



**SCREENING CHAPTER 20
ENTERPRISE AND INDUSTRIAL POLICY**

**AGENDA ITEM VII :
LATE PAYMENT IN COMMERCIAL TRANSACTIONS**

**Country Session: The Republic of TURKEY
04-05 May 2006**



LEGAL FRAMEWORK

- Constitution,
- Law of Obligations No 818,
- Commercial Code No 6762,
- Law on Legal Interest and default interest No 3095,
- Enforcement and Bankruptcy Law No 818.



Constitution, Article 48

“Freedom to work and conclude contracts in any activity.”

Law of Obligations, Article 19

Scope and subject of a contract can be freely determined within the limitations defined in the Law.

Limitations of subjects are; legally forbidden subjects and subjects those are detriment to general public order, personal rights and moral principals

Unless specified in the contract.

- **When a Commercial payment;**
 - ✓ become due?
 - ✓ become defaulted?
- What is interest rate to be applied?
- Is there retention of title?
- What is the enforcement of title?



Law of Obligations regulates commercial sales:

Obligation of seller and buyer specified in article 182.

- Unless specified in the contract seller and buyer should execute their obligations simultaneously,
- Seller should give the property of goods against agreed value,
- Buyer should receive the property of goods and make the payment.



Obligation of buyer are specified in article 208

- Buyer obliged to receive the goods or services immediately,
 - ✓ Unless otherwise specified in the contract and there is no reference application in the current code of conduct,
 - ✓ This means obligation for payment begins immediately after the possession of goods.



Rights of sellers to receive value of goods and interest on late payments are specified in article 210

- Unless otherwise specified in the contract, right of seller to receive the value begins as soon as the goods come into buyers possession.



Interest in commercial transactions is mentioned in Commercial Code (Article 8)

- Interest rates in commercial contracts can be freely determined between the parties.

if not specified in the contract?



Legal interest rate and interest rate for defaulted payment are mentioned in Commercial Code (Article 9)

- Unless defined in the contract, Article 72 of Law of Obligations is applied on the interest rate.
- Article 72 refers to an other law namely “Law on Interest Rate and Interest Rate on Defaulted Payments”



Law No 3095, on Interest Rate and Interest Rate on Defaulted Payments, (Article 1)

- If interest to be paid according to the Law of Obligations and the Commercial Code, and if the rate is not defined in the contract, the applicable annual rate is 12%.
- Council of Ministers is authorised to increase this rate up to 100% or to decrease down to 10% of this rate by taking into consideration economic conditions.
- If the applicable banking discount rate “*on the place and date of payment*” is higher than this rate, interest rate to be applied on defaulted payment is the short term discount rate declared by the Central Bank.



Beginning of Commercial interest is defined in Commercial Code (Article 10)

- Unless defined in the contract, interest for a commercial transaction begins by the due date, or by the day of warning via the notary.



Right of seller to retain the title is regulated in the Law of Obligations (Article 211)

- If the contract explicitly defines that the goods be delivered upon the payment, seller can abolish the contract and retain the title, unless the payment on time.
- Seller should inform the buyer immediately if he would like to abolish the contract.



Enforcement and Bankruptcy Law (Article 58-60)

- Creditor can apply to the Enforcement Authority with the documents indicating his credit and ask to send a payment order to debtor.
- Enforcement officer can send an order to the debtor, to pay the debt and costs or declare the objection in 7 days .
- Otherwise enforceable title can be executed.

- **Unless specified in the contract, a commercial payment;**
 - ✓ **become due:**
With the possession of goods or services to the buyer.
 - ✓ **become defaulted:**
With the warning throughout the notary.
- **Interest rate to be applied for defaulted payment is:**
 - ✓ 12% or Central Bank rate whichever is higher



- **Retention of title** is possible if delivery of goods explicitly bounded to the payment in the contract.
- **Enforcement of title** can be done within at most 30 days including official notification and response time from the submission of valid evidence documents to the Enforcement Authority.



Thank you for your attention