domingues, Iara Santos Conrado & Caroline Gomes Tabach da Rocha,
Siqueira Castro Advogados

Canada

Michael Statham & Nadia Chiesa,
WeirFoulds LLP

Cayman Islands

Peter Hayden, Hector Robinson & Louis Mooney, *Mourant Ozannes*

China

Denning Jin,
King & Wood Mallesons

Cyprus

Andreas Erotocritou & Antreas Koualis, *AG Erotocritou LLC*

England & Wales

Andrew Horrocks,
Andrew Horrocks Law Limited & Leah Alpren-Waterman Watson Farley & Williams LLP

Finland

Kristiina Liljedahl & Saara Lapiolahti,
Borenius Attorneys Ltd

France

Thierry Bernard,
CORUS, société d’avocat

Germany

Bettina Joos & Felix Muuss,
Ehlermann Rindfleisch Gadow

Guernsey

Karen Le Cras, *Carey Olsen*

Hong Kong

Richard Wilmot, Justin Gan & Howard Hsu,
Watson Farley & Williams

India

Aditi Pandey, Nihit Nagpal, Malyashree Sridharan, Geetanjali Sethi, Pragati Aneja & Puneet Dhawan,
Amitabha Sen & Co

Indonesia

Firmansyah, Karen Mills & Margaret Rose,
KarimSyah Law Firm

Ireland

Maurice Phelan & Paul Bassett,
Mason Hayes & Curran

Italy

Cino Raffa Ugolini,
CREA – AVVOCATI ASSOCIATI

Japan

Akihiro Hironaka,
Nishimura & Asahi

Malaysia

Siva Kumar Kanagasabai & Lee Shih, *SKRINE*

Mexico

Carlos Sierra, Miguel Ruelas, Viridiana Barquin & Juan Tiscareño,
Abogados Sierra y Vázquez

New Zealand

Jonathan Scragg, with contributions from Nicholas Quirke & Tessa McKeown,
DUNCAN COTTERILL

Poland

Dr Jerzy Modrzejewski,
Modrzejewski i Wspólnicy Sp.k.

Russia

Andrey Astapov, Oleh Beketov & Natalia Konovalova,
AstapovLawyers International Law Group

Singapore

Lok Vi Ming, SC & Germaine Tan,
Rodyk & Davidson LLP

South Africa

George van Niekerk, *ENSAfrica*

South Korea

Young Seok Lee, Sae Youn Kim & Stephen Sukjoon Pak, *Yulchon LLC*

Spain

Jorge Angell, *LC Rodrigo Abogados*

Sweden

Erik Wernberg & Jens Tillqvist,
Advokatfirman Cederquist KB

Switzerland

Dieter Hofmann & Stefano Codoni, *Walder Wyss Ltd*

Turkey

Dr Zeynep Çakmak & Elif Demiröz,
Çakmak Avukatlık Bürosu

United Arab Emirates and Dubai International Financial Centre

Jasamin Fichte & Walid Batisha (UAE), Alessandro Tricoli & Teresa Starr (DIFC),
Fichte & Co Legal Consultants

Ukraine

Andrey Astapov, Oleh Beketov & Igor Semenov, *AstapovLawyers International Law Group*

United States

Andrew Rhys Davies & Justin L Ormand,
Allen & Overy LLP

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COMMERCIAL LITIGATION
INTERNATIONAL SERIES

SECOND EDITION

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General Editors: Andrew Horrocks *Andrew Horrocks Law Limited & Maurice Phelan Mason Hayes & Curran*



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Andrew Horrocks Law Limited
&
Maurice Phelan
Mason Hayes & Curran



THOMSON REUTERS

General Editors

Andrew Horrocks & Maurice Phelan

Commissioning Editor

Emily Kyriacou
emily.kyriacou@thomsonreuters.com

Commercial Director

Katie Burrington
katie.burrington@thomsonreuters.com

Publishing Editor

Dawn McGovern
dawn.mcgovern@thomsonreuters.com

Editor

Chris Myers
chris@forewords.co.uk

Editorial Publishing Co-ordinator

Nicola Pender
nicola.pender@thomsonreuters.com

Published in September 2015 by Thomson Reuters (Professional) UK Limited, trading as Sweet & Maxwell
Friars House, 160 Blackfriars Road, London, SE1 8EZ
(Registered in England & Wales, Company No 1679046.
Registered Office and address for service:
2nd floor, 1 Mark Square, Leonard Street, London EC2A 4EG)
A CIP catalogue record for this book is available from the British Library.

ISBN: 9780414050969

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FOREWORD

Andrew Horrocks | Andrew Horrocks Law Limited
Maurice Phelan | Mason Hayes & Curran

Four years have now passed since the publication of the first edition of this book. Despite the generally improving economic outlook, the significant increase in commercial litigation remains evident, partly still caused by the previous financial crisis.

The growth of cross-border commerce means that jurisdictional principles have become more important as litigants are increasingly likely to find themselves involved in disputes in jurisdictions unfamiliar to them. They and their usual lawyers may have limited, if any, understanding of how the local legal system works. Sophisticated litigants are also increasingly aware of the benefits of bringing a claim in a jurisdiction more favourable to their cause of action, even if that means litigating in unfamiliar territories. It is therefore now more important than ever for parties and their advisors alike to be able to obtain an overview of the way litigation is conducted around the world.

Since the publication of the first edition, there have been a number of other noticeable trends. One is the increasing level of case management in commercial litigation undertaken by the courts in our own jurisdictions to attempt to avoid delay and reduce costs. The imposition of stricter time limits requires parties and in turn their lawyers to ensure resources are better managed.

The need to find cost-effective routes to the resolution of commercial disputes also remains a key trend. The market for mediation and other alternative dispute resolution services continues to expand, and arbitration remains popular for disputes arising out of cross-border commerce and investment. Insurance products relating to the costs of litigation have been available for some time in our jurisdictions, and here and elsewhere there is also a third party funding market.

The contributors to this second edition are all leading lawyers in their jurisdictions and are ideally placed to provide practical, straightforward commentary on the inner workings of their respective legal systems. Their kind contributions are greatly appreciated by us. We have been particularly pleased as general editors to have been able to gather such a breadth of contributors for this new book, from just about every major jurisdiction in the world. We express our thanks to all those at Sweet & Maxwell who have worked tirelessly to bring together the chapters and have assisted hugely in the editorial process.

As with the previous edition, a work of this nature will not allow for in-depth analysis or provide solutions for every problem encountered by litigants. The book is intended rather to provide a first port of call so that readers can start to appreciate the approach of the courts in each jurisdiction to commercial litigation and better understand both the procedure they adopt and how the dispute will be resolved in practice.

We hope this book will assist all who come to use it, and will be happy to receive suggestions for future editions.

Andrew Horrocks and Maurice Phelan, London and Dublin, September 2015

TURKEY

Dr Zeynep Çakmak & Elif Demiröz | Çakmak Avukatlık Bürosu

1. COURT STRUCTURE

1.1 How is the court structured? Does a specific court or division hear commercial claims?

The courts in Turkey can be grouped under four titles: (i) civil courts, (ii) administrative courts, (iii) criminal courts and (iv) military courts.

Civil courts include civil courts of peace, civil courts of general jurisdiction (including courts with specific scopes, such as family courts, labour courts and commercial courts) and other courts constituted by special laws. The Turkish Commercial Code No. 6102, published in the Official Gazette No. 27846 dated 14 February 2011 (TCC), determines the types of cases and the courts that are authorised to hear these cases. Unless otherwise specified in the TCC or other specific laws, commercial courts are authorised to hear all commercial cases (cases with a commercial nature) irrespective of the amount of the case or the value of the claim. Article 4 of the TCC delineates the types of case that have a commercial nature. Commercial courts are specially authorised courts and are constituted by the Ministry of Justice in metropolitan cities upon the positive opinion of the Supreme Board of Judges and Prosecutors. Not every metropolitan city has a commercial court. In the event that a separate commercial court has not been established in a city or town, the civil courts of general jurisdiction of that city or town are authorised to hear the commercial cases in the capacity of a commercial court.

Commercial courts usually have three or more judges assigned them to serve as needed, depending on the nature of the matters brought before them. While some matters can be heard and decided upon by a single judge, certain other matters must be heard and decided upon by a panel of judges, consisting of one chief judge and two member judges. The number of judges depends on the amount involved in the dispute or the nature of the matters involved, as indicated under Article 5 of the Law regarding the Establishment, Authorization and Competence of the Courts of Original Jurisdiction and Regional Jurisdiction Courts No. 5235, published in the Official Gazette No. 25606 dated 7 October 2004. Currently, disputes with a total claim over 300,000 TRY are heard and decided upon by a panel of three judges, whereas disputes of a lesser amount are heard and decided upon by one judge. As said, Article 5 requires certain matters, such as lawsuits related to bankruptcy, to be heard and decided upon by a panel of three judges irrespective of the dispute amounts involved.

The commercial cases that are decided upon by commercial courts (or by courts of general jurisdiction in places where there is no commercial court established) may be appealed in the Turkish Appellate Court.

2. PRE-ACTION

2.1 Are parties to potential litigation required to conduct themselves in accordance with any rules prior to the start of formal proceedings?

There is no pre-action requirement in Turkish commercial trials as a precondition to commencing a lawsuit. The parties are, however, free to settle the dispute before, during or after the court proceedings amicably in or outside the court. Also, mediation is available as an alternative dispute resolution mechanism. If the parties are not able

TURKEY

to settle with the assistance of a mediator appointed jointly by themselves, either party may file a lawsuit in a commercial court.

2.2 Are there any time limits for bringing a claim? If so, what are they?

The time limits differ depending on the nature of the case. For instance:

- Unless otherwise stated in the law, all receivables have a statute of limitations of ten years.
- Claims relating to periodic matters, such as claims for rents, interest on principal and wages, have a statute of limitations of five years.
- Accommodation costs and food and beverage costs have a statute of limitations of five years.
- Receivables arising out of small artworks and small retail sales have a statute of limitations of five years.
- Receivables arising out of a partnership agreement, including receivables between partners, the partner(s) and the partnership, and the receivables of managers, auditors and representatives, have a statute of limitations of five years.
- Receivables arising out of agency contracts, attorney contracts, commission contracts and brokerage contracts, except commercial brokerage receivables, have a statute of limitations of five years.
- Receivables arising from construction agreements, except for claims dealing with a contractor who has not fulfilled his or her obligations entirely or partially due to wilful misconduct or gross negligence, have a statute of limitations of five years.
- Claims relating to defect liability have a statute of limitations of two years unless the seller is subject to a longer liability period or the seller was intentionally or grossly negligent.
- Claims for damages have a statute of limitations of two years beginning from the date the damage became known to the affected party, and in any event are subject to a maximum ten year statute of limitations.
- Compensation claims against insurers, have a statute of limitations of ten years beginning from the event date that is subject to insurance.

Note that this is a representative list, not an exclusive one.

3. PROCEDURE AND TIMETABLE IN CIVIL COURTS

3.1 How are proceedings commenced?

A proceeding commences with the claimant party filing a lawsuit petition with the court. The petition must contain sufficient explanations for and details of the defendant(s), the claim, the facts, the legal grounds, the remedies sought and the evidence. After the submission of the lawsuit petition to the relevant court and the deposition of the court costs and fees, the lawsuit file is given a file number and the case is considered as filed (as admitted subject to the procedural screenings that will be made before serving the petition to the counterparty). The claimant is required to submit all his or her evidence to the court, together with information on interim remedies, the measures

that are sought by the claimant and the evidence for which the claimant requires the court to make official inquiries from third parties. After admission of the file, the court clerk serves a copy of the petition to the defendant(s), and this forms the beginning of the trial process. The claimant is not obligated to share his or her petition or documents with the defendant before filing the lawsuit with the court.

3.2 What are the main steps to trial, once a claim has been formally commenced? What is the usual timetable to trial?

After receipt by the defendant of the lawsuit petition filed by the claimant with the court, the defendant has two weeks to submit a response petition, together with his or her evidence. In cases where it is difficult to prepare and file a response within two weeks, the defendant may request additional time from the courts. The courts usually grant additional time to the defendants if such is requested within the two week period. The additional time granted may be no more than one month from the date of the request.

During the response period (two weeks or longer, if so granted by the court), the defendant is entitled to file a counter-claim against the claimant as part of the response. If the defendant files a counter-claim, both claims will be heard and decided upon by the same court. In the event that the defendant does not file a counter-claim within the response period but files a separate lawsuit, the counter-claimant may request the court in which the second lawsuit has been filed to join the two lawsuits together. If the conditions for such a joining decision are met, then the second court will join the lawsuits and the first court will hear both of them.

In the response petition, the defendant is required to submit all his or her responses, legal grounds and evidence. After the submission of the response petition to the file, the claimant has a right to submit his or her responses against the defendant's responses (reply) within two weeks. Upon this submission, the defendant party then has a right to submit a second response petition (rejoinder). With the second response petition, the written submissions (pleadings) stage is completed. The judge then reviews the file and determines a preliminary hearing date, and court invitations are sent to the parties.

Theoretically, the court must decide on the requests of the parties on interim matters, such as the requests for precautionary measures, suspension orders and injunction reliefs, immediately upon their filing, either with the written submissions or separately. In practice, however, the courts usually wait until the written submissions stage has been completed before ruling on such requests. The courts usually require the requesting party to post security with the court in the amount determined by the court before issuing precautionary orders.

3.3 Is it possible to expedite the normal timetable to trial? If so, how?

There is no practice of procedural agreements whereby the process may be shortened. However, it is technically possible for parties to enter into agreements where they can make joint declarations to the court on certain factual or procedural matters or on certain evidence to enable the court to expedite the trial and investigations.

4. DOCUMENTARY EVIDENCE

4.1 Are the parties obliged to search for, retain or exchange documentary evidence prior to trial?

Since there is no jury system in Turkey, both parties must submit all their evidence supporting their claims in the lawsuit with their petitions. The principle of *ex officio* examination is not applicable in civil lawsuits. However, in the event that certain documents are needed to adjudicate the case, the parties have the right to request that the judge order those documents to be submitted to the court from the relevant government office, party, company and so on. The court would then send a writ to the relevant third party in that regard and order the documents to be submitted to the file in a timely manner. The parties are obligated to prepare a sufficient number of petitions and their annexes, so that other party can obtain a complete copy of the submission and review all related documents submitted by the other party. The other party can always review the file and may obtain copies of the documents submitted. Practices such as document discovery and production are not applicable in the Turkish trial system.

4.2 Are there any special rules concerning the exchange of electronic documents?

Electronic documents, which have the nature of evidence, must be submitted to the lawsuit file so that they can be reviewed by the judge(s) before their admission as evidence. This submission may be a print-out or electronic data in electronic form. If such documents are in the possession of third parties, the related party has a right to request that the document be submitted to the file with the judge's order. Upon the order of the judge, the third party must submit the original electronic document or produce a certified copy of the relevant evidence and submit it to the file. In some cases, the court may appoint an expert to analyse such technical documents (such as electronic data, electronic records and voice records) and provide a report to the court as to the subject matter of the evidence.

4.3 Can any documents be withheld from the other side or from the court?

The parties must submit all documents that they rely on as evidence or supporting data. Parties are not required to submit documents that they do not rely on in arguing their respective positions unless the court issues specific orders for specific documents that are known to exist. Official documents, such as corporate books, cannot be withheld if the court issues a disclosure order. If such documents are necessary for a business's day-to-day operations, certified copies may be submitted. If a document is indicated as evidence by a party and this document is thought to be necessary to prove the claim, the judge may grant a definite period of time to the other party to submit this document to the court. In the event that the party denies possession of the document, the judge will require that party to swear under oath that he or she does not have this document in his or her possession or that he or she could not find the document. If the party does not submit the document during the definite period of time ordered by the judge, and if he or she cannot provide an excuse in that regard or he or she denies the existence of the document and does not agree to swear under oath, the judge may accept the statement of other party regarding the content of such document for the purposes of the trial and decision making.

Under Turkish law, attorneys are required to keep any information relating to their clients and cases secret, and such information is considered privileged and confidential for all purposes. It is only with the consent of the client that an attorney may (but is not required to) disclose such secrets/information to the courts. The same principle

is applicable for in-house attorneys (but not for in-house legal counsel who are not members of the Turkish Bar Association).

5. WITNESS EVIDENCE

5.1 Do parties exchange witness evidence prior to trial? If so, how and at what stage in the proceedings?

Under Turkish law, witness evidence is not exchanged prior to trial; in other words, there are no preliminary hearings of witnesses before the trial. During the litigation process, each party has to prove its claims or defence. The claimant party, in its lawsuit petition, may request from the court that its witnesses give testimony during the hearings, and the defendant may also submit the names of its witnesses with its defence petition. The full name and full address of the witness must be specified in the petitions. The content of a witness's statement is restricted to the subject matter of the lawsuit and must be based on information, not on sense perception.

5.2 Do witnesses give evidence at trial? If so, how? Is it possible for the court to hear oral testimony from expert or ordinary witnesses via teleconferencing, or any other remote live connection system?

Witnesses give statements verbally before the court. If the judge finds it necessary, a list of questions can be prepared and sent to the witness for written responses instead of providing a verbal witness statement. However, if the written responses are insufficient or not sufficiently clear, the judge may order the witness to appear in court to provide verbal explanations. The judge administers an oath to witnesses before their written or oral testimony, during which everyone in the court, including the judge and the clerks of the court, remain standing. The form of the oath is read by the judge and the witness confirms the oath. The witness remains standing during his or her statement, but everybody else may sit down after the completion of the oath. Witnesses who are under 15 years of age or otherwise lack legal capacity may testify without an oath. If the witness is far from the judicial locality of the court, the nearest court to the witness may be authorised by the main court to obtain the witness's testimony. If both parties consent, the court may take the statement of a witness, expert or other party via teleconferencing. The chief judge or single judge, as the case may be, directly asks the witness questions. Cross-examination is not permitted under the TCC. If the parties want to ask the witness questions, they must first direct those questions to the judge, who will then direct them to the witness if he or she deems them appropriate for the purposes of the case and the trial. If the judge discovers that the witness has lied during his or her testimony, the judge must promptly prepare a report and send it to the Public Prosecution Office for criminal prosecution. "Perjury" is a criminal act, and may be subject to criminal litigation.

5.3 Can a witness be forced to attend court for the purposes of giving evidence?

All witnesses must appear before the court upon receipt of an official invitation, except for certain circumstances specified in law. A witness who does not attend a hearing despite being invited in due time and form will be compelled to attend the hearing by law enforcement officers upon the order of the judge. In addition, the judge may issue an administrative penalty of up to 500 TRY plus any damages the witness may have caused by not attending the hearing. If the witness justifies his or her failure to attend the hearing, the administrative penalty and damages will not be applied to the witness.

6. EXPERT EVIDENCE

6.1 Are parties permitted to use experts in the proceedings to give opinion evidence? If so, who appoints the expert?

The parties are allowed to submit technical or legal opinions prepared by an independent expert during the hearing. Such reports are accepted as “party-appointed expert opinion”, and form a part of the submission of evidence and/or law by the relevant party. These reports must be strictly related to the subject matter of the lawsuit. Upon the request of the parties or *ex officio*, the judge may invite a party-appointed expert who has prepared an opinion regarding the lawsuit to testify at a hearing, where the parties (if permitted by the judge) and the judge may question him or her.

The judge may also appoint *ex officio* experts to provide expert opinion or testimony to the court; usually these experts are appointed from a list of experts that is prepared every year. The appointment of experts by the court is very common in commercial litigation in Turkey. Since commercial disputes are usually related to technical agreements, the courts commonly prefer this method; however, expert reports are advisory and are not binding on the courts. The courts do not have to rely on such expert opinions or testimony in making their decisions, though they usually rely on the reports provided by the experts appointed *ex officio*.

6.2 Do parties exchange expert evidence prior to trial? If so, how and at what stage in the proceedings?

No. However, it is possible for a party to apply to the court before filing the actual lawsuit for determination of evidence. This method is generally used if there are indications that the evidence may lose its nature in time or may disappear. The existence of a “legitimate legal interest” is required for a party to seek such a determination from a court. This determination is generally made by conducting a site inspection along with experts, who will provide a written report on the determinations made. Usually, the other party is not invited to the inspection or later stages of the determination; instead, the expert report is notified to other party by the court. The court does not rule on any substantive matter at this stage, but simply guides the process of determination. The other party has a right to object to the report within one week after being notified. In the report, the experts give written evidence only and are not allowed to make legal evaluations.

6.3 Do experts give evidence at trial? If so, how?

Experts generally give written evidence at trial, though the judge may order any expert to give oral evidence as well. After the service of the experts’ reports by the court to the parties, each party has the right to raise objections thereto within two weeks. In the case of verbal evidence, the experts’ testimonies are recorded in minutes, which are then signed by the experts, and the two week objection period starts from the date thereof. There is no process of cross-examination of experts. However, the court may ask experts to respond to or comment on the objections made by the parties in written or verbal form.

6.4 How are experts paid and are there any rules to ensure that expert evidence is impartial?

The parties are required to deposit an advance payment in the amount determined by the court for the expert fees and costs of expert review. There are usually predetermined advance payments, the court later asking the parties or the party who has requested the expert to deposit additional amounts, depending on the nature of the lawsuit or considering the efforts made by the experts. As experts are required to be impartial, they must take an oath when they are appointed. When the experts are officially appointed and/or the lawsuit file is delivered to them to start or resume work, they are reminded by the judge of this oath.

7. ENDING A CLAIM/ALTERNATIVE DISPUTE RESOLUTION (ADR)

7.1 What are the main ways in which a claim may be brought to an end before trial?

There are several methods for a claim to be brought to end before the court renders its decision in a lawsuit.

An abandonment of an action (*feragat*) is one such method. Abandonment can be made wholly or partially. Another method is “acceptance of the lawsuit by the defendant” (*davanın kabulü*), which can also be made wholly or partially. This method can be applied only if the defendant has an unrestricted right over the subject matter of the lawsuit. Both abandonment and acceptance can be made by a written petition or verbally during a hearing. The consent of the court or the opposing party is not required for either of these methods. In the event of a partial acceptance or partial abandonment, the part which is subject to these methods must be indicated and stated clearly. Abandonment and acceptance must be unconditional. These methods can be applied up until the decision of the court is finalised. The results of these methods are the same as if the court had issued a final decision.

Another way of ending the lawsuit is “settlement” (*sulh*). Settlement (a mutual compromise) is an agreement that is made before the court by the parties with the aim of resolving the dispute partially or wholly. This method can be applied only if the parties have an unrestricted right to dispose of the subject matter of the lawsuit.

7.2 What ADR procedures are available?

As mentioned in *Section 2.1* above, mediation is an alternative dispute resolution method. It is available both prior to and after filing a lawsuit. If mediation starts after the lawsuit has been filed, the hearing will be postponed by up to three months.

7.3 Can the court compel the parties to use ADR?

The judge may offer the parties the opportunity to use ADR; however, it is not compulsory, and the parties may continue with their lawsuit if they wish to do so notwithstanding the offer from the judge.

8. TRIAL

8.1 What are the main stages of a civil trial? How long would a significant commercial litigation trial last?

Following the completion of the exchange of petitions (written submissions), the judge sets a date for a preliminary hearing and the parties are invited to this hearing. During the preliminary hearing, the judge asks the parties whether there is a possibility of settlement (mutual compromise) or not. If the parties state that there is such a possibility, the judge will postpone the hearing for a period of time to allow the parties to reach a settlement. If the parties fail to do so in the time given, the litigation process will continue. Considering the evidence indicated by the parties, the judge may appoint experts, conduct a site inspection or listen to the parties' witnesses, send writs to related institutions and organisations, and do any other necessary investigations during the trial process. Depending on the case, a commercial litigation trial may take up to two or three years, excluding the appeal stage. As commercial lawsuits are generally related to matters regarding expertise other than law and as such disputes necessitate technical review, *ex officio* appointed expert review is critical and may take a long time. Upon objections from the parties, the judge may appoint new experts. Experts are obligated to submit their report within three months; however, upon the request of the experts, the judge may extend this time of submission for up to an additional three months, indicating the reasons for the extension. In practice, experts usually submit their reports after the allotted time and the courts tolerate such delays. Considering the nature of commercial lawsuits, as stated above, the witnesses are not usually invited to the court. Generally, it is not the number of witnesses but their delayed attendance at the hearing that extends the litigation process considerably.

8.2 Are civil court hearings held in public? Are court documents available to the public?

According to the Turkish Constitution, civil court hearings are held in public. Unless the court issues a special ruling that there is a serious risk to public safety or public morals in conducting the hearings in public, any interested person can sit in the hearings. Court documents can be reviewed by the parties, and the parties may obtain copies of any documents in the file. According to the Attorney's Code, all attorneys can review all lawsuit files; however, they cannot obtain copies unless they submit their power of attorney from a party or related party. Under certain circumstances, judges may issue a confidentiality order for the court file. In such an event, attorneys can only review the files after obtaining the permission of the judge who rendered the confidentiality decision.

9. REMEDIES

9.1 What are the main remedies available prior to trial? In what circumstances can such remedies be obtained?

The principles relating to interim and injunction remedies are governed by Civil Procedural Law No. 6100. An interim order or injunction relief is an interim decision rendered by a court of law to secure temporary measures that prevent any potential danger or irreparable damage from occurring until the final resolution of the matter in substance. An interim order or injunction relief request can be filed either before filing a lawsuit or during the lawsuit. In order for an interim order or injunction relief to be rendered, the party must prove that:

- Irreparable damage would occur if there were a delay in taking the necessary precautions.

- A preventative measure ruled by the court would prevent this danger or irreparable damage.
- Injunction relief may be requested from any competent court that is authorised to hear the dispute with its merits before filing a lawsuit. However, after the lawsuit has been filed, it can only be requested from the court that hears the lawsuit file. In the case of unavoidable circumstances, the court may render an injunction relief decision without listening to the other party. The requesting party shall indicate the reason for and the type of relief requested in its petition, and shall demonstrate that the remedy requested is critical for the proper resolution of the case on its merits. The courts must usually be convinced of the legitimacy of the claim in substance before issuing such remedies.

The court will rule that the requesting party must provide security to cover the damages and loss which may be incurred by third persons and the counterparty as a result of the injunction relief (in practice, such security amount is determined as not less than 15% of the dispute or the claimed amount).

The requesting party must enforce the injunction relief decision within one week after the decision has been rendered. Otherwise, the injunction relief decision will cease to have legal effect. The counterparty has a right to file an objection to the court that rendered the injunction relief decision. Unless otherwise stated by the court in its decision, the objection does not stop the enforcement of the injunction relief. The court will review the objection and can either reject or accept it. The decision upon the objection can be appealed. However, the appeal process does not stop the enforcement of the injunction relief and the decision given upon the appeal is final. If the injunction relief is requested before the filing of a lawsuit, the requesting party shall file its lawsuit based on the merits of the dispute to the court which issued the relief within two weeks after he or she has requested the enforcement of such remedy, and shall submit the documents stating that the lawsuit has been filed. Otherwise the injunction relief decision will cease to have legal effect.

Precautionary attachment of the debtor's (defendant's) assets is another method used before filing a lawsuit, but can be used only if the subject matter of the lawsuit is a receivable.

9.2 What final remedies are available at trial?

Depending on the nature of the case, the judge may render several decisions, such as:

- Damages.
- Transfer of possession.
- Specific performance.
- Prohibition of an act.
- Cancellation of a contract.
- Rectification of a contract.
- Postponement of bankruptcy.
- Bankruptcy.

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- Cancellation of general assembly resolution.
- Cancellation of security.

Note that the foregoing is a representative list and the decisions of commercial courts are not limited to those mentioned above.

10. ENFORCEMENT

10.1 How is an award of damages enforced if a party fails to make payment voluntarily?

The verdict of a court can be submitted to the execution office for execution whether or not the judgment specifies the amount of money due. If the judgment is related to a specific amount of money, the execution office sends the defendant an order of payment. Should the defendant not pay the mentioned amount, his or her assets can be sequestered. After the selling of those sequestered assets by public auction, the amount collected (up to the amount of the receivable and the costs of execution) is transferred to the claimant. If the verdict orders the defendant to do something or prevents an action (such as repairing a defective item or ceasing construction of a building), then the execution office sends an order in this regard and the defendant is compelled to do or not to do what is stated in the order.

11. APPEALS

11.1 Is it possible for a defeated party to appeal a decision after the close of trial? In what circumstances will a party be allowed to appeal?

The defeated party has the right to appeal a decision before the High Court of Appeals within 15 days after being notified of the reasoned decision of the court. The party who prevailed in the case may also appeal the decision if there are grounds for that party to appeal. However, lawsuits where the claim amount is less than 2,080 TRY (as of 2015) or where the decision is rendered within the scope of an ex parte proceeding cannot be appealed. The appealing party must indicate its reasons for the appeal; however, a reversal decision can be rendered by the High Court of Appeals only if:

- The laws or the contract between the parties were wrongfully applied by the first instance court.
- There is no valid cause of action.
- The court of first instance rejected the evidence indicated by the parties to prove their claims without providing any legal reason.
- There were errors or omissions in the litigation process that affected the decision rendered by the court.

11.2 What is the basic procedure for an appeal?

An appeal is made by submitting a petition to the court that rendered the decision, addressed to the related chamber of the High Court of Appeals. (Note that after the establishment of the Provincial High Court and Court of Appeal, there will be a two-step objection/appeal process. The date of establishment of these courts has not yet been finalised.) The appealing party must set forth in its petition the reasons for the appeal and ask for a reversal decision.

The appeal review is made on file without a hearing. However, if the claim is over 60,000 TRY, the appealing party may request a hearing. If accepted by the appeal court, only one hearing is conducted after written submissions. Each appeal file is assigned to an investigating (reporting) judge, who takes care of the file and the process up to the hearing and decision making. The investigating judge submits the file to a panel of judges after the completion of written pleadings and his or her own review with a report. Thereafter, the hearing (if requested and accepted) and decision making is handled by the panel of judges. The High Court of Appeals is not bound by the reasons stated in the appeal petition and may render a reversal decision for another reason. The High Court of Appeals does not hear witnesses, nor does it conduct a site inspection or appoint experts. In the event of a procedural deficiency, such as of witnesses, experts' review or site inspection, the High Court of Appeals reverses the decision based on procedural grounds and the court of first instance must rectify the procedural deficiency.

12. COSTS/FUNDING

12.1 How are legal fees ordinarily charged to a client? On an hourly rate?

There is no statutory rule under Turkish law regarding the way legal fees are determined or charged. However, the Turkish Bar Association publishes a tariff every year stating the minimum fixed or contingency rates for attorneys. Attorneys are required to comply with this tariff. Usually, the courts use this tariff as the basis for ruling on legal costs and fees.

12.2 Are there any restrictions on lawyers entering into "no win, no fee" agreements with their clients?

According to the Lawyers' Code, legal services must be rendered for a fee. If an attorney handles a lawsuit without a fee, the relevant local Bar association must be notified. In other words, handling a lawsuit without a fee is exceptional and the attorney handling the lawsuit without a fee may face disciplinary action. A legal service agreement must include a legal fee. Subject to the restrictions in the Lawyers' Code for relative values and the limits that may be provided in the tariff issued by the Turkish Bar Association, a legal service agreement that provides for a fee above the amount provided in the legal tariff is valid. A contingent legal fee can be determined between the parties as not more than 25% of the value of the disputed asset or the claim. A fixed fee can also be agreed in the form of a fixed amount or a proportion of the disputed amount or the claim. However, as handling a lawsuit without a fee is not permitted, a "no win, no fee" agreement is not acceptable under Turkish Law.

12.3 Is it permissible for a third party to fund a claim? Are there any restrictions on the use of such funding?

There is no specific legislation in Turkey regarding funding of claims. There is no restriction on third party funding of claims either. In theory, an agreement between two private parties for funding a claim would be enforceable subject to the general requirements applicable to contracts. However, the involvement of lawyers in claim funding and referrals made by lawyers for claim funding in return for a fee or role in the claim would be against the Lawyers' Code and would trigger professional and ethical prosecution by the Turkish Bar Association.

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12.4 Is it possible to obtain insurance which will cover the costs of bringing the claim?

Except for the legal aid programme implemented by the local Bar associations, there is no statutory insurance or private insurance practice which would cover the costs of bringing claim. A person meeting the requirements to obtain legal aid would be represented by an attorney appointed by the local Bar association, and his or her court fees and costs would be paid by the state. Obtaining private insurance for such costs is technically possible, but there is no common practice as such.

12.5 Can the court order a losing party to pay a winning party's costs? If so, in what circumstances and to what extent?

Yes. It is common practice for the courts to order the losing party to pay the winning party's court costs and attorney's fee. The winning attorney's fee is determined according to the tariff published by the Turkish Bar Association. If the court renders a decision of "partial acceptance" or "partial rejection", the court costs are shared between the claimant and the defendant based on the proportions determined by the court. These costs and cost-sharing orders are stated explicitly in the court decision.

12.6 Can the court make an order providing security for costs prior to permitting a claim to proceed? If so, what are the circumstances in which such an order is possible?

A claim is considered to be filed (initiated and admitted) when the plaintiff pays all the statutory court fees to be paid at the time of filing, as described in *Section 3.1* above. The plaintiff is also required to deposit with the secretariat of the court an advance payment to cover other costs for evidence, such as expert opinions and site inspections. If the party requesting such evidence does not make the advance payment, such party will be considered to have waived the right to use such evidence.

13. COLLECTIVE ACTIONS

13.1 Can claimants with similar claims bring a collective action against an alleged wrongdoer?

Non-governmental organisations established in Turkey (usually in the form of associations) may file lawsuits aiming at protecting the rights of their members or the interest groups they represent. This is called a "collective lawsuit". The outcome of such lawsuits might be benefited directly by the members of such organisations or indirectly by interest groups in the form of legal precedents.

13.2 Is the procedure for bringing a collective action different to the procedure for a normal claim?

The procedure is the same as for a normal claim.

14. OTHER SPECIAL FEATURES

14.1 Are there any other special features of the commercial litigation regime that litigants should be aware of?

Turkey is an administrative law jurisdiction. Although commercial relationships between the state and state entities are within the jurisdiction of private (commercial courts) in principle, certain matters of a commercial nature in general terms may be required to be brought before the administrative courts simply because (i) the contract or relationship may be categorised as a special matter falling under the jurisdiction of administrative courts or (ii) the other party to the contract or relation may be an administration, corporation or enterprise that is owned directly or indirectly by the state or a state entity. Administrative courts are subject to a different trial process and the administrative courts tend to favour the interests of the state.

14.2 Are there any forthcoming changes to commercial litigation practice in your jurisdiction or any proposals for reform?

No.

CONTACT DETAILS

GENERAL EDITORS

Andrew Horrocks
Andrew Horrocks Law Limited
35 Bedford Road
London N2 9DB
UK
t +44 7786 738254
e andrew@horrockslaw.co.uk

Maurice Phelan
Mason Hayes & Curran
South Bank House
Barrow Street
Dublin 4
Ireland
t +353 1 614 5000
f +353 1 614 5001
e mphelan@mhc.ie
w www.mhc.ie

ARGENTINA

Gonzalo García Delatour &
María Lucila Marchini
Estudio Beccar Varela
1 Tucumán Street, 3rd Floor
Edificio República
Buenos Aires C1049AAA
Argentina
t +54 11 4379 6800/4700
f +54 11 4379 6860
e gdelatour@ebv.com.ar
e mmarchini@ebv.com.ar
w www.ebv.com.ar

AUSTRALIA

Minter Ellison, Scott Chesterman &
Vicki Bell
525 Collins Street
Melbourne VIC 3000
Australia
t +61 3 8608 2614
t +61 438 363 093
e scott.chesterman@minterellison.com
e minterellison.com
e vicki.bell@minterellison.com
w minterellison.com

BRAZIL

Carlos Roberto Siqueira Castro, Daniela
Soares Domingues, Iara Santos Conrado
& Caroline Gomes Tabach da Rocha
Siqueira Castro – Advogados
Rua Tabapuã, number 81 -4 floor
Itaim Bibi
São Paulo – SP 04533-010
Brazil
t +55 11 3704 9840
f +55 11 3704 9848

Praça Pio X 15 – 3 floor – Centro
Rio de Janeiro – RJ 20040-020
Brazil
t +55 21 2223 8818
f +55 21 2516 8308
e danieladomingues@siqueiracastro.com.br
e ddomingues@siqueiracastro.com.br
e ebassaco@siqueiracastro.com.br
w www.siqueiracastro.com.br

CANADA

Michael Statham & Nadia Chiesa
WeirFoulds LLP
66 Wellington Street West,
Suite 4100
PO Box 35, Toronto-Dominion Centre
Toronto, Ontario
M5K 1B7 Canada
t +1 416 947 5023
t +1 416 947 5084
f +1 416 365 1876
e mstatham@weirfoulds.com
e nchiesa@weirfoulds.com
w www.weirfoulds.com

CAYMAN ISLANDS

Peter Hayden, Hector Robinson & Louis
Mooney
Mourant Ozannes
94 Solaris Avenue
Camana Bay
PO Box 1348
Grand Cayman KY1-1108
Cayman Islands
t +1 345 814 9165
f +1 345 949 4647
e louis.mooney@mourantozannes.com
e hector.robinson@mourantozannes.com
e peter.hayden@mourantozannes.com
w www.mourantozannes.com

CONTACT DETAILS

CHINA

Denning Jin
King & Wood Mallesons
17th Floor, One ICC, Shanghai ICC
999 Huai Hai Road (M)
Xuhui District
Shanghai 200031
China
t +86 21 2412 6020
t +86 1390 188 3273
f +86 21 2412 6150
e denning.jin@cn.kwm.com

CYPRUS

Andreas Erotocritou & Antreas Koualis
AG Erotocritou LLC
1 Arch Kyprianou & Ayiou Andreou
Corner,
Loucaides Building, 6th Floor,
Limassol 3036
Cyprus
t +357 25 370101
f +357 25 370102
e info@erotocritou.com
e andreas erotocritou@erotocritou.com
e antreas.koualis@erotocritou.com
w www erotocritou.com

ENGLAND & WALES

Andrew Horrocks
Andrew Horrocks Law Limited
35 Bedford Road
London N2 9DB
UK
t +44 7786 738254
e andrew@horrockslaw.co.uk

Leah Alpren-Waterman
Watson Farley & Williams LLP
15 Appold Street
London EC2A 2HB
UK
t +44 20 7814 8000
f +44 20 7814 8141
e lalpren-waterman@wfw.com
w www.wfw.com

FINLAND

Kristiina Liljedahl & Saara Lapiolahti
Borenus Attorneys Ltd
Eteläesplanadi 2
FI-00130 Helsinki
Finland
t +358 20 713 33
f +358 20 713 3499
e kristiina.liljedahl@borenus.com
e saara.lapiolahti@borenus.com
w www.borenus.com

FRANCE

Thierry Bernard
CORUS, société d'avocat
14, rue d'Anjou
75008 Paris
France
t +33 1 42 66 58 57
f +33 1 42 66 60 73
e tbernard@corus-avocats.com
w www.corus-avocats.com

GERMANY

Bettina Joos & Felix Muuss
Ehlermann Rindfleisch Gadow
Rechtsanwälte Partnerschaft mbB
Ballindamm 26
20095 Hamburg
Germany
t +49 40 37 48 14 0
f +49 40 37 48 14 30
e joos@erg-legal.com
e muuss@erg-legal.com
w www.erg-legal.com

GUERNSEY

Karen Le Cras
Carey Olsen
Carey House, Les Banques
St Peter Port
Guernsey GY1 4BZ
Channel Islands
t +44 1481 741524
e karen.lecras@careyolsen.com
w www.careyolsen.com

CONTACT DETAILS

HONG KONG

Richard Wilmot, Justin Gan & Howard Hsu

Watson Farley & Williams
Units 1703-1707, One Pacific Place
88 Queensway
Hong Kong

t +852 2168 6700

f +852 2918 9777

e rwilmot@wfw.com

w www.wfw.com

INDIA

Aditi Pandey, Nihit Nagpal, Malyashree Sridharan, Geetanjali Sethi, Pragati Aneja & Puneet Dhawan

Amitabha Sen & Co
Attorneys & Advocates
Suite 601 F, 5 Hailey Road
New Delhi – 110 001, India

t +91 11 2335 2365

f +91 11 2335 2594

e asenco@vsnl.com

w www.asenco.in

INDONESIA

Firmansyah, Karen Mills & Margaret Rose

KarimSyah Law Firm
Alamanda Tower, Level 27
Jalan TB Simatupang Kav. 23–24
Jakarta 12430

Indonesia

t +6221 2966 0001

f +6221 2966 0007

e kmills@cbn.net.id

e firmansyah@karimsyah.com

w www.karimsyah.com

IRELAND

Maurice Phelan & Paul Bassett
Mason Hayes & Curran

South Bank House
Barrow Street
Dublin 4
Ireland

t +353 1 614 5000

f +353 1 614 5001

e mphelan@mhc.ie

e pbassett@mhc.ie

w www.mhc.ie

ITALY

Cino Raffa Ugolini
CREA – AVVOCATI ASSOCIATI
Via del Lauro, 9
20121 Milano

Italy

t +39 0289836800

f +39 0289836899

e c.raffa@crealaw.com

w www.crealaw.com

JAPAN

Akihiro Hironaka
Nishimura & Asahi
Ark Mori Building
1-12-32, Akasaka
Minato-ku
Tokyo 107-6029
Japan

t +81 3 5562 8644

f +81 3 5561 9711

e a_hironaka@jurists.co.jp

w www.jurists.co.jp/en/

MALAYSIA

Siva Kumar Kanagasabai & Lee Shih SKRINE

Unit 50-8-1, 8th Floor
Wisma UOA Damansara
50 Jalan Dungun
Damansara Heights
50490 Kuala Lumpur
Malaysia

t +603 2081 3999

f +603 2094 3211

e skk@skrine.com

e ls@skrine.com

w www.skrine.com

MEXICO

Carlos Sierra & Miguel Ruelas
Abogados Sierra y Vázquez
Prolongación Reforma No. 1190 25th Floor

Santa Fe

Mexico DF 05349

t +52 55 52 92 78 14

f +52 55 52 92 78 06

e csierra@asyv.com

e mruelas@asyv.com

w www.asyv.com

w www.asyv.aero

CONTACT DETAILS

NEW ZEALAND

Jonathan Scragg
Duncan Cotterill, Lawyers
Level 2 Chartered Accountants House
50 Customhouse Quay
PO Box 10376
Wellington 6143
New Zealand
t +64 4 499 3280
f +64 4 499 3308
e jonathan.scragg@duncancotterill.com
w www.duncancotterill.com

POLAND

Dr Jerzy Modrzejewski
Modrzejewski i Wspólnicy Sp.k.
Al. Stanów Zjednoczonych 61a
04-028 Warsaw
Poland
t +48 22 516 26 00
f +48 22 516 26 01
e modrzejewski@modiwi.pl

RUSSIA

Andrey Astapov, Oleh Beketov &
Natalia Konovalova
AstapovLawyers International Law
Group
Svyatogor-2 Business Centre
10 Letnikovskaya Street, building 2,
8th floor
Moscow, 115114
Russian Federation
t +7 495 987 12 10
f +7 495 987 12 11
e astapov@astapovlawyers.com
e beketov@astapovlawyers.com
e konovalova@astapovlawyers.com
w www.astapovlawyers.com

SINGAPORE

Lok Vi Ming, SC & Germaine Tan
Rodyk & Davidson LLP
80 Raffles Place
#33-00 UOB Plaza 1
Singapore 048624
t +65 6225 2626
f +65 6557 2522
e lok.viming@rodyk.com
e germaine.tan@rodyk.com
w www.rodyk.com

SOUTH AFRICA

George van Niekerk
ENSafrica
1 North Wharf Square
Loop Street
Foreshore
Cape Town 8001
South Africa
t +27 21 410 2500
f +27 21 410 2555
e gvanniekerk@ensafrica.com
e info@ensafrica.com

SOUTH KOREA

Young Seok Lee, Sae Youn Kim &
Stephen Sukjoon Pak
Yulchon LLC
Textile Center 12F
518 Teheran-ro
Daechi-dong, Gangnam-gu
Seoul 135-713
Korea
t +82 2 528 5200
f +82 2 528 5228
e mail@yulchon.com
w www.yulchon.com

SPAIN

Jorge Angell
LC Rodrigo Abogados
Lagasca, 88 – 4th floor
28001 Madrid
Spain
t +34 914 355 412
f +34 915 766 716
e jangell@rodrigoabogados.com
w www.rodrigoabogados.com

SWEDEN

Erik Wernberg & Jens Tillqvist
Advokatfirman Cederquist KB
PO Box 1670
SE-111 96 Stockholm
Sweden
t +46 8 522 06500
f +46 8 522 06700
e erik.wernberg@cederquist.se
e jens.tillqvist@cederquist.se
w www.cederquist.se

CONTACT DETAILS

SWITZERLAND

Dieter Hofmann
Walder Wyss Ltd
Seefeldstrasse 123
PO Box 1236
8034 Zurich
Switzerland
t +41 58 658 58 58
f +41 58 658 59 59
e dieter.hofmann@walderwyss.com
w www.walderwyss.com

Stefano Codoni
Walder Wyss Ltd
Via F Pelli 12
PO Box 5162
6901 Lugano
Switzerland
t +41 58 658 40 00
f +41 58 658 59 59
e stefano.codoni@walderwyss.com
w www.walderwyss.com

TURKEY

Dr Zeynep Çakmak & Elif Demiröz
Çakmak Avukatlık Bürosu
Piyade Sokak, Portakal Çiçeği
Apt. No. 18
C Blok Kat: 3
Çankaya
Ankara 06550
Turkey
t +90 312 442 4680
f +90 312 442 4690
e z.cakmak@cakmak.av.tr
e e.demiroz@cakmak.av.tr
w www.cakmak.av.tr

UAE & DIFC

Jasamin Fichte & Walid Batisha (UAE)
Alessandro Tricoli & Teresa Starr (DIFC)
Fichte & Co Legal Consultancy
19th floor, Prism Tower
Sheikh Zayed Road, Business Bay
Dubai, UAE
t +971 4 43 57 577
f +971 4 43 57 578
e jasamin.fichte@fichtelegal.com
e walid.batisha@fichtelegal.com
e alessandro.tricoli@fichtelegal.com
e teresa.starr@fichtelegal.com
w www.fichtelegal.com

UKRAINE

Andrey Astapov, Oleh Beketov &
Igor Semenov
AstapovLawyers International Law
Group
Sophia Business Centre
6 Rylskiy Lane, 6th floor
Kyiv, 01601
Ukraine
t +380 44 490 7001
f +380 44 490 7002
e astapov@astapovlawyers.com
e beketov@astapovlawyers.com
e semenov@astapovlawyers.com
w www.astapovlawyers.com

UNITED STATES

Andrew Rhys Davies & Justin L Ormand
Allen & Overy LLP
1221 Avenue of the Americas
New York, NY 10020
USA
t +1 212 610 6300
f +1 212 610 6399
e andrew.rhys.davies@allenoverly.com
e justin.ormand@allenoverly.com
w www.allenoverly.com