

Compulsory Use of the Turkish Language in Agreements Executed in Turkey

One who does business in Turkey and reads the above heading may ask himself whether there is such a requirement. Well, the answer is “Yes”, but only a few are aware of it. On the other hand, the ones who still ignore the said requirement may face unpleasant situations such as the invalidity of a key agreement which they signed recently with their top business partner.

We are living in an era where rules in different jurisdictions are constantly reviewed to abolish trade barriers which obstruct investors’ entry into new markets. Despite the latter, there are still a number of obsolete laws/regulations on which foreign investors are occasionally not duly advised. This causes such investors to overlook mandatory requirements of a given jurisdiction that they need to comply with. Law No. 805 on Compulsory Use of the Turkish Language by Economic Enterprises¹ (the **Law**) is a noteworthy piece of legislation within this category.

Containing nine articles in total, the Law is short and to-the-point. It dates back to 1920s, which was a revolutionary period when the use of the Turkish language was intentionally being promoted as a state policy. Although the Law is quite old, its provisions are still in vigor and thus enforceable. No specific law has been subsequently enacted to hinder its application.

Although violation of the Law brings forth severe consequences, not many of the legal practitioners are aware of the seriousness of the matter. In such a legal environment, compliance with the Law becomes crucial.

Below you may find the (i) principles imposed by the Law on the compulsory use of the Turkish language that shall be respected at all costs; (ii) exceptions to these principles; and (iii) consequences attached to the violation of the principles.

I. The Principles

The Law sets forth a number of principles with regards to the compulsory use of the Turkish language in day-to-day transactions of enterprises including companies. Transactions entered into by natural persons are not within the Law’s scope of application.

Pursuant to Article 1 of the Law, Turkish companies are obliged to execute their transactions and agreements, and keep all their correspondences, records and books within Turkey in the Turkish language. This principle does not have any exception. Therefore, regardless of the identity and/or nationality of its shareholders or partners, an agreement executed in Turkey between two legal entities duly established and validly existing under the laws of Turkey shall be in Turkish.

Article 2 of the Law states that the obligation for foreign companies to use the Turkish language is limited to (i) their correspondence, transactions and contacts (agreements not included) with their Turkish counterparts including natural persons; and (ii) documents and books they represent to any governmental authority, collectively referred to as the **Restricted Domain**. Therefore, an agreement² executed in Turkey between two foreign legal entities or a foreign company and a Turkish company may be executed in a language other than Turkish.

¹ Published in the Official Gazette dated 22 April 1926 and numbered 353.

² Which is not covered by the Restricted Domain.

Notwithstanding the above, the Law does not exclude the possibility of using a foreign language. In accordance with its Article 3, foreign companies may use a language other than Turkish within the Restricted Domain too provided that a Turkish version is added in such documents. This gave birth to the practice of executing bilingual, dual-column documents. Although the Law permits such practice, it specifies that in the event of a dual-column document executed within the Restricted Domain, the Turkish version shall prevail over the foreign language version.

To make a recapitulation:

- Agreements executed in Turkey between two (or more) Turkish companies (regardless of their shareholders, managers, directors, etc.) shall be in Turkish;
- Agreements executed in Turkey between two (or more) foreign companies may be in a language other than Turkish;
- Agreements executed in Turkey between a foreign company and a Turkish company may also be in a language other than Turkish;
- Foreign companies may execute bilingual documents in the Restricted Domain only on the condition that the Turkish version of the relevant document prevails in case of discrepancy.

II. Exceptions

The Law does not explicitly provide for any exception to the compulsory use of the Turkish language. Therefore, the interpretation of the Law by the Court of Appeals plays a decisive role in the matter.

Although the Law has been in full force and effect for more than 80 years, we were able to spot only five Court of Appeals judgments with regards to the Law. In such judgments, the Court has established two exceptions to the principles established by the Law:

- In an agreement that has to be executed in Turkish, it is possible to include terms in foreign language provided that (i) the nature and specialty of the subject matter of the agreement necessitates the use of such terms, and (ii) it is customary to include such terms in similar agreements (*e.g.*, standard insurance clauses containing terms in foreign language).
- Since the Law does not explicitly prohibit, agreements between a foreign entity and a Turkish entity may be executed in a language other than Turkish.

Other than the aforesaid, the Court of Appeals judgments do not provide for any exception to overcome the compulsory use of the Turkish language.

In light of our above explanations, an agreement between a foreign-owned Turkish company and another Turkish company has to be executed in Turkish. It should be noted that when it comes to practice, such requirement is circumvented by either (i) including a foreign third party in the agreement that only has symbolic obligations or (ii) (since the Law is only applicable to the agreements executed within Turkey) determining the place of execution of the agreement as a country other than Turkey although the agreement is actually signed in Turkey.

III. Applicable Sanctions

The Law sets forth sanctions applicable in case of violation of its provisions:

- Pursuant to Article 4 of the Law, documents and records that are prepared contrary to the provisions of the Law shall be invalid. Such agreements (e.g., an agreement executed in Turkey in a language other than Turkish between two Turkish legal entities) shall be considered as null and void and shall not confer any rights or obligations on their parties.
- Pursuant to Article 7 of the Law, failure to comply with the Law may lead to the payment of an administrative fine amounting to at least one hundred days.