SURETY BOND DILEMMA IN TURKISH INSURANCE

-Breathing Life Into Phraseology-

Insurance in Turkey is regulated by two primary sources. The Insurance Law No. 5684 (InsL) codifies establishment, license, tariff, financial structure as well as supervision of insurance companies and furthermore states the prerequisites of being actuary, broker and agent. Having said that, Export Credit Bank of Turkey (Turk Eximbank) is out of the scope of InsL in accordance with the 1st article of InsL. Turkish Commercial Code, Law no 6102 (TCC) on the other hand focuses on contractual relations, obligations and parties’ rights, moreover defines the insurance contract, duration, conclusion and limitation period thereof. When it comes to secondary source, Ministry of Treasury and Finance drafts General Terms and Conditions per each insurance branch and such legislative power rests with the 11th article of InsL.

Prior to bringing a perspective to Surety Bond in terms of Turkish Law and being lost among provisions, the incentive behind Surety Bond’s recent rear needs to be reminded. The turning point in Surety Bond is the year 2017 when an amendment took place in Public Procurement Law no 4734 (PPL). The term of “Guarantee Letter” has been added to the definitions of PPL and together with Letter of Guarantees provided by Banks, Surety Bonds issued within the scope of Suretyship Insurance by Insurance Companies domiciled in Turkey has also been regarded as “letter of guarantee”. The amendment in the PPL paved the way for raising of the following question “Are we entering into an era wherein Turkish Insurance Companies begin to issue Letter of Guarantees as Banks do?”

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1 A similar article exists under the Law no 3332 whereby Export Credit Bank of Turkey has been converted to join stock company and subjected to private law.
2 From many aspects TCC has similarities with German Insurance Contract Act (Versicherungsvertragsgesetze, VVG) and PEICL (The Principles of European Insurance Contract Law)
3 The scope of the PPL is similar to Federal Acquisition Regulation (“FAR”) and like Miller Act of US, PPL of Turkey is the regulation that requires contractors to provide Surety Bond in material, equipment or service procurement by Public. While Miller act provides a cap before which, contractor is not obligated to submit a Bond, under PPL, irrespective of the bid’s amount, contractor is obligated to provide a letter of guarantee amounting not lesser than % 3 of the Tender. After awarding the contract, the amount of letter of guarantee amplifies to % 6 of the Tender. And it is solely up to discretion of Public Procurement Authority to determine the form and the scope of such letter of guarantee. Mutual feature of both regulations is while a surety company must hold a “certificate of authority” and be placed on Treasury Circular 570 List, Turkish insurance companies must also hold a license in “Surety” branch. Please see https://fiscal.treasury.gov/surety-bonds/circular-570.html and https://ms.hmb.gov.tr/uploads/2018/11/Kefalet-ve-Tek-Risk-Sigortalar%C4%B1na-%C4%B0l%C5%9Fkin-Genelge-20153.pdf last visited on 29.08.2019.
Majority of the Letter of Guarantees used in Turkish financial markets are unconditional and since the very purpose of insurance is a conditional indemnification prior to which Policyholder is obliged to pay the premium and execute its duties (informing the insurer of all important circumstances, notifying it as to materialization of the risk, provide information necessary for determining the extent of risk and indemnity, take measures to prevent or mitigate the loss and protect insurer’s right to recourse) PPL’s gathering two different kinds of instruments under the umbrella of guarantee appeared to be odd. As stated hereinabove, TCC imposes two main obligations on Policyholder, monetary obligation is the payment of the premium and while failure in paying the premium or the first installment results in avoidance, failure in paying the subsequent ones results in termination of the contract. Latter obligations are the duty of disclosure, taking measures and protecting insurer’s rights. Owing to the degree of the negligence, breaching these duties may result in a deduction in indemnification or even a zero indemnification.

Despite of insurance’s being conditional in nature PPL, a non-insurance regulation treated Surety Bond as if it is a pure unconditional guarantee. Hence in a circumstance where Policyholder violates its obligations, by paying the indemnification upfront, insurer may be deemed to have renounced from its right to deduct the indemnification. Sub insurance legislations hold the same approach as PPL does and allow parties to draft unconditional Surety Bonds. Consequently, as of now there is a split of doctrine as to whether Surety Bond is insurance and some are still skeptic in placing Surety Bond even as a “quasi-financial guarantee”.

Surety Bond’s function and the rules applied vary in many jurisdictions and this deviation undoubtedly stems from the difference in the perception of guarantee and insurance between Common Law and Civil Law. In Common Law, some courts find Surety Bond is akin to an insurance product. As a Civil Law jurisdiction, Turkish Law differentiates the regime of insurance from the contracts concerning undertaking. Under Turkish Law the only consensus is that Surety Bond carries the characteristics of a Guarantee like the Undertaking of Third Party’s Performance and the Suretyship Contracts. As is seen these three kinds of contracts are used for a mutual purpose, a “Guarantee”, but follow separate systematics. Fundamental difference is the regulations they were codified under, while TCC is the source of insurance, Undertaking of Third Party’s

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4 Under Turkish Law, avoidance and termination are entirely different ways of ending a contract. In avoidance, contract is deemed null and void from the effective date therefore parties reimburse the benefits they received from each other, however termination does not have such retroactive outcome and parties are only relieved from their obligations after the termination date.

5 In short term export credit insurance, presence of a dispute between Buyer and Policyholder is a bar before indemnification which must be settled by the Policyholder in favor of himself and such prerequisite will have been lifted in unconditional Surety Bonds.


Performance and the Suretyship Contracts have been codified under Turkish Code of Obligations, Law no 6098 (TCO).

Undertaking of Third Party’s Performance is in fact the heading of article 128 of TCO which is the only basis for the Guarantee Contracts and which Letter of Guarantees of financial market fall under this category. Guarantor is imposed an obligation independent of primary contract, put another way, by entering into a Guarantee Contract, guarantor forbears from using debtor’s/guarantor’s defense. And to deem a Guarantee Contract valid there is no formal requirement.

In Contrast, in Suretyship Contract, should the primary contract is invalid, surety may plea it as a defense and will be exonerated from his/her obligations. Compared to Guarantee Contracts, suretyship requires so called qualified formal requirement as per article 583 of TCO whereby natural person sureties are imposed to declare type, date and amount of suretyship in their handwritings.

Another distinguishing feature of these contracts is the means of indemnification. The heading of article 128 of TCC implies how guarantor may exercise its obligation. Guarantor(debtor of Undertaking of Third Party’s Performance) is entitled to indemnify the loss incurred by the third party within a broad scope of indemnification including restitution in kind but debtor of the Suretyship Contract(Surety) solely undertakes a monetary payment. Despite of the identical wording, Surety of the Surety Bond (Insurer) may perform its essential obligation in different ways.\(^8\) This may beg the question of whether TCO can be applied to a Surety Bond in Turkey. I am of the opinion that Surety Bond is much linked to article 128 of TCO than it is to insurance of TCC and acceptance of this approach will conceptualize Surety Bond a non-coextensive liability with that of Principal. Some may find this vague or a Surety Bond’s blind-side however in the following paragraph this ambiguity will be converted into clarity.

Surety Bond’s close link with TCO generates terminological as well as practical dilemma. One of the dilemmas in Turkish insurance practice derives from the terminology employed to describe Surety Bond. Most likely, drafting committee devised to underline its insurance function thereby GTC was literally named as “Suretyship-Insurance” a hybrid of two different notions of TCO and TCC respectively. Therefore parties to insurance contracts are now experiencing an insurance instrument which encompasses suretyship without the requirement of special written form and insurance where customary pecuniary indemnification is not a necessity.

In fact, article 1401 of TCC defining the insurance contracts states that indemnification of a loss by means of effecting payment is not imperative, on the contrary, fulfillment of

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\(^8\) Surety Bond was defined and assumed to be an insurance under Ministry of Treasury and Finance’s General Terms and Conditions for Surety Bond(GTC).
performance by the insurer is valid. Similarly as per article 1427 of TCC, unless agreed otherwise, restitution in kind is licit, notwithstanding putting aside some exceptions, compensation in insurance practice still relies on monetary payment. And as a final note, article 1451 of TCC states that “In the absence of an available provision in TCC, provisions of TCO shall apply to insurance contracts.” Therefore, in a Surety Bond-related dispute, as a prerequisite, courts/tribunals are obliged to exhaust TCC and GTC provisions, should situation (the lack of regulation under TCC) requires, TCO will underpin the adjudication, whereas the only article in TCO concerning guarantees is the article 128, broad wording of which is filled by doctrine and court decisions. Accordingly even though TCO appears to be more relative legislation for Surety Bond, article 1451 of TCC may not shed a light on all conflicts. Worthy to note that due to hierarchy in the regulations, GTC trumps and is the first regulation to be borne in mind, nevertheless Turk Eximbank has right of immunity under InsL.

Speaking of legislations, Ministry of Treasury and Finance aimed at repealing the GTC for revision however due to lack of legislation in force and despite of its unwise wording, repealed GTC is still gap filler. To be explicit on its wording, while a customary Surety Bond is a tripartite relation in which Principal assumes a contractual undertaking, Obligee (the party in whose favor a bond runs) benefits Principal’s performance and Surety guarantees to the Obligee performance of the Principal’s contractual undertaking, GTC interprets Surety Bond as if four partite relation (Insurer, Policy holder, Insured and the Beneficiary) however in terms of rights and mandates Insured and Policy Holder appear to be same. Another critique is that, whether deliberate or not, legislators omitted conventional terms which might cast negative inference. To put in a nutshell, Surety Bond is an adoption of a foreign origin credit transaction, therefore it would have been fair to expect keeping the harmony with the international practice so that crucial notions such Obligee and Principal should have been preferred in lieu of Beneficiary and Policy Holder & Insured.

Following dilemma is the role imposed on parties which also makes Surety Bond “unique” among other insurance products. In a customary insurance, Policyholder is the party obliged to pay the premium and receiving the compensation in the event of risk occurs. Under TCC and by its nature, Policyholder may also take out insurance for a third party’s interest and third party (Insured) then becomes entitled to claim the payment from Insurer. However GTC, butchered the conventional perception of insurance and had introduced an extraordinary method in which, while Policyholder pays the premium, Beneficiary makes demand upon surety and Surety recoups its damages from the Premium Payer/Principal. And despite of the similarities, unlike Surety Bond, in financial guarantee Beneficiary is the party whose obligation is undertaken by the Guarantor and should Beneficiary fails to honor its obligations, payment is made to Applicant.
As of today, in addition to commercial Surety Bond, another type of Surety aiming to cover consumer needs is in force, the so called Gtc of Housing Bond (literally “building completion insurance”) has been introduced in 2015 and according to article B.6 of that Gtc and provided that it is agreed under insurance contract, Surety is entitled to decide whether to reimburse payment or to complete the project (building) in a time frame which under no condition may exceed 24 months. Since its scope of coverage is limited to Consumer Protection Law, this type of insurance may be called a Sub-Surety.

Succinctly, Surety Bond does not conform the conventional insurance practice neither does it fulfill the requirements of a financial guarantee mechanism. New GTC is on the horizon and will likely come with significant package of amendments, but prior to its entering into force, probably by September 2019 Turk Eximbank will have introduced a Surety Bond product to Turkish Insurance market. This brand new tool will allow state-backed agency of Turkey to expand its cross-border operations. Fundamentals of this prospective product will be assessed in the following paragraphs, but prior to that a brief comparison of Surety’s options and benefits as well as complications of those options need to be discussed.

Performance Bond may provide several options to the Obligor. Surety may finance the Principal, buy-out the Bond or take over the Project and may complete it either with Obligee or tender a new contractor. Having summed up the options, I will briefly underline two of four options. Since insurance relies on indemnification of the party incurring the loss rather than the party liable for, despite of Principal’s default advancing money to him could compose a concept of “awarding the guilty”. However in Surety Bond that is not the case, it is said that Surety drives an ambulance not a hearse and this phrase may have many meanings and one of them is saving the Principal. Whether Bonded or not, Principal may work on several projects at the same time and the more project it is involved, the more likely its balance sheet will deteriorate in the event of acts of God, commercial and political risks. Irrespective of whether on pro rata basis or proportional, unless sum is disbursed among Principal’s projects, Principal will be enabled to pursue the time schedule of the bonded contract. Some Sureties may be reluctant in leaving at Principal’s sole discretion how the money is spent. Principal’s such prerogative at that point may threat the Project which is already at risk. Thus, rather than monitoring or soliciting from Principal the wire transfers or transactions, by way of General Indemnity Agreement (Policy) either as is in Buyer’s credit, Surety may lend money directly to Principal’s site employees and machinery & equipment and/or service suppliers of the bonded project or a trust fund may be established and all payments received with regard to primary contract can be held in trust for the payment obligations of the items furnished in the prosecution of the work provided in the primary contract. A major detriment in financing the Principal is that Obligee may disagree to reduce the

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9 Please note that, in Bonding, direct lending means financing directly the Principal, not its subcontractors.
monies to be given to Principal from Surety’s penal sum, furthermore financing the Principal may not be a safe haven at all times. The risk of failure never evaporates and preparedness of Surety for takeover is a must if Principal fails to honor its obligation despite of additional financing. Within this purpose, Surety should be given right to declare Principal’s breach any time after entering into a financing agreement with Principal. Although a financing agreement is not mandatory, Principal and Surety may agree on the terms under Policy as well, however since the parties to Policy and Bond are different, options Surety is conferred with under Policy can be dictated to Obligee as long as they are included in the performance bond.

Surety’s completing the Project is also tricky. If Surety is armed with selecting the means of indemnification, it should bear remaining work in mind because such unfinished work may increase the risk of unforeseen rise in the cost of completion. Contracts should stipulate the completion stage of the project, after reaching that point, Obligee may keep retainage\(^1\) for the so called punch list provided that contract indicates that Surety’s obligations survive for hidden poor workmanship and defected work. If a restriction is not placed on whom to select in completing the project, especially if default took place in the late stages, best option is to proceed with Principal so that surety may utilize Principal’s experience and mitigate unforeseen costs. By virtue of the right purveyed in the bond, Surety may select contractor, in the absence of such liberty, Obligee may oppose terminated and perhaps conflicted contractor’s(Principal) returning back to project. It is a heads or tails game, whether its reasoning is rightful or not, reluctance in defaulted Principal’s completion and opting to tender a new contractor might be time-consuming, plus new contractor may come up with a bid exceeding Surety’s penal sum cap.

Prior to its termination, contract and by way of incorporation the Bond may require a notice whereby Principal may gain an opportunity to cure the defaults or inadequate performance and the lack of such notification may deem the Bond null and void. Pertaining to settlement Obligee and Surety (as Principal’s attorney-in-fact and prospective Obligor) may wish to avoid terminating the contract and to provide an occasion for such cure. However if dissenting voices exist, as prerequisite required in most situations, Surety will seek a formal declaration from the Obligee of a material breach or legal default which is in capacity to justify such termination and that will come with a cost such as impairing Principal’s reputation and thwarting it to bid on other Projects. If the default is narrowly defined in the primary contract, Surety may also wish to define default under Policy and be empowered to serve a default notice to the Obligee as it is the case in financing the Principal, so that it may mitigate its losses and prevent any occasion where Principal’s default goes unnoticed. If the completion is on the menu of the options, through such

\(^1\)Together with the amounts paid to Principal, retainage and improper payments should also be deducted from the penal sum of the Bond.
notification, installments be made to Surety. And for the clarity, such entitlement should be stated both in Bond and Policy.

According to TCO, in construction contracts, if Contractor’s (Principal) failure to deliver the commodity by the date agreed under the contract is explicit and such occurrence results from outside Owner’s (Obligee) control or if an approximate amount determined at the beginning is extremely and explicitly exceeded, except for the negligence of the Obligee, Obligee may avoid the contract prior to contractual delivery date. Same TCO also provides that if default in the project, despite of Principal’s certain warning springs from the misdirection of the Obligee (For instance if the defect stems from inadequate plans and specs provided by or on behalf of the Obligee) or for any reason Obligee might be held liable for it, he shall not avoid the contract, ask for deduction in cost or reparation of defect.

An available defense to Principal under TCO is that if the events whether unpredicted or predictable prevents constructing the commodity or makes constructing difficult with the agreed lump sum contract price, Principal is vested in asking adjustment of contract’s terms from the court or avoiding the contract.11 And lastly, if completion of the commodity becomes impossible due to events related to Obligee, Principal may request the value of the completed work and its expenditures. If impossible of performance arises from Obligee’s negligence, Principal may also claim indemnification.

In conditional Bond, condition(s) should be satisfied in terms of indemnification and due to the barrier before Obligee, presentation of collateral in exchange for the risk carried by the Surety may not be needed. However depending on the presence of a lending option, it is imperative to obtain collateral the value of which will likely reduce if Surety waits for the declaration of Principal’s default. Besides such expectancy of declaration will prevent Surety from enjoying the security. Thus, after issuing a Bond, It is of Surety’s interest to observe the credibility of Principal on periodic basis and hold site visits. And as a final point, from a garment to nuclear power plant, since the “Project” may mean manufacturing or constructing any item/facility therefore Surety should either narrow its scope or contrarily should be well equipped for any commercial activity.

Surety and Principal enter into a General Indemnity Agreement that concerns many issues including but not limited to payment of the premium and fees, duty to mitigate Surety’s loss, lending of Principal, trust funds, collaterals and the basis on which Surety’s can obtain reimbursement (attorneys’ fees, expenses) assignment (contract funds), attorney in fact provision (to settle disputes with Obligee or setoff) entitlement to material and equipment that are not

11 Under Turkish Law, this provision is called “Objective impossibility” and debtor is not expected to cope with the situation which is beyond its control.
necessarily on-site but obviously not secured in favor of a third party. In order to make the product operative, aforementioned provisions will be placed in the Policy.

At the outset, scope of the product’s menu of remedial options might be limited to indemnification and completion. In customary Surety Bond, Surety is expected to pay monetary damages resulting from the principal’s default, up to the penal limit of the bond\(^\text{12}\), but depending on the case, completion of the projects might be more beneficial therefore some bonds may spell out the completion. Therefore Bid, Payment and Performance Bonds might be introduced in the first place. The rationale of such start up is a prompt market sounding but on a case by cases basis, the number and the wording of Bonds will likely expand and even in same kind of Bond, nuances will inherently exist. In any case, Surety, (in this case Turk Eximbank) has the burden of executing a complex due diligence. Commercial-wise, Surety needs to assess the Project, the Project Contract and identify whether it is arm’s length transaction or not and to the extent possible, should evaluate the level of knowledge of the personnel who will manage and conduct the project. Some may suppose that Obligee is not subject to an analysis; however Sureties should not take the heed. Finally and most importantly Principal’s credibility, capacity(past project expertise, labor force, net worth, debt ratios, machinery and equipment owned and so forth) and profitability(if the Principal failed to make profit in recent years) needs to be rated. And Surety should be entitled to contractual funds so that it may reimburse itself for the costs of completion and nevertheless in order to prevent commercially absurd outcomes, before and during the execution of construction, all circumstances that may grant Obligee to setoff claims against contractual funds amounts which Principal owe to Obligee should thoroughly be investigated. Legal-wise, Surety should proceed with due care and it will be imperative for Surety to study the Contract of the Project as if it is the party thereto. Definition of the default, terms of payment, delivery date and other major factors that may lead to rescind the Contract may be of great importance.

One last dilemma or complexity is the Law(s) that will govern the contracts of this product.\(^\text{13}\) Expecting Turkish law to govern all overseas contracts is impractical; on rare occasions Surety may use its Bond as bargaining chip and interfere in determining the governing law of the Primary Contract. When it comes to Policy, due to location of the parties thereof, Turkish Law shall govern it. The point is that, equitable subrogation is permitted by article 1472 of TCC, according to the so called “statutory ceding”, Surety is subrogated to the rights of the Obligee and once Obligee is indemnified, by relying on Primary Contract, as subrogee, Surety may assert its

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\(^{12}\) Within that limit, Surety will be held responsible for completing the project and the consequential damages Obligee sustained (liquidated damages, actual damages from delay, overheads, attorney fees and latent defects). Thus terms of the contract are crucial. Under Turkish Law, parties may also limit the debtor’s liability, however relieving debtor from his gross negligence or in a case where the service or profession requires an authorization obtained either from an authority or law, relieving debtor from his sole negligence is not valid.

\(^{13}\) Surety Bond consists of Primary(construction) Contract, General Indemnity Agreement and the Bond.
subrogor’s receivables from the Principal.\(^{14}\) Thus, for the same subject matter, one is by consent (Policy) and the other is by operation of law (Primary Contract) Principal and Surety will have entered into two different contracts having different governing laws and dispute resolution clauses,\(^{15}\) therefore, Policy and Primary Contract will inevitably clash. However regardless of what is vested in Surety under Primary Contract, since Surety’s liability is up to the penal limit of the Bond, whether through Policy or Primary Contract, as Surety recourses against Principal for its receivable, any sum exceeding Bond’s amount will face unjust enrichment plea.

When it comes to Bond, it is designed to apply URDG rules of ICC (Uniform Rules for Demand Guarantees). Article 34 of URDG states that “unless otherwise provided for in the guarantee, its governing law shall be that of the location of the guarantor’s branch or office that issued the guarantee.” In this sense, parties may opt to apply Turkish Law to Bond as well. And in accordance with article 87 of TCO, unless otherwise understood either from the legal relation or specificity of the transaction, it is up to discretion of the Debtor to choose the method of exercising its obligation. Therefore should Turkish Law governs the Bond, Surety who is shouldering the obligation to achieve an outcome will be granted the right to choose the means and methods to reach that outcome. The caveat is that, Choice of Law or the Dispute Resolution Clause of the Primary Contract might be incorporated by reference into the Bond, such incorporations are valid under Turkish Law.\(^{16}\) However in drafting the Bond, referring to governing law and in particular arbitration clauses has to be borne in mind.

While the scheme of the product is being drafted and Principal’s obligations were elucidated above, I find it vital to discuss Surety’s obligations hereunder. Article 1420 of TCC imposes obligation on Insurer (Surety) to carry the risk upon payment of the premium or the first installment thereof and since the premium is to be paid upfront, Surety will begin carrying the risk as of that moment. Surety’s following obligation is informing the Policyholder (Principal) according to article 1421. Before the conclusion of insurance contract and in advance for due consideration, Surety is obliged to inform in writing the Policyholder of all matters related to

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\(^{14}\) Depending on the language of the contract and also what is agreed to be manufactured/constructed thereunder, in the event of Principal’s default, as Obligee rescinds the contract it may claim the sum he paid plus punitive damages or if it is a construction of a project, he may possess the incomplete project and claim for punitive damages, the amount of punitive damages Surety will be subrogated to probably be lesser than the rights it is assigned under Policy. Thus to recourse to Principal, Surety should prefer to proceed with Policy. And one last note is equitable subrogation may not be endorsed in all jurisdictions, in cases where Principal and Surety are of different nationalities, to be cautious, cedent should inform the debtor in writing as to execution of subrogation and legal status of subrogee. Also please see; Marilyn KLINER, George J BACHRACH, Tracey L. HALEY, The Surety’s Indemnity Agreement, Law and Practice, 2nd edition, pp. 16-24, 308-309.

\(^{15}\) In accordance with Law No. 5718, parties may agree on foreign law and jurisdiction of foreign state in a case in which the jurisdiction of a court is not determined according to exclusive jurisdiction of specific court principles and in which dispute contains a foreign element.

insurance contract, Insured’s rights and provisions to which the Policyholder should pay attention. Depending on Policyholder’s being prudent merchant or consumer, this provision may have significance, consumer/real person Policyholders are protected by law and in conflicts, insurance regulations are construed in favor of the Policyholder. However in this product Principals shall be prudent merchant and Surety as well as Principal will sit on the different but equal scale of the law.

In the light of article 1427 of TCC, it is likely that Surety may take over the contract and step into the shoes of its principal. In a Bond involving restitution in kind, it is incumbent upon surety to get the project on track and complete it. However this completion should be exercised through a new contract. Therefore, Surety and Obligee should have a mutual intent to sign a takeover agreement which will be the backbone of the completion. And for the sake of Surety, such contract should not essentially deviate from the terminated (primary) contract and perhaps should have minor amendments including new delivery date and the Surety’s entitlement to receive contractual funds. Corollary of a takeover without a separate agreement is parties’ blurred obligation to conform the terms of the terminated contract excluding delivery date. After the expiry of delivery date, the right of rescission often arises in the Obligee’s favor when the grace period and/or period for permissible delay or liquidated damages are elapsed. Benefit of a takeover agreement is also agreeing on the stage, defects and completion cost of the current project. Existence of just a bond and a unilaterally drafted appraisal report indicating the data on defects and cost may not be sufficient complete the project in a workmanlike manner.

And finally for Sureties willing to run their operations in Turkey, in 2018 a new debt structuring model has been introduced and said model imposes an automatic stay for bankruptcy actions for a period of not exceeding 29 months. For the time being, stay prohibits commencement or continuation of actions, thus, in ordinary course of law, while fluctuating market value and encumbrance are one of the items effecting the cost and/or the duration of liquidating the collaterals, this time Surety will be exposed to a compulsory period in which it will end up prohibited from applying for debt collection and in the end of which receivables might be subject to a compulsory deduction or extension of their due dates. In such case, financing the Principal and creating a space for him might be preemptive to be dragged into such abyss of zone of insolvency that may last for 29 months.

\[17\] In a case wherein Surety warrants latent defects or defected work, in addition, should parties wish to revise the terms or the scope of the work & payments and finally if there are claims preserved between Principal and Obligee, entering into a new contract means a fresh start or continuation for Obligee and Surety, unless stated otherwise in the takeover agreement whether contractual or actual, Obligee’s right to claim its loss will be limited to the amount provided for in the Bond and in the absence of a takeover agreement, as Obligee requests liquidated damages and expends the Bond limit then the project may remain incomplete.