



THE NEW TRANSPORT LEGISLATION ACCORDING TO THE TURKISH COMMERCIAL CODE

TRANSPORT AND LOGISTICS SERVICES are an important part of trade and the New Turkish Commercial Code number 6102 that came into force on 1 July 2012 sets out the relevant regulations for this sector as well as for companies that want to transport their goods by road. Mention must be made that nearly 90% of the movement of goods in Turkey is by road. The legal relations between the sender of goods and the consignor are regulated by the New Turkish Commercial Code ("TCC") and internationally by various conventions, depending on the means of transport used. With this article we want to portray an overview of the relevant statutory regulations regarding the transport of goods by road.

Outlines of the New Transport Legislation

The New Turkish Commercial Code introduced new provisions for the transport of goods by road. The general sections aim to regulate the liabilities of the carrier, the limitation to special drawing rights and the periods of limitation and exclusion. The information provided below applies, whenever the goods are to be carried over land by road and if the carriage is part of the operation of a commercial enterprise.

The Transport Legislation in the TCC is divided into six parts:

- 1) The first part (Art. 850 – 855 TTC) contains rules of application and a number of general provisions;
- 2) The second part (Art. 856 - 893) deals with the transport of goods;
- 3) The third part (Art. 894 - 901) provides regu-

lations regarding the transport of household and office goods;

4) The fourth part (Art. 902 - 905) deals with multimodal transport;

5) The fifth part (Art 906 – 916) provides regulations regarding the passenger transport;

6) The sixth part (Art. 917 – 930) touches on forwarding business.

The Main Obligations Regarding the Contract of Carriage

By virtue of a contract of carriage, the carrier is obliged to carry the goods to their destination and there to deliver them to the contractual consignee. The sender is obliged to pay the agreed freight. The sender shall package the goods in such a way that they are protected against loss and damage and that the carrier suffers no detriment. Furthermore the sender shall label the goods to the extent necessary to handle them in accordance with the contract. The sender shall provide to the carrier such documents and such information as may be necessary for official processing prior to the delivery of the goods, in particular for customs clearance.

Dangerous Goods

If dangerous goods are to be carried, the sender shall inform the carrier regarding the precise nature of the danger and if necessary of the precautionary measures to be taken, in good time and in written form. If the carrier neither knew of the nature of the danger nor had at least been informed, the carrier may unload, store or return the dangerous goods or to the extent nec-

essary destroy them or render them harmless without becoming liable in damages to the sender and furthermore the carrier may claim reimbursement for taking these measures.

Loading and Unloading of the Goods

Unless the contract, the circumstances or the transport usage indicate otherwise, the sender shall put on board, stow and secure the goods so as to provide for their safe transport as well as unload them. No extra fee may be charged for loading and unloading time, but if the carrier waits beyond the loading or unloading time on the basis of a contractual agreement for reasons outside the sphere of risks to be borne by him, he is entitled to appropriate demurrage.

Sender's Liability in Special Cases Irrespective of Fault

The sender shall even without fault, compensate the carrier for damage and outlays caused by insufficient packaging or labelling, incorrect or incomplete statements made in the consignment note, failure to disclose the dangerous nature of goods or absence, incompleteness or incorrectness of documents and information specified in the applicable national or international legislation. The sender's liability is limited to the amount of 8,33 special drawing right for each net kilogram.

Termination of the Contract by the Sender

The sender may at any time terminate the contract by notice. If the sender terminates the contract the carrier may claim either:

- 1) the agreed freight, any demurrage, as well as any outlay which the carrier is entitled to have refunded according the applicable legislation, minus savings occasioned by the termination of the contract; or
- 2) one third of the agreed freight;

But if the termination is based on reasons within the sphere of risks to be borne by the carrier, a claim of the kind mentioned above is not possible.

Subsequent Instructions

The sender has the right of disposal in relation to the goods and may in particular instruct the carrier to stop the goods in transit or to deliver them to another destination or another consignee. The carrier is obliged to comply with such instructions only in so far as this can be done without the risk of prejudice to his business or damage to the senders or consignees of other consignments.

Upon the arrival of the goods the sender's right of disposal lapses. Henceforth the right of disposal shall pass to the consignee. If this right is exercised, additional outlays of the carrier shall be reimbursed. Furthermore, if a consignment note has been issued and signed by both parties, the sender may exercise this above mentioned right only upon presentation of a copy of the consignment note, if the consignment note so prescribes.

Presumption of Loss

The person¹ is entitled to make a claim and may assume the goods lost, if the delivery has not taken place within an additional period of twenty days for domestic transport and thirty days in cases of cross-border carriage. Within thirty days of having been notified that the lost goods have been found, the person entitled to make a claim may demand that they may be delivered to him concurrently with repaying the previously paid compensation. If the goods have been found after the compensation has been paid and if the person entitled to make a claim has not asked to be informed or if having been informed but without demanding delivery, the carrier has the right of free disposal in relation to the goods. The carrier is liable for any damage resulting in, loss of or damage to the goods during the time between the taking over of the goods and their delivery, or because of delay in delivery.

Carrier's Liability

The carrier is relieved of liability in so far as the loss, damage or delay in delivery was caused by circumstances, which the carrier could not avoid even by exercising the utmost diligence hence resulted in consequences which the carrier was unable to prevent. The carrier is additionally relieved of liability in so far as the loss, damage or delay was due to actions of persons beyond his control such as insufficient packaging by the sender, handling, loading or unloading of the goods by the sender or the consignee, nature of goods or insufficient labelling of packages by the sender, as mentioned in detail above.

Responsibility Regarding the Servants of the Carrier

The carrier is furthermore responsible for the acts and omissions of his servants to the same extent as for his own but only if the servants act within the scope of their employment. The same applies to the acts and omissions of other persons whose services are used for the carriage of the goods.

Carrier's Liability and Limitations

A special feature of both, national and international Trans-

port Legislation is that the liability of the carrier (and in the aforementioned cases of the sender) is limited, to 8.33 Special Drawing Right ("Özel Çekme Hakkı") per kilogram. Special Drawing Rights are an artificial unit of currency, introduced by the International Monetary Fund and available at the internet site: www.tcmb.gov.tr. This liability limit can only be exceeded, leading to full liability, in the event of grossly negligent conduct on the part of the carrier.

Hence the compensation payable for loss of or damage to the entire consignment is limited to an amount of 8.33 special drawing right for each kilogram of gross weight of the consignment. The liability of the carrier for non-compliance with the delivery period is limited to an amount equal to three times of the freight. If the carriage is performed by a third party as actual carrier, the actual carrier shall be liable in the same way as the contractual carrier for damages caused during the carriage performed by the actual carrier. The carrier and the actual carrier are liable jointly and severally.

Non-contractual Claims

The exemptions from and limitations on liability provided in the Turkish Commercial Code or in the contract of carriage shall also apply to a non-contractual claim of the sender or of the consignee against the carrier for loss of or damage to the goods, or for delay in delivery.

Lien over the Goods

The carrier has a lien over the goods for all claims founded on the contract of carriage, which extends to the accompanying documents. The liens persist as long as the carrier has possession of the goods, in particular as long as he has the right of disposal over them by means of a bill lading, consignment bill or warehouse warrant.

Carriage by using Various Modes of Transport (Multimodal Transport)

If carriage of goods is performed by various modes of transport on the basis of a single contract of carriage and if, separate contracts had been concluded between the parties for each part of the carriage which involved one mode of transport regarding a leg of carriage, the afore-

mentioned shall apply to the contract unless special provisions or international conventions dictates otherwise.

Forwarding Business

By virtue of the forwarding contract the forwarder is obliged to arrange for the dispatch of the goods. The duty to arrange for the dispatch of the goods includes the arranging of the carriage, this means in particular the determination of the means of transport, the route of transport, the choice of the performing enterprise and the securing of sender's claim to compensation. In addition, the forwarder is also entitled to perform the carriage of the goods himself. If a forwarder exercises this right, he has, as far as the carriage is concerned, the rights and duties of a carrier. In this case, he may charge the usual freight in addition to the remuneration for his services as forwarder. The sender is obliged to pay the agreed commission. The forwarder issues the required contracts in his own name or if the is authorised to do so, in the name of the sender. The forwarder is liable for any damage resulting in loss of or damage to goods in his custody. Furthermore the forwarder is also liable for damage other than loss of or damage to the goods in his custody if he has acted in breach of a duty, but he is relieved of such liability if the damage could not have been avoided by exercising the diligence of a prudent businessman.

Conclusion

This Article reviewed the main aspects and outlines of the new transport legislation for transport of goods by road in Turkey, which came into force on 1st July 2012. It is important to note that a party may adapt a contract of carriage to its own needs in compliance with the obligatory provisions of national and international transport legislation. A transport with a cross-border dimension is covered by international conventions and agreements in addition to the above mentioned provisions.

By Fatma Bilim | fbilim@goksusafiisik.av.tr



¹ Person means the sender or the consignee, depending on who is entitled to the goods according the Turkish Transport Legislation.