

# Amendments to Warranty Agreement Provisions under the New Turkish Code of Obligations

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The Turkish Code of Obligations no. 818 (“Code”) will be replaced by the new Code of Obligations no. 6098 (“New Code”) which will enter into effect on July 1, 2012. The purpose of drafting the New Code was to modernize the language of the Code and also to amend the Code in light of modern demands and practices.

In addition to the provision in the Code regarding warranty agreements, new provisions not covered by the Code are regulated under the New Code in Articles 595 through 603. According to Article 483 of the Code, warranty agreement is defined as an agreement in which the guarantor ensures the performance of the debtor’s obligation to the creditor.

This article will shed light on the crucial amendments to the regulations on warranty agreements, which were significantly amended in the New Code. Details of the new regulation shall be examined in terms of the format of, consent of a spouse in, and withdrawal from warranty agreements.

## Format of Warranty Agreements

Given the issues in practice, provisions regarding warranty agreements have been amended under the New Code, tightening restrictions on format requirements in favor of the guarantor. According to the relevant provisions of the New Code, a warranty agreement must be in writing and the maximum amount that can be incurred by the guarantor must be stated in the agreement. In addition to such requirements, the date of warranty, joint guarantee, or similar statements shall be made in the warranty agreement and these statements shall be written by the guarantor in his/her own handwriting. Moreover, amendments to a warranty agreement after the signing date and also amendments imposing more responsibility on the guarantor shall not be valid unless satisfying the abovementioned requirements of warranty agreements. Furthermore, a grant of special authority to a guarantor and/or an undertaking by a guarantor to act on behalf of a third party is subject to the fulfillment of such requirements. Clearly, the format requirements of warranty agreements under the New Code are regulated in a stricter way.

## The Written Consent of the Spouse in Warranty Agreements

The provision regarding the written consent of the guarantor’s spouse, which was not included under the Code, is regulated under the New Code in order to protect the spouse from any damages that may arise from a warranty agreement. According to the relevant article of the New Code, for a warranty agreement to be valid, the written consent of the spouse is required before the signature date of the agreement or, at the latest, at the time of the execution of the agreement.

The written consent of the spouse is not required if one of the following exceptions is true:

- (i) a court decision regarding the separation,
- (ii) a decision entitling the spouses to live separately, or
- (iii) subsequent amendments on the warranty agreement which do not impose more responsibility on the guarantor or which do not result in the conversion of the ordinary guarantee to a joint guarantee or which do not cause the guarantees that are in favor of the guarantor to diminish.

### Term of Warranty Agreements

The provision regarding the term of the warranty agreement has been significantly amended under the New Code. In accordance with this amendment, a warranty granted by real persons for a period of more than ten (10) years shall automatically expire at the end of ten (10) years. The warranty term may be extended (provided that there is a written declaration by the guarantor, in the form of a guarantee agreement, made not later than one (1) year prior to the expiration of the warranty period) for a maximum period of ten (10) years. Unless the term of the warranty has been extended or a new warranty has been granted, the guarantor shall only be liable for a period of ten (10) years even if the warranty is granted for a period exceeding ten (10) years.

### Withdrawal from Warranty Agreements

The right to withdraw from a warranty is regulated as a new right under the New Code, as this right has not been regulated under the Code. According to the provision regarding the right to withdraw, for guarantees in relation to debts to be incurred in the future

only, the guarantor may withdraw from the warranty agreement by written notice to the creditor provided that the debt has not yet been incurred and the financial condition of the debtor has been materially diminished after the execution of the warranty agreement or the financial condition of the debtor is worse than the financial condition assumed in good faith at the time of the execution of the warranty agreement.

### Conclusion

Under the New Code, the provisions regarding warranty agreements of the Code have been amended and several new provisions have been included as well. These provisions have been amended and added to bring the legislation in line with technological developments, modern demands in practice and the necessity of providing protection to the weaker party (the guarantor) in warranty agreements. As explained above, articles regarding the stricter format of warranty agreements, requiring the written consent of the spouse, and specifying the terms of the warranty agreement are a couple of crucial illustrations of such protection.