

CAPE TOWN CONVENTION ACADEMIC PROJECT
COUNTRY SUMMARY NOTE – TURKEY
(Updated February 2015)

I. INTRODUCTION

The Republic of Turkey (“Turkey”) has a long history in accomplishing the process of signing and ratification of the Convention on International Interests in Mobile Equipment (“Convention”) and the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment (“Protocol”) (“CTC”).

There have been a number of amendments in the Turkish legislation to adopt the terms of Convention and the Protocol and Turkey has spent extensive efforts to harmonize and standardize its local laws in order to honor its compliance obligation under the Convention and the Protocol and expedite their full implementation in Turkey.

II. RATIFICATION PROCESS

Turkey signed the CTC on November 16, 2001 and a decade later the Convention and the Protocol were ratified by the Council of Ministers Decree¹ (“Decree”) ([Notification of Ratification in the Official Gazette](#)). With the provision of the Decree, the CTC and the Protocol came into force in Turkey on December 1, 2011. ([Turkish Text of Convention and Protocol](#))

III. STATUS OF THE CTC IN THE TURKISH LEGAL SYSTEM

Under Article 90 of the Constitution², the Conventions which are duly put into effect carry the force of law in the hierarchy of norms and enjoy all the superiority of the laws in this respect. Furthermore, Article 90/4 of the Constitution provides for the primacy of international treaties in the area of fundamental rights and freedoms over the conflicting Turkish laws. Pursuant to a number of Constitutional Court decisions³ ([Constitutional Court’s decision-2010](#))

¹ Published in the Official Gazette dated July 4, 2011 and numbered 27984 with the declarations as adopted by the Council of Ministers

² Constitution of the Republic of Turkey dated November 7, 1982 numbered 2709 and published in the Official Gazette dated November 9, 1982 numbered 17863

³ Constitutional Court’s Decision dated March 24, 2010 bearing the docket number 2006/159, the decision number 2010/47; published in the Official Gazette dated May 18, 2010 and numbered 27585; “... *Within this context pursuant to Article 35 of the Turkish Constitution and European Convention on Human Rights (“ECHR”) Appendix Protocol No1, right of ownership can be considered among the fundamental human rights...*”, Constitutional Court’s Decision dated May, 22 2013 bearing the docket number 2012/108, the decision number 2013/64; published in the Official Gazette dated July 12, 2013 and numbered 28705; “... *Right of ownership, entitling an individual with the right to use, enjoy the property at his own discretion within the boundaries of the laws and not damaging the rights of other individuals; has been protected under Article 35 of the Constitution as a fundamental right and the same article states that the right of ownership can be restricted only by law and by virtue of public interest...*”

([Constitutional Court's decision-2013](#)), right of ownership is considered among the fundamental human rights. Such Constitutional Court decisions provide that the right of ownership which entitle an individual with the right to use, enjoy the property at his own discretion within the boundaries of the laws and not damaging the rights of other individuals is protected under Article 35 of the Constitution as a fundamental right.

CTC involves protection terms with respect to right of ownership and interest arising therefrom, therefore it can be considered within the scope of Article 90/4 of the Constitution and thus prevail over any conflicting laws. So, the CTC and the qualifying declarations made by Turkey already have the force of law and prevail any conflicting legislation in the whole territory of Turkey without need to any further act, implementing additional legislation or the passing of any further law.

IV. LEGISLATION CHANGES INTRODUCED IN TURKEY TO HONOUR THE IMPLEMENTATION OF THE CTC

Several legislation changes have taken place in Turkey in order to confirm and honour CTC's primacy and effective implementation in Turkey.

Amendment made in the Turkish Civil Aviation Law ("TCAL")⁴

A new Article 68/A, stating that the CTC will have a supremacy over domestic laws in the event of a conflict has been introduced in the TCAL, for the purpose of advancing the implementation of the CTC. In effect, the TCAL amendment repeats the terms of Article 90/4 of the CTC mainly to put interested persons on notice of its primacy.

The TCAL amendment was approved on July 4, 2012 by the Grand National Assembly of Turkey, and came into force pursuant to the Law Amending Certain Laws and Decrees in Force of Law as of July 12, 2012.

New Directive on Implementation of IDERA

On April 1, 2013, a Directive on implementation and enforcement of the IDERA was introduced by the Flight Operation Directorate of the General Directorate of Civil Aviation Authority of the Ministry of Transportation, Maritime Affairs and Communication of the Republic of Turkey ("CAD") which was then published in the CAD's official website.

On July 7, 2014, a brand new and updated Directive on Implementation and Enforcement of the IDERA entered into force to bring in further clarity for the

⁴ *Turkish Civil Aviation Law* dated October 14, 1983 and numbered 2920; published in the Official Gazette dated October 19, 1983 and numbered 18196

CAD officers and sector players on how to honor the duly issued IDERA forms and to resolve practical problems, which have been incurred during the course of implementation of the previous IDERA Directive. ([IDERA Directive](#))

Amendment made in the Financial Leasing Legislation

A Circular came into effect in Turkey on July 31, 2013 as issued by the Association of Financial Leasing, Factoring and Financing Companies (“[Association](#)”).([Cross-Border-Circular](#)) (Association is the current competent legal authority for the registration of cross-border financial lease agreements.) The Circular regulated the registration methods and principles of cross border financial lease agreements under Turkish Law. While doing so, the Circular provided for a specific provision on implementation of the CTC by stating that the Association will de-register the lease agreements from its records, in the event that the applying party provides a certificate as issued by the CAD stating that in case a lessor attempts to exercise its remedies under the CTC, the Association will not be able to refrain from de-registration of the financial lease agreement from its records.

Amendment made in the Law on Execution and Bankruptcy

The Omnibus Bill⁵ (“[Omnibus Bill](#)”) (*Torba Yasa*) dated February 6, 2014, clarified on how claims of the interest holders should be executed at the execution and bankruptcy offices in Turkey. ([Omnibus Bill](#)) The Additional Article 2 (*Ek Madde 2*) has been introduced by the Omnibus Bill to the Law on Execution and Bankruptcy⁶ (*İcra ve İflas Kanunu*).

This new Additional Article 2 clearly states that the claims arising from Article 8/1(a) and Article 10/1(a) of the CTC can be raised by the interest holders before Ankara Execution Offices (*Ankara İcra Daireleri*) only.

Consequently, with the enactment of the foregoing amendments; (i) the creditors can take possession or control of any object charged to the same in the event of a default of the debtor pursuant to Article 8/1 (a) of the CTC and (ii) the Conditional Seller or the Lessor can re-possess or control of any object related to a title reservation agreement or a leasing agreement in the event of default pursuant to Article 10/1(a) of the CTC. Either of the foregoing actions can be taken through Ankara Execution Offices in any case.

⁵ Omnibus Bill numbered 6562, published in the Official Gazette dated February 19, 2014 and numbered 28918.

⁶ Law on Execution and Bankruptcy dated June 6, 1932 and numbered 2004 published in the Official Gazette dated June 19, 1932 and numbered 2128.

In the light of the foregoing, the authority for the execution of claims of the interest holders have been assigned to only one particular execution office jurisdiction in Turkey, in Ankara, the capital city of the country, in which the CAD is located as well, for the cases where the contract provides that the terms of the CTC will apply.

V. TURKEY'S PARTICIPATION IN THE CAPE TOWN LIST

As of October 20, 2014 Turkey was added to the list of states ("Cape Town List") as defined under the Sector Understanding on Export Credits for Civil Aircraft ("ASU"), which stands for the states qualifying for the reduction of the minimum premium rates and consequently whose airlines are eligible to enjoy the Cape Town Treaty discount. (<http://www.oecd.org/tad/xcred/ctc.htm>)

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