

Restructuring & Insolvency

Contributing editor
Bruce Leonard



2017

GETTING THE
DEAL THROUGH 

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Bruce Leonard

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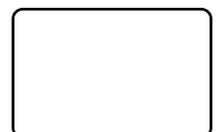


Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 3708 4199
Fax: +44 20 7229 6910

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First published 2008
Tenth edition
ISSN 2040-7408

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Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112



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Turkey

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Legislation

1 What legislation is applicable to insolvencies and reorganisations? What criteria are applied in your country to determine if a debtor is insolvent?

The bankruptcies and reorganisations are generally governed by the Enforcement and Bankruptcy Law (EBL) numbered 2004. The EBL is mainly supported by the provisions of the following laws and regulations:

- the Turkish Civil Code (TCivC);
- the Turkish Code of Obligations (TCO);
- the Turkish Commercial Code (TCC);
- the Banking Law (BanL);
- the Law of Banks (LOB);
- the Law on Procedure of Collection of Public Receivables (LPCOPR); and
- the International Private and Civil Procedure Law (IPCPL).

Any failure by a debtor in paying his or her due debt despite the bankruptcy case is a general reason.

Courts

2 What courts are involved in the insolvency process? Are there restrictions on the matters that the courts may deal with?

The court ruling the bankruptcy case and rendering bankruptcy adjudication is the commercial court. In addition to that, the commercial courts take decision for the approval of the composition proposed by the debtor, postponement of the bankruptcy of the capital companies or cooperatives and restructuring of them through reconciliation.

The enforcement court takes decision regarding examination of the complaints lodged against the transactions of the bankruptcy offices, supervision and inspection of the bankruptcy offices, election of the members to the bankruptcy administration, approval of the invoices of the administration, granting duration for the composition, appointment of commissar and giving extraordinary duration.

With the introduction of a three-tiered court system in Turkey, parties may appeal the decisions of the local courts before the regional appellate court. It is possible to refer the decisions of the regional appellate court's decisions to the 12th and 23rd Civil Chambers of the Court of Appeals.

Excluded entities and excluded assets

3 What entities are excluded from customary insolvency proceedings and what legislation applies to them? What assets are excluded from insolvency proceedings or are exempt from claims of creditors?

As a rule, only merchants are subject to bankruptcy. The following are considered to be merchants and subject to bankruptcy pursuant to article 18 of the TCC:

- collective companies;
- commandite companies;
- joint-stock companies;
- commandite companies with share capital;
- limited liability companies;
- cooperatives;

- foundations and associations operating a commercial enterprise in order to achieve their goal; and
- institutions and corporations established by the state, special provincial administration, municipality, village and other public legal entities for the purpose of being managed or commercially operated in accordance with the private law provisions pursuant to their own laws of establishment.

A special method of liquidation has been determined for banks, financial institutions and insurance companies.

Following opening of bankruptcy, any and all seizable goods, receivables and rights included in the property holding of the bankrupt will be delivered to the bankruptcy estate irrespective of where they are present. However, the assets that are not of seizable nature as specified in the laws related to the governmental properties and the assets included within the scope of article 82 of the EBL are not delivered to the bankruptcy estate.

Public enterprises

4 What procedures are followed in the insolvency of a government-owned enterprise? What remedies do creditors of insolvent public enterprises have?

The state, special provincial administration, municipality, village and other public legal entities, the associations conducting activity for the public interest and the foundations spending more than half of their revenues for activities that are in the nature of public services are not considered to be merchants and, therefore, they are not subject to bankruptcy irrespective of whether they directly operate a commercial enterprise or they operate the same by way of a legal entity managed or operated pursuant to the public law provisions.

Protection for large financial institutions

5 Has your country enacted legislation to deal with the financial difficulties of institutions that are considered 'too big to fail'?

The Savings Deposit Insurance Fund of Turkey (SDIF) gives financial support to the banks that may be subject to a bankruptcy proceeding because of a failure in paying their debts, as well as protecting them against the risk of bankruptcy. Many banks have been revitalised in the financial system and kept alive through a special sale transaction where the bank transferred to the SDIF selects the assets and liabilities wanted by the buyer and a separate closing balance sheet is issued for the transfer transaction.

Secured lending and credit (immovables)

6 What principal types of security are taken on immovable (real) property?

The most frequently applied method of ensuring a security is a mortgage imposed on the immovable properties. The mortgage will entitle the mortgagee to ensure the foreclosure of the pledged property that is registered in the land registry if the receivable is not paid when due.

Any receivable that is present or that has not yet arisen, but will probably arise may be secured with a mortgage (TCivC, article 881). Unless otherwise stipulated in the law (for example, articles 892 and 893 of the TCivC), an agreement regarding the mortgage should be

executed by and between the mortgagee and the mortgagor in the presence of a deed officer in order to impose a mortgage, and this mortgage should be registered with the land registry.

Secured lending and credit (moveables)

7 What principal types of security are taken on moveable (personal) property?

Pledge may be created over all kinds of tangible and intangible negotiable moveables including the intellectual and industrial property rights and receivables. If any receivable secured under a pledge is not paid, the pledgee will collect his or her receivable by converting the moveable subject to pledge into cash money.

Lien is a right entitling the creditor to retain, as a security for his or her receivables, the moveables and valuable papers pertaining to the debtor which are in his or her possession and that should be returned until the debt is paid and to convert the same into cash money by giving a notice in advance.

Retention of title is created by way of a notarial deed followed by registration in the relevant special register (eg, vehicle registration record for a car) and, thus, limited to the certain kind of transactions.

Commercial enterprise pledge covers the trade name and company name of the commercial enterprise, the machinery, tools, instruments and motorised means of transportation (moveable operating equipment), the letters patent, brands, models and the intellectual and industrial property rights such as drawings and licences and is issued based on the Law of Commercial Enterprise Pledge (LOCEP) No. 1447 dated 21 July 1971.

Unsecured credit

8 What remedies are available to unsecured creditors? Are the processes difficult or time-consuming? Are pre-judgment attachments available? Do any special procedures apply to foreign creditors?

The creditors may initiate an enforcement proceeding or a lawsuit against the debtor. Assets of the debtor may be seized if the creditors win the relevant lawsuit or the enforcement proceeding so initiated is finalised. However, these actions or proceedings may take many years if an objection is raised by the debtor.

In addition to the foregoing, the creditors may cause a cautionary attachment to be imposed on assets of the debtor if certain conditions are satisfied. In this method, the creditors may temporarily seize the assets of the debtor based on a court decision in order to secure the timely payment of their pecuniary claim. The court taking decision for cautionary attachment may also decide for receipt of a security from the creditor. This security is received for the purpose of ensuring that the losses to be sustained by the debtor (and third persons) are met if the creditor requesting cautionary attachment loses the lawsuit in the future.

Foreign creditors are required to post a guarantee prior to the lawsuits and enforcement proceedings to be initiated in Turkey unless there is a bilateral agreement between their own country and Turkey in this direction or there is a regulation in this respect in a multilateral agreement to which their own country and Turkey are parties. With regard to this matter, the creditors that are citizens or companies of a state that is party to the Hague Convention of 1954 on Civil Procedure are exempted from making a down payment pursuant to article 17 of this agreement.

Voluntary liquidations

9 What are the requirements for a debtor commencing a voluntary liquidation case and what are the effects?

A debtor who is subject to bankruptcy may submit a petition to the extent that he or she is unable to pay his or her debt to a competent commercial court requesting that a decision should be taken for its bankruptcy.

Furthermore, the persons authorised to represent a capital company or a cooperative (for example, the board of directors in the joint-stock companies) may request a decision for bankruptcy of the company or cooperative attaching the balance-sheet indicating that the liabilities of the company or cooperation are more than the assets thereof. The commercial court will decide for bankruptcy of the company if it believes that the liabilities of the company or cooperation are

more than the assets thereof and if the postponement of the bankruptcy of the company or cooperative is not requested.

Bankruptcy liquidation

Concurrently with the bankruptcy decision, the bankruptcy liquidation is initiated leading to the following consequences that cannot be stopped even if the decision is appealed:

- any and all seizable assets, receivables and rights of the debtor will automatically constitute the bankruptcy estate;
- the right to initiate a claw-back action granted to the creditors for the cancellation of donations and fraudulent actions made by the debtor for the purpose of concealing the properties from the creditors prior to the seizure of the properties or a decision is taken for bankruptcy of the debtor will pass to the bankruptcy estate and such actions of nullity will be initiated by the bankruptcy estate;
- the debtor's power of performing any act over his or her properties will cease;
- as a rule, the proceedings initiated against the bankrupt prior to the initiation of the bankruptcy will be stopped upon initiation of the bankruptcy and they will be terminated following finalisation of the bankruptcy decision;
- any new proceeding cannot be initiated against the debtor during the bankruptcy liquidation;
- the civil lawsuits that are initiated prior to the bankruptcy and to which the bankrupt is a party as a plaintiff or defendant will cease to be in effect concurrently with the opening of the bankruptcy;
- the overdue receivables of the debtor except those that are secured under a mortgage or pledge will become due and payable concurrently with the opening of the bankruptcy;
- the non-pecuniary receivables will be converted into the pecuniary claims by the creditors thereof;
- interest will continue to accrue in the receivables included in the bankrupt's estate; and
- in certain cases, the creditor may exchange his or her receivable with the receivable from the debtor.

Liquidation through composition with creditors (LTCWC)

Another method of voluntary liquidation is LTCWC where the debtor leaves his or her property holdings to the creditors and requests that these property holdings should be liquidated by the creditors. This method of liquidation is also in favour of the debtor since it protects the debtor against bankruptcy. Moreover, the debtor will get rid of his or her debts and discharged contrary to the debtor who is liquidated within the framework of the current bankruptcy procedure.

Dissolution

Another method of voluntary liquidation is liquidation as described in the TCC. The company whose activity is terminated because of any reason other than bankruptcy will enter the process of liquidation within the scope of the TCC. In general, the liquidation is managed through the liquidator appointed from among the partners. If it is understood that the company is over-indebted, the liquidator should request the bankruptcy of the company under the same conditions.

Involuntary liquidations

10 What are the requirements for creditors placing a debtor into involuntary liquidation and what are the effects?

If the receivable of a creditor wishing to initiate a proceeding against his or her debtor subject to bankruptcy through the way of bankruptcy is dependent on a bill of exchange (cheque, policy or bond), the creditor will refer to the procedure of (special) bankruptcy particular to bills of exchange or otherwise, he or she will refer to the procedure of general (ordinary) bankruptcy.

Ordinary bankruptcy will be commenced with the bankruptcy proceeding claim to be submitted by the creditor to the execution office. The bankruptcy proceeding will be terminated if the debtor pays his or her debt within seven days (or five days in a special bankruptcy) or otherwise, the creditor will initiate a bankruptcy lawsuit in the commercial court requesting that a decision should be taken for the bankruptcy of the debtor.

The commercial court may decide for depository injunction. Based on this depository injunction, the court will instruct the debtor to pay

his or her debt together with the interests and executive costs thereof or to deposit the equivalent of the debt and the accessories thereof in the court's pay office within seven days. If, following the depository injunction, the debtor fails to pay his or her debt (or does not deposit the equivalent of the whole debt) and the creditor deposits the necessary expenses in advance, the commercial court will decide for the bankruptcy of the debtor at the first hearing following the depository injunction.

The creditor may also directly initiate a bankruptcy lawsuit in the commercial court without sending a bankruptcy payment order to the debtor through submitting a bankruptcy proceeding claim to the execution office based on the following reasons:

- if the residential address of the debtor is not known;
- if the debtor escapes in order to get rid of his or her commitments;
- if the debtor commits fraudulent acts violating the rights of his or her creditors or attempts to commit such an act;
- if the debtor conceals his or her assets during a proceeding through attachment;
- if the debtor suspends the payment of his or her debts;
- non-approval of the composition proposed by the debtor or the removal or fully termination of the duration for composition;
- fully termination of the restructuring of a capital company or cooperative through mutual consent;
- any failure in paying a receivable based on a judgment although the same is requested through an execution order; and
- any occurrence where the assets of the capital companies and the cooperatives cannot meet the liabilities thereof.

If the Commercial Court determines the existence of the receivable and the above-mentioned reason of bankruptcy as a result of the investigation, it will directly decide for the bankruptcy of the debtor without rendering the depository injunction for the debtor.

Concurrently with the bankruptcy decision of the commercial court, the liquidation in bankruptcy regarding the debtor will have been commenced. Thereafter, the bankruptcy office will commence the liquidation process.

Voluntary reorganisations

11 What are the requirements for a debtor commencing a formal financial reorganisation and what are the effects?

Ordinary composition

A debtor may prevent his or her bankruptcy by declaring ordinary composition (off bankruptcy or bankruptcy preventive composition), which allows him or her to restructure debt by concluding a composition agreement irrespective of whether he or she is subject to bankruptcy or not. The debtor or each creditor authorised to submit bankruptcy petition will inform his or her composition project by attaching his or her balance-sheet and income statement in the enforcement court at the same locality as the headquarters of the debtor. If the enforcement court is convinced that the success of the project is probable and it is free of causing any loss on the part of the creditors, it will provide the debtor with a duration of a maximum of three months for composition and will appoint one to three commissars in composition.

No executive or bankruptcy proceeding can be made and the previously initiated proceedings will be stopped except the foreclosure of pledged property for the receivables obtained through the pledge of moveables and immoveables, and the proceedings through seizure for the employee's receivables against the debtor during the time period given for the composition. If the adjudication for the affirmation of the composition has not been concluded within the term, the court may, with due regard for the report of the commissioner with justification, decide to suspend the proceedings previously initiated against the debtor or not initiate new proceedings against the debtor to be valid for the period after the conclusion of the composition term.

During this period, the debtor may conduct his or her activity under the supervision of the commissar. Thereafter, the commissar will call the creditors and the creditors will decide whether to accept or reject the composition at this meeting.

For the acceptance of the composition, both the majority of the creditors (a majority exceeding half of the informed and written creditors should accept the same) and the receivable majority (the receivables of the informed and written creditors should exceed at least two-thirds

of the total receivable amount) should be ensured and the requirement of depositing a security should have been fulfilled. The privileged creditors and the pledgees are not included in this calculation.

If the creditors accept the proposed composition, this proposed composition will be affirmed by the commercial court. Thereupon, the debtor will pay his or her debts pursuant to the affirmed composition and get rid of that part of the debt waived based on the said composition.

Post-bankruptcy composition

The majority in the same ordinary composition is required for the acceptance of the post-bankruptcy composition. However, this time the proposal will be made to the bankruptcy administration and no duration is given and no commissar is appointed for the composition. The encashment will be postponed until the commercial court takes a decision for affirmation. The court will affirm the composition if it determines the existence of the necessary requirements and inform the same of the administration of bankruptcy when the decision is finalised. If the request for affirmation is rejected, the administration of bankruptcy will continue the transactions for the liquidation in bankruptcy following receipt of a notice in this respect.

Postponement of bankruptcy (POB)

The postponement of bankruptcy is the most frequently used reorganisation institution, and at the same time it is the most-criticised institution because it is extremely in favour of debtors. POB is an institution ensuring the improvement of the financial position of an over-indebted capital company or cooperative within the framework of the improvement project to be submitted by the company to the court and that involves taking the company under the court's protection and ensuring the improvement of the financial position of the said company.

The debtor or any creditor may request the postponement of the debtor's bankruptcy by providing the court with an improvement project indicating the objective and real sources including investment of new cash capital. The information and documents (eg, list indicating the payment terms and amounts of existing debts, addresses of creditors, inventories according to the features of the industry as well as their waiting period and amount, the latest balance sheet and income statement submitted to the tax office, trade registry certificate of the company or cooperative) proving that the improvement project is serious and persuasive should also be submitted to the court. In this respect, the debtor requesting the POB should have been over-indebted, the improvement project should be serious and persuasive, there should be the hope of improvement and the debtor should not have made use of the extraordinary duration.

Following receipt of the request for the POB, the court will promptly appoint a trustee for the preparation of an inventory (itemisation of the debtor's properties) and taking the place of the board of directors or for approval of the resolutions passed by the board of directors and it will take the other measures required for the protection of the property holding of the company and the cooperative.

A decision will be taken for the POB of the company if the improvement project of which has been found to be serious and persuasive.

The duration for the postponement of bankruptcy can be maximum of one year. This duration may be extended for a year more where it is found appropriate by the court taking into consideration the reports given by the trustee. A capital company or cooperative that has benefited from postponement of bankruptcy cannot make any demand for POB before a year passes following the expiration of the postponement period including any extensions, as the case may be.

The trustee will regularly submit reports to the court regarding the activities of the company, the bankruptcy of which is postponed at such time period to be determined by the court.

Following the decision for postponement, no proceeding including the proceedings conducted pursuant to the LPCOPR (including the proceedings related to the public receivables) can be conducted against the debtor and the previously initiated proceedings will be automatically stopped.

During the postponement, a proceeding may be initiated through the foreclosure of pledged property because of the receivables obtained based on an immovable or commercial enterprise pledge or it will be possible to proceed with the previously initiated proceedings; however, any protective measures cannot be taken and the sale of a pledged property cannot be realised because of such a proceeding. In this case, the

interest will accrue during the term of postponement and a security should be provided for the interests that cannot be met with the current pledge.

However, a proceeding through seizure may be conducted for the employee's receivables as provided for in the first sentence of article 206 of the EBL.

The bodies of the debtor will maintain their duties and authorities under the supervision of the trustee within the framework to be determined by the court. The rights and obligations of the debtor arising from the agreements executed prior to the decision of postponement will continue to be in effect. The fact that a decision is taken for the postponement of bankruptcy will not prevent the continuance of the previously initiated lawsuits or the initiation of new lawsuit during the term of postponement except the bankruptcy lawsuit.

Following the determination of the impossibility of an improvement at the end of the duration for postponement, the court will decide the bankruptcy of the debtor. Even if the duration of postponement has not expired, if the court comes to the conclusion, based on the reports delivered by the trustee, that the improvement of the company's or the cooperative's financial position is not possible, it may withdraw the decision for postponement and decide for the bankruptcy of the company or cooperative. If the improvement of the company is realised at the end of the duration for postponement, the decision of postponement will be removed and the company will continue to conduct its activities.

Restructuring of capital companies and cooperatives through mutual consent (RSCCTMC)

The institution for the RSCCTMC has been substantially arranged for the restructuring of the big undertakings' debts differently from the composition. However, the banks and insurance companies cannot file an application with this institution in the capacity of a debtor.

In order for the capital companies and cooperatives to benefit from this regulation, their applications should be prepared in good faith, they should be unable to pay their due debts or their current assets and receivables should not be sufficient to meet their debts or they should be on the verge such a situation.

If the capital company or cooperative in such a situation reaches an agreement with the majority of its creditors with whom negotiations are conducted, who are affected by the project and who have receivables at a certain rate, it may file an application with the commercial court of first instance in the same locality as the headquarters of the relevant capital company or cooperative for the restructuring of its debts.

It is sufficient for it to reach an agreement only with the creditors affected by the project. It is also possible for the debtor to create receivable classes among the creditors having similar receivables. In this case, each creditor category should accept the project based on a large majority as stipulated in the law. The necessary majority will be deemed to have been acquired if the restructuring project is accepted by the majority of creditors exceeding half of the creditors who are affected by the project and constituting at least two-thirds of the creditors participating in the voting. If the project contains more than one creditor class, each creditor class should have accepted the project based on the necessary majority within its own class. In addition to the foregoing, the debtor that has filed the application should indicate that the amount to be acquired as a result of the project by each creditor that has rejected the project will be equal to the amount to be acquired as a result of the liquidation in bankruptcy.

The restructuring project to be submitted to the commercial code will contain the following issues:

- the conditions governing the creditors affected by the project and the manner in which equality will be ensured among and between the creditors having similar receivables;
- the effect of the project on the agreements to which the debtor is a party;
- the effect of the project on the debtor's power to perform acts of disposal over his or her property holding;
- if it is deemed to be necessary for the restructuring of the debts, the issue of whether the debtor will apply for sources of financing such as loans;
- the methods that may ensure the applicability of the project such as the transfer of the debtor's undertaking in whole or in part, a merger with another company or companies, any change in the

capital structure or an amendment to the debtor's articles of association, determination of the persons who are going to take part in the management of the debtor's undertaking, extension of the maturity date of the debts, changing the interest rates and issue of moveables;

- the issue of how and by whom the implementation of the project will be controlled after the decision of approval; and
- the fact that the receivable of the creditor that has rejected the project will be subject to equal treatment with the receivables of similar nature with regard to quality unless the relevant creditor explicitly accepts an amount that is less than those stipulated for his or her own class in the project.

The court that has received the application will promptly take the measures it may deem necessary with regard to the activities of the debtor until the date on which the final decision regarding the application is going to be taken. Furthermore, the debtor may refer to the new financing instruments during this interim period.

The approved restructuring project and the conditions thereof prevail over the provisions of any and all agreements executed with the creditors affected by the project.

Time extension in extraordinary cases

In extraordinary cases and especially during periods of economic crisis, the government may decide that provisions regarding time extensions in emergency cases apply to affected debtors for a specific time period. If the debtor failing to fulfil his or her commitments in places determined by the government without any fault on his or her part hopes to pay all of his or her debts at the end of the time period, the enforcement court may grant an extension not exceeding six months to the relevant debtor.

Although a proceeding may be conducted against the debtor during the time extension given in extraordinary cases, these proceedings will not result in conservation, encashment or bankruptcy as long as the extension continues to be in effect.

Involuntary reorganisations

12 What are the requirements for creditors commencing an involuntary reorganisation and what are the effects?

Although this is not observed frequently, creditors may also request postponement of bankruptcy and composition regarding the debtor under the conditions specified in question 11. However, creditors are not obliged to submit the commercial books, balance-sheets and income statements of the debtor, as well as not being obliged to deliver a composition project.

Mandatory commencement of insolvency proceedings

13 Are companies required to commence insolvency proceedings in particular circumstances? If proceedings are not commenced, what liabilities can result? What are the consequences if a company carries on business while insolvent?

If any creditor or creditors of the debtor initiates a proceeding through attachment against the debtor and if this proceeding results in the disposition of half of the assets pertaining to the debtor and if the remaining assets of the debtor are not sufficient to meet the other debts of the debtor that may become due within one year, then the debtor will promptly inform them that he or she has become insolvent and request that the commercial court take a decision on his or her bankruptcy. If he or she fails to request his or her bankruptcy and goes bankrupt within one year, then the relevant debtor will be considered to be a negligent bankrupt and he or she will be penalised.

In cases where the assets of the company do not meet its liabilities in the capital companies and cooperatives, the board of directors in the joint-stock companies and cooperatives and the manager of the limited liability companies is obliged to request a decision for the bankruptcy of the company pursuant to article 376 of the TCC.

In cases where the debtors actually cause insolvency as a result of gross negligence in their business affairs or knowingly aggravate the situation, they may be subject to penal sanctions.

Doing business in reorganisations

14 Under what conditions can the debtor carry on business during a reorganisation? What conditions apply to the use or sale of the assets of the business? Is any special treatment given to creditors who supply goods or services after the filing? What are the roles of the creditors and the court in supervising the debtor's business activities? What powers can directors and officers exercise after insolvency proceedings are commenced by, or against, their corporation?

The debtor may proceed with his or her business affairs under the supervision of the commissar in case of ordinary composition and under the supervision of the project controller in case of the RSCCTMC. However, the enforcement court may allow effective execution of certain transactions in the presence of the commissar or allow the commissar instead of the debtor to conduct the activity of the undertaking.

The debtor cannot impose any pledge, stand surety for someone, transfer or impose restrictions on any immovable or permanent installation of the undertaking and perform any voluntary act of disposal without obtaining permission of the enforcement court or otherwise, the transactions to be carried out will be null and void.

In case of the postponement of bankruptcy, the court may appoint a trustee who will take the place of the management or approve the resolutions to be passed by the board of directors. The debtor will continue to conduct his or her activity under the supervision of the trustee within the framework to be determined by the court. The court may take measures in the direction of extending or narrowing the restrictive decisions regarding authorised signatories of the company taking into consideration the operating reports to be given by the trustee regarding the undertaking.

Stays of proceedings and moratoria

15 What prohibitions against the continuation of legal proceedings or the enforcement of claims by creditors apply in liquidations and reorganisations? In what circumstances may creditors obtain relief from such prohibitions?

As a rule, the proceedings initiated against the bankrupt prior to the initiation of the bankruptcy will be stopped upon initiation of the bankruptcy and they will be terminated following finalisation of the bankruptcy decision. Any new proceeding cannot be initiated against the debtor during the bankruptcy liquidation.

The civil lawsuits that are initiated prior to the bankruptcy and to which the bankrupt is a party as a plaintiff or defendant will cease to be in effect concurrently with the opening of the bankruptcy.

No executive or bankruptcy proceeding can be made and the previously initiated proceedings will be stopped except the proceedings except the foreclosure of pledged property for the receivables obtained through the pledge of moveables and immovable and the proceedings through seizure for the employee's receivables against the debtor during the time period given for the composition.

Following the decision for postponement, no proceeding including the proceedings conducted pursuant to the LPCOPR (including the proceedings related to the public receivables) can be conducted against the debtor and the previously initiated proceedings will be automatically stopped; the lapse of time and foreclosure durations that may be interrupted because of proceeding transaction will not be functional.

Commencement a foreclosure proceeding for the pledged properties and receivables of employees in accordance with article 206 of the EBL are exempted from the automatic stay.

In a manner covering the proceedings and lawsuits initiated pursuant to the LPCOPR, the court may take decision for the stay of the proceedings initiated by the creditors affected from the project and the lawsuits related to these proceedings, prohibition of the initiation of new proceedings for the affected creditors and for non-application of the decisions for preliminary injunction or cautionary attachment.

Post-filing credit

16 May a debtor in a liquidation or reorganisation obtain secured or unsecured loans or credit? What priority is given to such loans or credit?

Within the scope of ordinary composition, the debts incurred based on the approval of the commissar during the time extension in

extraordinary cases will be considered to be the debt of the bankruptcy estate in the composition through the abandonment of the property holding or in any future bankruptcy.

Within the scope of the RSCCTMC, the debtor may refer to the financing instruments like loan if the same is compulsory for the continuity of the undertaking or it is deemed to be necessary for the protection of, or for the purpose of increasing, the value of the property holding (the purchase of the necessary goods and service is also included within this scope). If it is necessary to give a security in order to use a source of financing, this security will firstly be insured over the debtor's moveables and immoveables on which any pledge has not previously been imposed.

The obtaining of a new loan by the debtor within the scope of bankruptcy liquidation is not possible.

Set-off and netting

17 To what extent are creditors able to exercise rights of set-off or netting in a liquidation or in a reorganisation? Can creditors be deprived of the right of set-off either temporarily or permanently?

During the process of liquidation, the creditor may set off his or her receivable with the bankrupt's receivable. However, no set off can be made in the following cases:

- if the debtor of the bankrupt becomes the creditor of the bankrupt following opening of the bankruptcy;
- if the creditor of the bankrupt becomes the debtor of the bankrupt or the bankruptcy estate following opening of the bankruptcy; and
- if the receivable of the creditor is dependent on a share certificate of bearer type.

Upon bankruptcy of the joint and limited liability companies and cooperatives, those parts of the share certificates that have not yet been paid or those that are subscribed to but not yet paid cannot be set off against the debts of such companies.

If the creditor creates a receivable against the bankrupt in order to obtain an interest for him or herself or a third person knowing that the debtor is in the status of insolvent prior to the opening of bankruptcy, such an exchange will be invalid.

Sale of assets

18 In reorganisations and liquidations, what provisions apply to the sale of specific assets out of the ordinary course of business and to the sale of the entire business of the debtor? Does the purchaser acquire the assets 'free and clear' of claims or do some liabilities pass with the assets? In practice, does your system allow for 'stalking horse' bids in sale procedures and does your system permit credit bidding in sales?

Goods that may fall in value or the protection of which may be expensive will be sold without delay. The securities and goods that have a price at the stock exchange or at the market may be promptly converted into actual money. The other assets will only be sold after the second meeting of creditors. The other assets pertaining to the bankruptcy estate will be sold through public auction by way of the bankruptcy administration or through bargaining if so decided by the creditors. The assets bearing the right of mortgage thereon may be sold through bargaining only after having obtained the consent of the pledgee creditors.

In any case, flexibility has been accepted in the LTCWC and the procedure and time of encashment will be decided by the board of creditors. The property holding will be realised separately or as a whole and in case of any creditor, through the collection of this receivable or the sale of the right to claim, through bargaining or public auction for the other assets.

While the assets sold during the process of liquidation are sold without restriction and the assets sold outside the process of liquidation are sold together with the restrictions thereon.

There is no procedure regarding 'stalking horse' bids and in the sales during the liquidation, the creditors other than the mortgagees cannot deduct their own receivable from the tender price.

Intellectual property assets in insolvencies

- 19 May an IP licensor or owner terminate the debtor's right to use it when an insolvency case is opened? To what extent may an insolvency administrator continue to use IP rights granted under an agreement with the debtor? May an insolvency representative terminate a debtor's agreement with a licensor or owner and continue to use the IP for the benefit of the estate?**

The issue of whether the bankruptcy of either party may terminate the agreement will be firstly determined according to the legal regulations or according to the agreement in cases where there is no legal regulation or according to the legal nature of the agreement in cases where there is no provision in the agreement.

In accordance with articles 58/I and 59/II of the Law on Intellectual and Artistic Works, in case of the death or bankruptcy of the licensee of any financial right, the licence agreement will expire in cases where the exercising of the licence right is dependent on the personality of the licensee only. As a matter of fact, any personal ability or skill is not required while exercising the rights of reproduction and distribution.

In article 50/II of the Law on Intellectual and Artistic Works, the case of bankruptcy by the licensee prior to the completion of the work has been expressed as the reason for terminating the licence agreement.

In Turkish law, there is no legal regulation with regard to how the brand licence agreement will be affected from the bankruptcy. If there is a gap regarding the termination of the brand licence agreement, the provisions included in the similar agreements may be applied by analogy. For example, if the provisions regarding the ordinary partnership are applied for the brand licence agreement, the brand licence agreement will expire in cases as stipulated in article 535 of the Code of Obligations and in the existence of valid grounds to the extent the same complies with the duration, notice and concrete event and in the application of the provisions related to the ordinary partnership, the death, loss of ability, disappearance and bankruptcy will terminate the agreement.

The status of the patent licence agreement is explained making an analogy with the lease agreement. If the licensee goes bankrupt after the patent constituting the subject matter of the licence is delivered to him or her, article 332 of the TCO regarding the lease agreement will apply by analogy. In this case, the licensor may request security for the values of licence that are accumulated or that will arise from the licensee and the administration of bankruptcy. The licensor may terminate the licence agreement if the said security is not given.

Personal data in insolvencies

- 20 Where personal information or customer data collected by an insolvent company is valuable to its reorganisation, are there any restrictions in your country on the use of that information in the insolvency or its transfer to a purchaser?**

Following the enactment of the Law on Protection of Personal Data (the Law) on 7 April 2016, a general prohibition started to be applied in Turkey on processing or storing personal data without the express consent of the owner. Under the Law, there is no specific regulation for insolvent companies. Thus, all restrictions applied for any other processor will also be applied to the insolvent companies. Therefore, it should be ensured that the consent of the owner has been collected in compliance with the Law.

Rejection and disclaimer of contracts in reorganisations

- 21 Can a debtor undergoing a reorganisation reject or disclaim an unfavourable contract? Are there contracts that may not be rejected? What procedure is followed to reject a contract and what is the effect of rejection on the other party? What happens if a debtor breaches the contract after the insolvency case is opened?**

In accordance with article 309/r of the EBL, any contract terms that may affect the application of the restructuring project shall not be applied against the debtor. However, this provision is only being stipulated under RSCCTMC provisions. Thus, article 309/r cannot be applied for other reorganisation institutions. However, as an exceptional case, if the agreement between the parties and the acts to be performed pursuant to the requirements of this agreement conflict with the measures

included in the improvement project submitted to the court by the debtor, a decision should be taken by evaluating the effect of the contractual acts on the debtor company.

The party of the agreement that is breached by the debtor may register its claim arising from the breach of contract to the bankruptcy estate. Those creditors are unsecured creditors.

Arbitration processes in insolvency cases

- 22 How frequently is arbitration used in insolvency proceedings? Are there certain types of insolvency disputes that may not be arbitrated? Will the court allow arbitration proceedings to continue after an insolvency case is opened? Can disputes that arise in an insolvency case after the case is opened be arbitrated with the consent of the parties? Can the court direct the parties to such disputes to submit them to arbitration?**

There is almost no way of incorporating arbitration into the bankruptcy. That is to say, the bankruptcy case will be initiated at the commercial court of the locality where the headquarters of the debtor are located.

In disputes arising after the opening of bankruptcy, the Administration of Bankruptcy may come to an agreement directly regarding the receivables up to an amount of 2,000 Turkish lira and based on the authority to be granted by the total of the creditors in case of the receivables exceeding the foregoing amount. The administration of bankruptcy may settle the disputes by way of arbitration if the authority to refer to arbitration is granted.

However, in a final decision taken by the Supreme Court of Appeals, it has been decided that the rule of not applying the arbitration clause in the bankruptcy cases will be effectual with regard to the state sovereignty for rendering a bankruptcy decision and this rule is not related to the phase of determining the receivable and at this phase, the arbitration clause should be valid.

Successful reorganisations

- 23 What features are mandatory in a reorganisation plan? How are creditors classified for purposes of a plan and how is the plan approved? Can a reorganisation plan release non-debtor parties from liability, and, if so, in what circumstances?**

See question 11.

Expedited reorganisations

- 24 Do procedures exist for expedited reorganisations?**

There is no defined procedure for expedited reorganisations.

Unsuccessful reorganisations

- 25 How is a proposed reorganisation defeated and what is the effect of a reorganisation plan not being approved? What if the debtor fails to perform a plan?**

In POB, the court will evaluate the request for postponement and if it comes to the conclusion that improvement is not possible, it will remove the decision of postponement and decide on the bankruptcy of the company.

If the concordat is not approved or the time extension is removed, a decision will be taken for the prompt bankruptcy of the debtor upon receipt of the request to be made by one of the creditors within 10 days following the announcement regarding this decision.

The court that has rejected the approval of the concordat will decide for the cautionary attachment of all attachable assets of the debtor without seeking any security. This decision will be applied based on the request of a creditor that has deposited the relevant costs as advance.

The provisions regarding termination of the concordat will apply in the RSCCTMC.

If the debtor fails to fulfil his or her obligations arising from the project in whole or in part, the court will determine whether the debtor has fulfilled his or her obligations as a whole or in part, the project is implemented and the revision thereof is not in question or the financing creditor cannot obtain its receivable in whole or in part, it will promptly decide on the bankruptcy of the debtor.

Insolvency processes

- 26** During an insolvency case, what notices are given to creditors? What meetings are held? How are meetings called? What information regarding the administration of the estate, its assets and the claims against it is available to creditors or creditors' committees? What are insolvency administrators' reporting obligations? May creditors pursue the estate's remedies against third parties?

The bankruptcy adjudication is published in a newspaper having a circulation of more than 50,000 and distributed throughout Turkey, and in a newspaper and trade registry gazette in the locality of the headquarters of the debtor. The closing and removal of the bankruptcy will also be informed and announced following the same procedure.

If the fact that the liquidation will be realised ordinarily is approved, the first meeting of creditors and the second meeting of creditors will be made and the creditors will be invited in accordance with the above-mentioned procedure. Apart from that, an invitation may be made for a new meeting of creditors if the majority of the creditors requests the same and the administration of bankruptcy comes to the conclusion that it is necessary.

The creditors are authorised to make the necessary inspection in the bankruptcy file.

The right to follow up an allegation the conclusion of which by the bankruptcy estate is not deemed to be necessary by the creditors will be transferred to the creditor wishing to do the same. The creditor that has taken over the same may continue with the proceeding.

Enforcement of estate's rights

- 27** If the insolvency administrator has no assets to pursue a claim, may the creditors pursue the estate's remedies? If so, to whom do the fruits of the remedies belong?

Creditors may pursue the allegations where the bankruptcy estate does not deem necessary to conclude. After having deducted the costs from the result to be obtained as a result of the creditor may be satisfied and the remaining amount will be deposited to the bankruptcy estate.

Creditor representation

- 28** What committees can be formed (or representative counsel appointed) and what powers or responsibilities do they have? How are they selected and appointed? May they retain advisers and how are their expenses funded?

Establishment of a committee among the creditors for the liquidation in bankruptcy is not defined in the EBL.

Insolvency of corporate groups

- 29** In insolvency proceedings involving a corporate group, are the proceedings by the parent and its subsidiaries combined for administrative purposes? May the assets and liabilities of the companies be pooled for distribution purposes? May assets be transferred from an administration in your country to an administration in another country?

There is no special process of arrangement of bankruptcy within the group of companies. Any and all attachable assets of the bankrupt existing as of the opening of bankruptcy irrespective of the place thereof will constitute the bankruptcy estate and the same will be allocated for the payment of the receivables. In this respect, the bankruptcy process of each company will continue separately. If, however, the bankruptcy transactions of those who have undertaken a debt jointly coincide at the same time, a creditor may request all of his or her receivable from the bankrupt's estate of each bankrupt.

Appeals

- 30** What are the rights of appeal from court orders made in an insolvency proceeding? Does an appellant have an automatic right of appeal or must it obtain permission to appeal? Is there a requirement to post security to proceed with an appeal and, if so, how is the amount determined?

With the introduction of a three-tiered court system in Turkey, parties may appeal the decisions of the local courts before the regional

appellate court. It is possible to refer the decisions of the regional appellate court to the 12th and 23rd Civil Chambers of the Court of Appeals.

Claims

- 31** How is a creditor's claim submitted and what are the time limits? How are claims disallowed and how does a creditor appeal? Are there provisions on the transfer of claims? Must transfers be disclosed and are there any restrictions on transferred claims? Can claims for contingent or unliquidated amounts be recognised? How are the amounts of such claims determined?

Creditors should register and submit their claims providing the originals or certified copies of their evidence (share certificates and commercial book records, etc) within one month prior to the notification.

The bankruptcy administration will examine the claims following expiration of the duration for the registration of the claims and the alleged progress payments. Creditors may appeal the decisions of the bankruptcy administration with respect to their rank or rejected amounts.

There is no separate limitation or arrangement regarding the liquidation in bankruptcy with regard to the assignment of the claims by the creditors. In this respect, if, for example, the privileged creditor transfers this claim to another person, the preferential right will also pass to the creditor that has taken over the same.

The creditor may also have any claim that is dependent on a condition or maturity. Upon realisation of the condition or as of the due date the creditor may be satisfied.

The claims, the subject matter of which is not money, will be converted into pecuniary consideration. However, the bankruptcy administration may apply payment in kind for such claims. In this case, the administration of bankruptcy will give security if so requested by the creditor.

Concurrently with the opening of the bankruptcy, an interest will continue to accrue on the receivables included in the bankrupt's estate pursuant to article 196 of the EBL.

Modifying creditors' rights

- 32** May the court change the rank of a creditor's claim? If so, what are the grounds for doing so and how frequently does this occur?

The rank of the creditors determined previously based on the law cannot be changed and no agreement can be made in this respect, provided that article 376/3 of the EBL is reserved. If an objection is raised to the order of precedence, the court will examine the request and inspect the decision regarding the rank of the creditor within the framework of article 206 of the EBL and take the necessary decision.

Pursuant to article 376/3 of the TCC, an agreement may be executed in writing with the creditors for accepting the placement of their claims after all of the other creditors of a company whose assets do not meet its liabilities, whereby the amount of the debts owed to these creditors meet the deficit and resolve the over-indebtedness of the company thereof.

However, within the procedure of objection to the order of precedence, the court may examine the position of the creditor objecting to its rank and make a decision accordingly.

Priority claims

- 33** Apart from employee-related claims, what are the major privileged and priority claims in liquidations and reorganisations? Which have priority over secured creditors?

In the liquidation in bankruptcy, the major privileged claims respectively consist of the secured claims, bankruptcy estate claims, public claims arising from a property and privileged claims accepted based on special laws and the claims written in the first three ranks of article 206 of the EBL. All other claims are non-preferential claims.

The public claims, such as customs duty, building and land tax and the inheritance and transfer tax required to be received from the properties constituting the subject matter of the pledge, will be paid prior to the secured claims.

Employment-related liabilities in restructurings

34 What employee claims arise where employees are terminated during a restructuring or liquidation? What are the procedures for termination?

The bankruptcy, concordat or postponement of bankruptcy by the employer is not a reason terminating the agreement in Turkish law.

In case of the employer's bankruptcy, the worker's right to terminate the agreement will arise if a guarantee is not given within an appropriate time period even if the worker requests the delivery of a security for his or her wage after the bankruptcy from the bankrupt's estate pursuant to article 436 of the TCO. If the guarantee is given by the debtor or bankruptcy administration within an appropriate time frame, the worker will be obliged to proceed with the employment contract towards the bankrupt's estate.

If the employer becomes unable to pay its debts, the wages of employees and the accessories thereof (bonus, prim, profit share, commission, payments in kind) and their other rights and interests convertible to money (overtime wage, annual paid leave, weekend wage, national holiday and general vacation wages, severance pay, payment in lieu of notice) are protected.

The receivables of employees including the severance and notice pays accrued based on the business relation during a period of one year prior to the opening of bankruptcy and the severance and notice pays that they deserve after the termination of the business relation because of the bankruptcy have been considered to be privileged receivables and stated that they are going to be included in the first rank. In addition to the foregoing, the debts of the employers to the facilities or associations that were established for provident funds and other benevolent associations for workers and that have acquired the status of legal entity will also be included as privileged receivables in the first rank.

Pension claims

35 What remedies exist for pension-related claims against employers in insolvency proceedings and what priorities attach to such claims?

The retirement and social security system is conducted by separate institutions completely independent of the employers. The necessary premium contributions should be paid to the social security institution. The receivables of the institution are enumerated as privileged receivables among the receivables included in the third rank in article 206 of the EBL.

Environmental problems and liabilities

36 In insolvency proceedings where there are environmental problems, who is responsible for controlling the environmental problem and for remediating the damage caused? Are any of these liabilities imposed on the insolvency administrator, secured or unsecured creditors, the debtor's officers and directors, or on third parties?

Pursuant to article 534 of the TCC, the liquidation in bankruptcy will be conducted by the administration of bankruptcy in accordance with the provisions of the EBL. The bodies of the company will protect their representative authority for the issues where the company is not represented by the administration of bankruptcy. In this respect, the responsibility of the administration of bankruptcy is limited to the issues for which it is appointed pursuant to the provisions of the EBL and the authority and responsibility regarding all other affairs of the company will lie with the company officials.

In this respect, the bankruptcy estate is responsible for any failure in taking the necessary measures within the scope of the protection of the assets by the bankruptcy administration or office.

Liabilities that survive insolvency proceedings

37 Do any liabilities of a debtor survive an insolvency or a reorganisation?

Pursuant to article 251 of the EBL insolvency certificates will be issued to creditors for the amount that has not been satisfied during the liquidation. After the closure of the bankruptcy liquidation process creditors holding an insolvency certificate may commence a proceeding against the debtor who has acquired a new property.

Under the LTCWC procedure, liabilities of the debtor do not survive as explained above.

In any reorganisation procedure, all liabilities of the debtor will survive.

Distributions

38 How and when are distributions made to creditors in liquidations and reorganisations?

When the value of the sold assets is collected and the order of precedence is finalised, the bankruptcy administration will prepare the share table of the monies and make the final calculation. The administration of bankruptcy will inform every creditor of the nature and amount of his or her share. The distribution will be started upon expiration of the duration of the preparation of the share table and the final calculation. If there is any complaint, the distribution may be postponed at a rate by which the decision to be taken following receipt of the complaint may affect the distribution.

Temporary distribution may also be made upon expiration of the period for raising objections to the order of precedence (15 days as of the publication of the order of precedence). In this case a share may also be allocated for the disputed receivables that have not yet been finalised.

Transactions that may be annulled

39 What transactions can be annulled or set aside in liquidations and reorganisations and what are the grounds? What is the result of a transaction being annulled?

The transactions that may be cancelled may be classified in three categories, voluntary acts of disposal, acts of disposal performed in the case of insolvency and acts of disposal intentionally performed for the purpose of causing damage.

The voluntary acts of disposal performed and the donations granted by the debtor during the last two years prior to the opening of the bankruptcy, except the ordinary and usual gifts, are subject to cancellation.

The following transactions carried out by the debtor during one year prior to the opening of the bankruptcy are subject to cancellation:

- the pledges imposed by the debtor for the purpose of securing a current debt except the cases where the debtor has previously undertaken to give a security;
- the payments made through any means other than money or usual means of payment;
- the payments made for an overdue debt; and
- annotations given to the land registry for the purpose of strengthening the personal rights.

Any and all transactions carried out by the debtor whose property holding is not sufficient for his or her own debts for the purpose of causing damage to his or her creditors may be cancelled in cases where the debtor's financial position and intention to cause damage are known or expected to be known by the other party of the transaction; provided that a proceeding should be initiated against the debtor through attachment or bankruptcy within five years of the date on which the transaction is realised.

If any action of nullity initiated by the Administration of Bankruptcy or a creditor pursuant to article 245 of the EBL is won, the assets constituting the subject matter of the lawsuit are taken to the bankruptcy estate as if they were owned by the debtor, they are sold by the administration of bankruptcy and the sales value will be allocated for the payment of the bankruptcy receivables. If the sales revenues of the assets meet all receivables and any amount remains at the bankrupt's estate, this money will be given to the defendant third person.

Proceedings to annul transactions

40 Does your country use the concept of a 'suspect period' in determining whether to annul a transaction by an insolvent debtor? May voidable transactions be attacked by creditors or only by a liquidator or trustee? May they be attacked in a reorganisation or a suspension of payments or only in a liquidation?

In general, the voluntary acts of disposal performed by the debtor during the last two years prior to the opening of the bankruptcy and

Update and trends

Since the economic crisis of 2001 that took place in Turkey, POB petitions have been the most used tool through the process of turnaround and restructuring of capital companies and cooperatives. This restructuring tool has long stood on top among turnaround professionals as this tool allows capital companies and cooperatives to reorganise during the stay of execution period, which can continue for up to five or six years. However, the creditors and the financial markets have been complaining for many years that the POB is being misused by malicious debtors. These complaints were mainly stating that some companies were creating fictitious debt to apply for bankruptcy postponement, while others have been moving their headquarters to other cities to benefit from more bankruptcy-friendly courts.

As a result of such complaints of creditors against the misused applications, a new amendment restricting and posing a challenge to bankruptcy postponement applications was published in the Official Gazette No. 29,796 dated 9 August 2016 and has entered into force. It is crucial to note that government officials and financial market professionals also state that the POB should be replaced with a more transparent restructuring procedure that is hard to abuse. The government officials stated that research has been conducted for a different model than the POB procedure. From our point of view, the POB procedure should be replaced with a more balanced restructuring tool where the creditors' active involvement is required and the appointment of a restructuring or turnaround officer is mandatory.

existence of the cases as specified in 279 of the EBL during the previous one year are evaluated as being subject to cancellation. Similarly, any and all transactions carried out by the debtor during the period of five years prior to the date of proceeding for the purpose of causing damage to his or her creditors are also subject to cancellation. The right to initiate an action of nullity if the debtor goes bankrupt lies with the bankruptcy administration. If the administration of bankruptcy does not wish to initiate an action of nullity, it may transfer this right to any creditor wishing to acquire the same. The action of nullity is not initiated only in case of bankruptcy, but it may also be initiated when the fact that the creditor cannot receive his or her receivables is proven with a temporary or final insolvency certificate.

Directors and officers

41 Are corporate officers and directors liable for their corporation's obligations? Are they liable for pre-bankruptcy actions by their companies? Can they be subject to sanctions for other reasons?

Generally, the obligations of the legal entities should be met from their own assets. The personal responsibilities of the managers arise if their obligations are violated. This responsibility will also be valid with regard to the public receivables.

Groups of companies

42 In which circumstances can a parent or affiliated corporation be responsible for the liabilities of subsidiaries or affiliates?

The conglomerate of companies has been regulated by the provisions of article 195 and the following articles of the TCC and the holding company cannot exercise its dominance in any manner causing damage to a subsidiary pursuant to article 202 of the TCC.

The loss experienced as a result of the directions of the parent company should be actually balanced during the same operating year or the affiliated company should be provided with the possibility of eliminating the said failure until the end of the current year at the latest.

Otherwise, each shareholder of the affiliated company may request that the loss sustained by the company should be indemnified by the parent company and its board of directors that has caused the said loss.

Insider claims

43 Are there any restrictions on claims by insiders or non-arm's length creditors against their corporations in insolvency proceedings taken by those corporations?

A limitation with regard to the disputed receivables causing damage to the company or consequently to the bankruptcy estate and not complying with the accounts of the company may be in question. In this respect, the general provisions in questions 38 and 39 will apply.

Creditors' enforcement

44 Are there processes by which some or all of the assets of a business may be seized outside of court proceedings? How are these processes carried out?

Except the process of bankruptcy and the liquidation in the meaning as specified in the TCC, the application of liquidation is possible within the scope of the processes of the transfer of the shares, assets or debts

of the company and the merger and demerger processes. However, the granting of a security or the payment of the debt may be in question for the protection of the creditors within the scope of these processes.

Corporate procedures

45 Are there corporate procedures for the liquidation or dissolution of a corporation? How do such processes contrast with bankruptcy proceedings?

Commercial partnerships are liquidated in two ways: according to the provisions of the EBL and the provisions of the TCC. In the case where the company goes bankrupt, the liquidation of the company will be realised in accordance with the provisions of the EBL. In the other cases of termination, the provisions of the TCC will apply. The liquidation procedures will be realised through two procedures: through the way of liquidation or without liquidation. The case of merger of the companies is a termination without liquidation.

Contrary to the liquidation through bankruptcy, the liquidation according to the TCC is not subject to the approval of a court.

Conclusion of case

46 How are liquidation and reorganisation cases formally concluded?

If the debtor submits a statement to the extent that all of his or her creditors have withdrawn their claims or a document indicating that all receivables are paid off or the executed concordat is approved, the court will decide for the removal of the bankruptcy and for the return of his or her assets in order to ensure the free disposal of them by the debtor.

After the monies are distributed, the administration will give a final report to the court that has taken a decision for the bankruptcy. Following receipt of this report and after having understood that the liquidation is completed, the court will decide on the closing of the bankruptcy.

International cases

47 What recognition or relief is available concerning an insolvency proceeding in another country? How are foreign creditors dealt with in liquidations and reorganisations? Are foreign judgments or orders recognised and in what circumstances? Is your country a signatory to a treaty on international insolvency or on the recognition of foreign judgments? Has the UNCITRAL Model Law on Cross-Border Insolvency been adopted or is it under consideration in your country?

In order to ensure that the adjudications of bankruptcy or relevant decisions rendered by foreign courts or the other decisions taken within the framework of the bankruptcy procedure in the foreign courts have a result in Turkey, not only an enforcement proceeding, but also an action for recognition and enforcement should be initiated because of the nature thereof.

However, the Turkish courts may take a decision to the extent that the adjudications of bankruptcy rendered by foreign courts cannot be recognised because of the principle regarding territoriality of bankruptcy and the executive jurisdiction of Turkey with regard to bankruptcy cases.

COMI**48 What test is used in your jurisdiction to determine the COMI (centre of main interests) of a debtor company or group of companies? Is there a test for, or any experience with, determining the COMI of a corporate group of companies in your jurisdiction?**

It is compulsory for bankruptcy cases to be initiated in the court of the locality where the headquarters of the debtor are located without fail pursuant to article 154 of the EBL. As also specified in Supreme Court practice, the city centre where the headquarters of the debtors are registered with the trade register constitutes a presumption with regard to the headquarters within the scope of article 154 of the EBL. There is no special regulation with regard to the group companies. A special concrete evaluation is made for every company.

Cross-border cooperation**49 Does your country's system provide for recognition of foreign insolvency proceedings and for cooperation between domestic and foreign courts and domestic and foreign insolvency administrators in cross-border insolvencies and restructurings? Have courts in your country refused to recognise foreign proceedings or to cooperate with foreign courts and, if so, on what grounds?**

In the Turkish Bankruptcy Law, there is no special regulation for the cooperation between local and foreign courts and the administrations

of bankruptcy and for the recognition of foreign bankruptcy processes. In this respect, there are contradictions and differences both in the Supreme Court decisions and the doctrinal opinions with regard to the recognition of foreign bankruptcy processes. However, in order to enable the representative of a foreign bankruptcy estate to carry out any transaction in Turkey, the foreign award regarding the establishment and appointment of a bankruptcy estate and its representative should be recognised. In this respect, it will be appropriate to come to a conclusion after having examined the reciprocity principle and the other conditions regarding recognition according to the provisions of the international agreement and the IPCPL in every concrete situation.

Cross-border insolvency protocols and joint court hearings**50 In cross-border cases, have the courts in your country entered into cross-border insolvency protocols or other arrangements to coordinate proceedings with courts in other countries? Have courts in your country communicated or held joint hearings with courts in other countries in cross-border cases? If so, with which other countries?**

There is no procedure regarding this matter.

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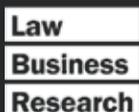
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Restructuring & Insolvency
ISSN 2040-7408



THE QUEEN'S AWARDS
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