

tive case management (Article 22/2). The arbitrators should convene a case management conference to establish the most effective procedural measures and the newly introduced Appendix IV sets out a guideline with some case management techniques. Further, to keep up the pressure, the arbitrators are required to inform the parties and the Secretariat about the time when they anticipate submitting their award as at the close of proceedings.

The new rules introduce application for interim or controversy measures before the constitution of the tribunal without prejudice to the right of the parties to apply to a competent judicial authority.

This new procedure called the Emergency Arbitrator Procedure is provided in Article 29 and Appendix V of the rules. The Emergency Arbitrator Procedure may be exercised by an application to the Secretariat if: a) the arbitration agreement under the Rules was concluded before the date on which the Rules came into force; b) the parties have agreed to opt out of the Emergency Arbitrator Pro-

visions; or c) the parties have agreed to another pre-arbitral procedure that provides for the granting of conservatory, interim or similar measures.

The New Rules recognize the need for time and cost effective procedures and memorialize the rules widely applied in arbitration practice under the ICC Rules. As said by John Beechey, Chairman of the ICC International Court of Arbitration *"It is one of the principal aims of the International Court of Arbitration to ensure that its Rules promote efficiency in the arbitral process and that they reflect current practice, consistent with the overriding objective of doing justice between the parties"*.

The solutions introduced with the New Rules in respect of interim or controversy measures, multi-party and multi-contract arbitrations likewise, recognize the needs and developments in arbitration practice although it is yet to be tested whether they will provide the effective solutions sought.

Disputes Arising from Goodwill Compensation Claims under the New Commercial Code

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As foreign products and services in the Turkish market have rapidly increased, particularly in the last decade as a result of globalised economies, foreign investors have started to market their products and services directly, rather than through a distributor or an agency. This approach and tendency of foreign companies which is closely linked with the rapidly growing Turkish economy despite the recent global recession

have led to a significant increase in the termination of distributorship or agency agreements with the local distributors operating in Turkey. Consequently, in recent years there has been an increase in goodwill claims and compensation claims made by local distributors against foreign producers.

Under Turkish Law, goodwill claims are one of the remedies that the distributor may seek

upon termination of an exclusive distributorship. The rationale of this remedy largely rests upon the principle of equity and fairness aiming to compensate the efforts exerted by the distributor to increase the clientele portfolio of the product/service during the term of the agreement. As goodwill or portfolio compensation is not explicitly recognised by the Turkish law for the time being, the Court of Appeals has developed a case law approach in connection with goodwill claims whereby the distributor is regarded as being entitled to goodwill compensation if the following requirements are duly met: i) the supplier must have obtained notable benefits following termi-

Appeals' precedents and the widely accepted scholarly opinion on that matter. Therefore, it can be argued that the New Code does not bring a new concept but explicitly regulates goodwill compensation for the first time. Although Article 122 of the New Code entitled "counterbalancing demand" seems to apply in the termination of the agency agreements, the last paragraph of this article clearly sets forth that this provision shall apply to exclusive distributorship agreements as well, provided that it does not run contrary to the principle of equity.

The three sub-paragraphs of the first paragraph of the Article 122 provide the requirements and conditions that need to be fulfilled in order to recover goodwill compensation. In that regard: i) if the supplier derives significant benefits from the customers which were acquired by the agency even after the termination of the contractual relationship, ii) if the agent would be deprived of claiming remuneration from the customers acquired by itself due to the termination of the agreement and iii) if the principle of equity and fairness requires such compensation to be awarded, then, the agent would be entitled to recover goodwill compensation from the supplier in the amount not exceeding the average of annual commission and other payments received by the agency under circumstances where the agreement is longer than five years. Should the contract be for less than five years then the average up to the date of termination shall be taken into consideration. Article 122 also provides that goodwill compensation cannot be claimed if the agreement is terminated unreasonably by the agency or if the agreement is terminated due to any fault attributable to the agency.

In conclusion, the New Turkish Commercial Code which will be enacted on 1 July, 2012 will codify goodwill compensation mostly in line and in accordance with the established precedents of the Turkish Courts of Appeal as well as the widely accepted scholarly opinions thereby recognising the efforts of the agencies and exclusive distributors in developing the clientele portfolio of the supplier.

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onsidering the rapid increase in the termination of distributorship agreements and the legal actions before the courts brought by the distributors claiming remedies including portfolio compensation, goodwill claims are recognised in the new Turkish Commercial Code under the heading of "counterbalancing demand".

nation through new customers already gained by the distributor, ii) the distributor must have suffered certain losses, mainly, being deprived of profits which would have been received from potential clientele, iii) the principle of equity must justify the goodwill claim of the distributor and iv) the claim must be asserted within one year of the termination, at the latest.

Considering the rapid increase in the termination of distributorship agreements and the legal actions before the courts brought by the distributors claiming remedies including portfolio compensation, goodwill claims are recognised in the New Turkish Commercial Code under the heading of "counterbalancing demand". This new tendency of the Code to explicitly regulate goodwill claims largely reflects the approach the Court of

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