SURETY IN TURKEY
FILE 2019094
REGULATIONS in INSURANCE LAW

1-PRIIMARY SOURCES

A- Insurance Law (Number no:5684)

- Codifies establishment, license, tariff, financial structure as well as supervision of insurance companies.
- Insurance companies and reinsurance companies which are going to operate in Turkey have to be established as a joint stock or a cooperative. Insurance companies and reinsurance companies shall not be engaged in other businesses except insurance transactions and businesses which are directly related to insurance operations.
- For the purpose of commencing their operation, insurance companies and reinsurance companies have to obtain a license from the Treasury for each insurance branch in which they would like to operate.
- Insurance companies can only operate in any one of life and non-life insurance groups.
- Minimum paid-up capital requirement is 5 million Turkish Liras. Treasury is empowered to raise the amount.

Important Note: Insurances that may be concluded abroad (Article 15)

If they are located in Turkey, insurable interests of the residents of Turkey have to be insured in Turkey by the insurance companies operating in Turkey.

(2) However the following insurances can be purchased abroad:
   a) Transportation insurance for the goods which are subject to export and import,
   b) Hull insurance to be provided for aircraft, ships, helicopters which are purchased with foreign loans, exclusively limited to the loan amount and applicable for the term until the foreign debt is paid up, or limited to the period of financial leasing if the same are brought home by financial leasing obtained abroad.
   c) Liability insurances arising from the operation of ships,
   d) Life assurances,
   e) Personal accident, sickness, health and motor vehicle insurances, limited to the time people will be abroad or their temporary stay in abroad.
   may be concluded abroad.

(3) The President is authorized to expand the scope of insurances that may be concluded abroad.

B- Turkish Commercial Code (Law Number no:6102, hereinafter referred to as «TCC»)

- Codifies contractual relations, obligations and parties’ rights, moreover defines the insurance contract, duration, conclusion and limitation period thereof.

2-SECONDARY SOURCES

General Terms and Conditions
A new era wherein insurance companies in Turkey begin to issue Letter of Guarantees?

- Turning point is the amendment in Public Procurement Law (hereinafter referred to as «PPL» Number no 4734).

- Surety Bonds issued within the scope of Suretyship Insurance by Insurance Companies domiciled in Turkey are regarded as “letter of guarantee”.

- Under PPL, 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. It is solely up to discretion of Public Procurement Authority to determine the form and the scope of such letter of guarantee.

- For the purpose of commencing their operation, insurance companies and reinsurance companies have to obtain a license from the Treasury for each insurance branch in which they would like to operate, for suretyship, insurance companies must hold a license in “Surety” branch.
Legal Framework

- Undertaking of Third Party’s Performance
- Suretyship Contracts
- Surety Bonds

ONE Purpose
(GUARANTEE)
THREE Contracts
<table>
<thead>
<tr>
<th><strong>Undertaking of Third Party’s Performance</strong></th>
<th><strong>Suretyship Contract</strong></th>
<th><strong>Surety Bond</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Codification</strong></td>
<td>Codified under TCO Article 583.</td>
<td>Codified under General Terms and Conditions for Surety Bond (Hereinafter referred to as «GTC»).</td>
</tr>
<tr>
<td><strong>Form Requirement</strong></td>
<td>It’s being written is important only for burden of proof.</td>
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</tr>
<tr>
<td><strong>Means of Indemnification</strong></td>
<td>Restitution in kind and pecuniary indemnification are licit.</td>
<td>Monetary payment.</td>
</tr>
<tr>
<td><strong>Link with the primary contract</strong></td>
<td>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.</td>
<td>Should the primary contract is invalid (contrary to mandatory rules, moral values, public order or having an impossible scope.) Surety may plea it as a defense and will be exonerated from his/her obligations.</td>
</tr>
<tr>
<td><strong>Additional Characteristic</strong></td>
<td>Letter of Guarantees (Guarantee contracts in other words) fall within the scope of this type of contract.</td>
<td>Principal can not defend or object the cause, amount or balance of the request for encashment of surety in presence of the insurer if the debt is not paid, the insurant (Policyholder/Principal) is deemed to quit the defenses which it may assert owing to failure in the performance of “counter guarantee” agreements which make the ground for the issuance of surety bond and are accepted between the insurer and beneficiary (Obligee).</td>
</tr>
</tbody>
</table>
Surety Bond

Several Bonds are defined under GTC. Some of them are as follows;

- **Payment Bond**: It provides guarantee against the risk of failing to make payment to all subcontractors and workers.

- **Performance Bond**: It provides guarantee against the risk of failing to fulfill the obligations assumed by the project owner according to the conditions of contract. In case insurer cannot meet its obligation, insurer can agree with a new contractor to complete the work.

- **Guarantee of Public Tender**: This guarantee type assures unconditional, final and essential payment independently of the obligation of insured party against the risks that guarantee is registered as revenue in the tenders subject to Public Tender Act no. 4734 and other related legislations upon the initial request.
Surety Bond premiums within last 5 years

- The premium production in surety/bond branch where 28 companies were active was 50,021,129 TL in 2017 and increased at the rate of 64.59% at current prices but decreased at the rate of 36.75% on USD basis.

- The loss ratio which had been 692.97% in 2016, was realized 183.92% in 2017.

Source: Insurance Association of TURKEY
Surety Bond of TURK EXIMBANK
What is on the horizon?

- Turk Eximbank’s production is expected to be operative by 2020.
- Preferential target/market demand is construction projects abroad.
- Bid Bond, Payment and Performance Bonds are on the top of the list to be introduced.
- Policy and Bonds are the main documents of the product. As the circumstances allow, provisions of General Indemnity Agreement and Policy will be merged under a single document (Policy).
- Menu of remedial options are to be monetary payment (priority) and completion. To avoid impediments in negotiating the terms of new completion agreement, bidding process, taking over the project and get the project on track and/or any other concerns some of which are stated in my article, monetary payment will be the priority.
- Issuing Bonds to project through bilateral agreements/MoU’s are open to mutual deliberations.
ANY QUESTIONS ?

NO?

THANK YOU

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