

Significant changes have been introduced to the Turkish Execution and Bankruptcy Law

The recent amendments to the Execution and Bankruptcy Law No. 2004 (the EBL) introduced new sets of rules and procedures for financially distressed parties and abolished the largely debated "postponement of bankruptcy" mechanism.

General

The Law No. 7101 on the Amendment of the EBL and Certain Other Laws (the **Law No. 7101**) was published in the Official Gazette on 15 March 2018 and introduced fundamental changes to frequently used, yet largely debated, legal mechanisms such as postponement of bankruptcy (*iflas erteleme*) and composition with creditors (*konkordato*). Majority of the amendments under the Law No. 7101 has become effective as of 15 March 2018; however, the procedures which have commenced before the effective date will be carried out in accordance with the earlier legislation.

The highlights of the amendments under the Law No. 7101 are as follows:

Postponement of bankruptcy is no longer available

The Law No. 7101 abolished the postponement of bankruptcy mechanism. However, the parties, which are subject to bankruptcy under the EBL may still resort to the "composition with creditors" mechanism to avoid bankruptcy.

Pledgees' preferential rights

The Law No. 7101 introduced a preferential right for creditors, whose receivables are secured by pledge. Accordingly, these creditors need to be satisfied before the payment of certain public receivables such as taxes and duties.

Foreclosure baskets

According to the Law No. 7101, it is possible to create a basket comprised of certain rights and assets of a debtor if these assets and rights constitute a "commercial integrity" or if it is understood that the foreclosure proceeds will be higher in case these rights and assets are sold together.

New rules and procedures for composition with creditors

The Law No. 7101 also introduced a new regime for the composition with creditors, which needs detailed analysis both by Turkish parties and their creditors.

Among others, the followings are the highlights of the new regime:

- The Law No. 7101 clearly states that a debtor may request composition with its creditors in order to reach an agreement to: (i) determine new maturity dates for its payables; or (ii) reduce the amount of its payables.
- The court examining the composition process may constitute a "board of creditors" comprising of a maximum of seven creditors. The Law No. 7101 sets out certain advisory roles and objection rights for the board of creditors.

- The composition process needs to be completed within one year. This one-year composition period may be extended up to only six months in exceptional cases. During this period, the creditors cannot initiate new legal proceedings against the debtor. Additionally, it is not possible to take preliminary injunction (*ihiyati tedbir*) or initiate provisional attachment (*ihiyati haciz*) proceedings against the debtor. Furthermore, during the composition period, no interest would accrue on the receivables, which are not secured by pledge.
- Arrangements with respect to the transfer of the debtor's future receivables, which have become due and payable after the commencement of the composition period, are deemed void.
- The creditors secured by pledge are entitled to initiate or continue with the legal proceedings for the foreclosure of their pledges; however, no protective measures can be taken or the pledged assets cannot be sold during the composition period.
- The provisions in the debtor's existing major contracts, which trigger an event of default or termination of the contract or constitute a breach in the contract in the event the debtor requests composition with its creditors, become unenforceable if the debtor applies for the composition with its creditors.
- Further, the debtor may terminate its contracts, which jeopardise the purpose of the composition process so long as it is approved by the composition commissar and in this type of termination, the compensation claims of the counter-parties also become subject to the composition process.
- In an ordinary composition (*adi konkordato*) process, the debtor may request a separate settlement with its creditors secured by pledge. The settlement may involve the parties' agreement on the restructuring of debts, which may include reduction of the principal amount or interest, time extension or other payment methods. In order to be valid, this type of an agreement must be approved by the creditors of at least 75% of the secured debts.

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