

Amendments to Turkey's Execution and Bankruptcy Law

Turkey's new bankruptcy law, amid other legislative reform, aims to improve the country's investment potential. Orçun Çetinkaya examines how the new law provides greater opportunity for debtors to recover their financial status.

Amendments to the Execution and Bankruptcy Law and Other Certain Laws (also referred to as Enforcement and Bankruptcy Law) entered into force on 15 March 2018.

Other amendments were also made to the Turkish Commercial Code, Civil Procedure Law, Notifications Law, and many other laws, but especially to Enforcement and Bankruptcy Law. The amendments aim to improve the quality and speed of legal procedures and regulate the problematic enforcement law mechanisms in a more effective and functional way.

In this article, key amendments to the Enforcement and Bankruptcy Law, including the abolishment of the 'postponement of bankruptcy' mechanism and the renewal of 'concordat' proceedings, will be discussed.

Key Amendments

With the new amendments, 'postponement of bankruptcy' which has caused problems in practice since 2003 has been abrogated, for the most part, because it did not serve its intended function. Instead, legislators have introduced a more effective 'concordat proceeding' in order for debtors to perform their obligations and recover from potential bankruptcy.

Concordat is defined as an agreement between the parties which becomes binding following the approval of the court and now has the following specifications:

- Reconstruction of the debts of potential bankrupt debtors to improve their financial status and avoid bankruptcy
- Improving the financial status of other debtors
- Providing the receivables to their creditors with an amount of discount or in a term set forth

Any debtor who has not paid its debts or has a potential of not paying its debt on the due date may request concordat. Creditors who have the right to request bankruptcy may also apply to the concordat proceedings.

Turkey's Commercial Court of the first instance is the competent court regarding judicial review of concordat proceedings. The competent commercial courts specialized in bankruptcy and concordat proceedings are to be determined by the High Council of Judges and Prosecutors.

The amendment provides for a temporary time period granted by the competent court to the debtor upon the debtor's request provided that the documents and tables clearly reveal the debtor's financial status is up to date and complete. This mechanism has the same effect of the interim injunction decision given following the request of 'postponement of bankruptcy' and aims for the necessary precautions to be taken in order to conserve the debtor's assets.

With the temporary time period, which provides for the same consequences as definitive time period, the competent court will appoint a 'concordat trustee' to determine whether the conditions to approve the concordat have been met and to determine the success of concordat proceedings.

Upon the court's determination that the success of concordat proceedings is possible following the temporary time period granted, which may be up to five months, and the decision of a one-year definitive time period is granted, the court shall establish a 'committee of creditors' from the list of creditors entrusted to the court consisting of maximum seven creditors. The trustee shall cooperate with the committee of creditors and complete the procedures regarding the 'approval of concordat' and submit its report to the court within the definitive time period.

In case it is seen that concordat proceedings cannot be successful within the definitive time period, the court will revoke the definitive time period, reject the concordat proceedings request and *ex-officio* decide on the bankruptcy of the debtor. The time period may also be revoked in case the financial status of the debtor has improved.

Articles of the Enforcement and Bankruptcy Law concerning the creditors have not been amended. Thus, a series of restrictions still apply to the creditors during temporary and definitive time periods. Such restrictions on the creditors are beneficial for the debtor to improve its financial status, freely engage in future commercial activities and prepare for the concordat negotiations. Such restrictions on the creditors include:

All execution proceedings to be suspended and no new execution proceedings to be initiated. An exception to this rule applies to 'execution proceedings through foreclosure of pledged properties'. Such proceedings can still be initiated during temporary and definitive time periods or the ongoing ones can continue, however, the pledged property cannot be sold through these proceedings and protective measures cannot be taken

- Interim injunction and provisional attachment decisions not to be enforced against the debtor
- Lapse of time and final term to stop
- Interest on any pledged receivables to stop
- Administrative lawsuits and civil lawsuits regarding the debts subject to concordat in which the debtor is the defendant to be suspended

An article has been added to the Enforcement and Bankruptcy Law which stipulates that in contracts where the debtor is a party, the clauses which give way to termination of the contract based on the bankruptcy and concordat request of the debtor shall not be enforced and shall be deemed void.

This article aims to enhance the functionality of concordat proceedings and provide the grounds for the debtor to continue its commercial activities. Also regarding the execution of contracts, debtor's contracts

of significance to the continuation of its commercial activities shall continue to be in force with the same conditions prior to concordat proceedings request, improving the debtor's opportunity to recover its financial status.

The amendment stipulates that contracts which prevent the debtor from reaching the aimed financial status with the concordat project, namely the contracts that keep the debtor in a continuous debt relation, can be terminated at any moment given that permission from the trustee has been obtained. However, service agreements constitute an exception to this rule.

According to the amendment, within the definitive time period, the trustee shall prepare separate reports for pledged debts and other debts following the preparation of the concordat project. Also, the competent court shall prepare separate decisions for pledged and other debts.

The condition to submit a security deposit in order to obtain the approval of the concordat from the competent court has been eased with the amendment. The condition of "submitting a security deposit to ensure the concordat" has been revoked and, thus, the most significant hurdle against the debtor during the concordat proceeding no longer exists. There are only two situations where a security deposit must still be submitted:

- Full payment of the receivables of privileged creditors, and
- Performance of debts which were agreed upon with the permission of the trustee during definitive and temporary time periods.

Prior to the amendment, the court could decide to postpone the foreclosure of pledged properties up to a year upon debtor's request. With the amendment, the scope of this rule has been widened and such decisions may be given regarding the properties subject to financial leasing which are in possession of the debtor. Therefore, the purpose of this amendment is the continuation of debtor's commercial activities and enhancement of the possibility for the concordat proceedings project to succeed since the debtor is going to possess assets subject to financial leasing which are necessary to reach the aimed financial status.

The article regarding the court's authority to *ex-officio* rule for the debtor's bankruptcy, in case the debtor's request for the approval of concordat is rejected by the court, provided that the debtor is subject to bankruptcy and that a condition for direct bankruptcy is met, has not been amended.

However, the article stipulating that a bankruptcy decision could be given if the debtor's request for the approval of concordat is rejected by the court even though the debtor is not subject to bankruptcy has been revoked. Thus, a severe sanction blocking the functionality of concordat no longer exists.

There is no retroactive application of the new amendments on pending disputes on the 'postponement of bankruptcy' and 'concordat proceedings', which shall be subject to the rules in place at the time the requests were submitted, prior to the enactment of the amendments.

Another amendment provides for the continuation of the debtor's commercial activities aiming for the debtor's recovery from the liquidation process stating that following the opening of bankruptcy, shops, storage units, workshops, retail outlets and other similar commercial places can be left operating under

the supervision of the bankruptcy office until the first meeting of the 'committee of creditors' if the bankruptcy office deems these commercial activities to be in favor of the bankrupt's estate.

Among the amendments, both in favor of the debtor and the creditor is the Article stipulating that seized assets, which commercially or financially constitute a whole, or the seized assets deemed to yield a higher revenue, can be sold as a whole.