

# Restructuring & Insolvency

*Contributing editors*

**Catherine Balmond and Katharina Crinson**



**2018**

**GETTING THE  
DEAL THROUGH**

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# Restructuring & Insolvency 2018

*Contributing editors*

**Catherine Balmond and Katharina Crinson**  
**Freshfields Bruckhaus Deringer**

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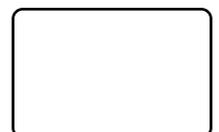


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# Turkey

## Çağlar Kaçar

### Kaçar

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#### General

##### 1 Legislation

###### What main legislation is applicable to insolvencies and reorganisations?

Insolvencies 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;
- the Law of Banks;
- the Law on Procedure of Collection of Public Receivables (LPCOPR); and
- the International Private and Civil Procedure Law (IPCPL).

##### 2 Excluded entities and excluded assets

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

As a rule, only the 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 commencement of bankruptcy liquidation, 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.

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##### 3 Public enterprises

###### 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.

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##### 4 Protection for large financial institutions

###### 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 due to 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.

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##### 5 Courts and appeals

###### What courts are involved? What are the rights of appeal from court orders? Does an appellant have an automatic right of appeal or must it obtain permission? Is there a requirement to post security to proceed with an appeal?

Only commercial courts are competent to render bankruptcy adjudication. In addition to that, commercial courts are also competent to make decisions regarding the approval of the proposed compositions, bankruptcy postponements of capital companies or cooperatives and their restructuring through reconciliation.

The enforcement courts make decisions 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 the duration of the composition, appointment of a 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. Appellants have an automatic right of appeal and there is no requirement to post security to proceed with an appeal.

## Types of liquidation and reorganisation processes

### 6 Voluntary liquidations

#### 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 it is unable to pay its 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 its assets thereof and if the postponement of the bankruptcy of the company or cooperative is not requested.

#### Bankruptcy liquidation

Concurrent 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 clawback 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 that 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 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 concurrent 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 concurrent 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 its 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 as it protects the debtor against bankruptcy. Moreover, the debtor will get rid of its 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 due to 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 as above.

### 7 Voluntary reorganisations

#### What are the requirements for a debtor commencing a voluntary 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 the debt by concluding a composition agreement irrespective of whether he or she is subject to bankruptcy or not. The debtor or each creditor may submit a composition project by attaching a balance sheet and income statement before the enforcement court. 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 concluding a composition with its creditors 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 proposed composition at this meeting.

For the acceptance of the proposed 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.

##### Postponement of bankruptcy (POB)

POB 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 commercial 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 commercial 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 its improvement project is found to be serious and persuasive.

The advantage of POB is the interim injunction, which is given within the first weeks of the case and grants an automatic stay for the proceedings commenced against the debtor and no new proceeding can be commenced against the debtor except for the pledged and employee-related claims.

The duration for the postponement of bankruptcy can be a maximum of one year. This duration may be extended for a further year where it is found appropriate by the commercial 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 expiry 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.

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 due to 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 due to 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 lawsuits 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 provided 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 of 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 before the commercial court for the restructuring of its debts.

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 before the commercial court should 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 the 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 a 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.

#### **8 Successful reorganisations**

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

There are no specified classifications among the creditors by law. In RSCCTMCs it is sufficient for a debtor 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. For the approval process of reorganisation plans please see question 7. Approved reorganisation plans do not automatically release non-debtor parties. However, there is no explicit obstacle for a debtor to reach an agreement with its creditors on the project, which is releasing non-debtor parties from liability.

#### **9 Involuntary liquidations**

**What are the requirements for creditors placing a debtor into involuntary liquidation and what are the effects? Once the proceeding is opened, are there material differences to proceedings opened voluntarily?**

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 full termination of the duration for composition;
- full 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 for 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.

#### 10 Involuntary reorganisation

**What are the requirements for creditors commencing an involuntary reorganisation and what are the effects? Once the proceeding is opened, are there any material differences to proceedings opened voluntarily?**

Although this is not observed frequently, creditors may also request postponement of bankruptcy and composition regarding the debtor under the conditions specified in question 7. 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 provide a composition project.

#### 11 Expedited reorganisations

**Do procedures exist for expedited reorganisations (eg, 'prepackaged' reorganisations)?**

There is no defined procedure for expedited reorganisations.

#### 12 Unsuccessful reorganisations

**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 composition is not approved, 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 composition will decide for the cautionary attachment of all seizable 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 in advance.

The provisions regarding termination of the composition 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.

#### 13 Corporate procedures

**Are there corporate procedures for the 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 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.

#### 14 Conclusion of case

**How are liquidation and reorganisation cases formally concluded?**

Reorganisations are concluded upon the approval of a plan and in POB upon exit of the debtor from the over-indebtedness.

In liquidations, there two ways for a formal conclusion:

- If the debtor submits a statement to the extent that all of its creditors have withdrawn their claims or a document indicating that all receivables are paid off or the executed composition 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 bankruptcy 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.

#### Insolvency tests and filing requirements

#### 15 Conditions for insolvency

**What is the test to determine if a debtor is insolvent?**

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

Based on the following reasons any creditor may also commence a direct bankruptcy case against a debtor:

- 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 full termination of the duration for composition;
- full 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.

In addition to the above tests, upon determination of an over-indebted capital company or a cooperative where its assets do not meet its liabilities, that capital company or the cooperative shall be deemed insolvent.

## 16 Mandatory filing

### Must companies commence insolvency proceedings in particular circumstances?

If a creditor of a 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 that may become due within one year, then the debtor shall promptly commence its bankruptcy.

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

## Directors and officers

### 17 Directors' liability – failure to commence proceedings and trading while insolvent

#### If proceedings are not commenced, what liability can result for directors and officers? What are the consequences for directors and officers if a company carries on business while insolvent?

If the debtor fails to request its bankruptcy and goes bankrupt within one year, then the debtor will be considered to be a negligent bankrupt and he or she will be penalised.

Failing to fulfil the obligation as stated in article 376 of the TCC may result in an imprisonment of a length from 10 days to three months.

### 18 Directors' liabilities – other sources of liability

#### Apart from failure to file for proceedings, are corporate officers and directors personally liable for their corporation's obligations? Are they liable for corporate pre-insolvency or pre-reorganisation actions? 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 directors and officers arise upon violation of their duties. This responsibility will also be valid with regard to the public receivables.

### 19 Shift in directors' duties

#### Do the duties that directors owe to the corporation shift to the creditors when an insolvency or reorganisation proceeding is likely? When?

When a company is in the zone of insolvency, the directors' duties do not shift to the creditors.

### 20 Directors' powers after proceedings commence

#### What powers can directors and officers exercise after liquidation or reorganisation 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.

In the bankruptcy liquidation process the bankruptcy estate is managed by the bankruptcy administration. Directors and shareholders' authority and responsibilities continue only for the matters over which the bankruptcy administration does not have power or responsibility.

## Matters arising in a liquidation or reorganisation

### 21 Stays of proceedings and moratoria

#### 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?

In reorganisation courts generally grant a period of stay for the proceedings commenced against the debtor and no new proceeding can be commenced against the debtor except for the pledged and employee-related claims.

In bankruptcy liquidations, 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 concurrent with the opening of the bankruptcy.

### 22 Doing business

#### When can the debtor carry on business during a liquidation or reorganisation? 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?

Please see question 20.

### 23 Post-filing credit

#### May a debtor in a liquidation or reorganisation obtain secured or unsecured loans or credit? What priority is or can be 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 as loans 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 services 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 ensured over the debtor's moveables and immovables 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.

## 24 Sale of assets

**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 reorganisations all transactions out of the ordinary course of business are subject to the court supervision and must be pre-approved.

In bankruptcy liquidations, 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, 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.

## 25 Negotiating sale of assets

**Does your system allow for 'stalking horse' bids in sale procedures and does your system permit credit bidding in sales?**

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.

## 26 Rejection and disclaimer of contracts

**Can a debtor undergoing a liquidation or 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.

## 27 Intellectual property assets

**May an IP licensor or owner terminate the debtor's right to use the IP when a liquidation or reorganisation is opened? To what extent may IP rights granted under an agreement with the debtor continue to be used?**

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 the 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 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 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.

## 28 Personal data

**Where personal information or customer data collected by a company in liquidation or reorganisation is valuable, are there any restrictions in your country on the use of that information 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 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.

## 29 Arbitration processes

**How frequently is arbitration used in liquidation or reorganisation proceedings? Are there certain types of disputes that may not be arbitrated? Can disputes that arise after the liquidation or reorganisation case is opened be arbitrated with the consent of the parties?**

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 recent 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.

## Creditor remedies

### 30 Creditors' enforcement

**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 for 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.

### 31 Unsecured credit

**What remedies are available to unsecured creditors? Are the processes difficult or time-consuming? Are pre-judgment attachments available?**

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 a 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 any third party) 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.

## Creditor involvement and proving claims

### 32 Creditor participation

**During the liquidation or reorganisation, what notices are given to creditors? What meetings are held and how are they 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 the liquidator's reporting obligations?**

The bankruptcy adjudication is published in a newspaper with 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 request 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.

### 33 Creditor representation

**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.

### 34 Enforcement of estate's rights

**If the liquidator 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? Can they be assigned to a third party?**

Any creditor may pursue a claim where the bankruptcy estate finds it unnecessary to conclude. The fruits of the result in relation to that particular claim will belong to the creditor who pursued the claim. After having deducted the costs from the result and satisfied that creditor, the remaining amount will be deposited to the bankruptcy estate.

### 35 Claims

**How is a creditor's claim submitted and what are the time limits? How are claims disallowed and how does a creditor appeal? Can claims for contingent or unliquidated amounts be recognised? Are there provisions on the transfer of claims and must transfers be disclosed? 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 the expiry 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. The creditor may be satisfied upon realisation of the condition or as of the due date.

Any claims whose subject matter is not money will be converted into pecuniary consideration.

However, the bankruptcy administration may apply payment in kind for such claims. In such cases 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.

### 36 Set-off and netting

**To what extent may creditors 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 receivables with the bankrupt's receivables. However, no set-off can be made in the following cases:

- if the debtor of the bankrupt becomes the creditor of the bankrupt following the opening of the bankruptcy;
- if the creditor of the bankrupt becomes the debtor of the bankrupt or the bankruptcy estate following the 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.

**37 Modifying creditors' rights**

**May the court change the rank (priority) 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.

**38 Priority claims**

**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.

**39 Employment-related liabilities**

**What employee claims arise where employees' contracts are terminated during a restructuring or liquidation? What are the procedures for termination? (Are employee claims as a whole increased where large numbers of employees' contracts are terminated or where the business ceases operations?)**

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 payments accrued based on the business relation during a period of one year prior to the opening of bankruptcy and the severance and notice payments that they deserve after the termination of the business relation due to the bankruptcy have been considered to be privileged receivables and it is stated that they will 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.

**40 Pension claims**

**What remedies exist for pension-related claims against employers in insolvency or reorganisation 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.

**41 Environmental problems and liabilities**

**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 personally, 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.

**42 Liabilities that survive insolvency or reorganisation proceedings**

**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.

**43 Distributions**

**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 the expiry 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 the expiry 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.

### Update and trends

Since the Turkish economic crisis of 2001, 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 been considered the best by 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 those involved in 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 these complaints by creditors regarding the misused applications, a new amendment restricting and aggravating the bankruptcy postponement applications has been published in the Official Gazette No. 29796 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; one that is hard to abuse. The government officials have stated that research is being undertaken to find a different model from 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 an appointment of a restructuring or turnaround officer is mandatory.

### Security

#### 44 Secured lending and credit (immovables)

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

In order to secure a debt, the most frequently applied method of ensuring an assurance is a mortgage imposed on the immovable properties. A mortgage entitles the mortgagee to ensure the foreclosure of the mortgaged property, which is registered in the land registry if the debt is not paid when due.

As per article 881 of the TCivC numbered 4721, any debt that is present or that has not yet arisen, but will probably arise may be secured with a mortgage.

The amount of security should be indicated in Turkish lira. However, a mortgage may also be imposed in terms of foreign currency by the credit institutions conducting activity both in Turkey and abroad in order to secure the loans extended in foreign currency or foreign limping standard.

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.

#### 45 Secured lending and credit (moveables)

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

##### Pledge

As per article 3 of the Moveable Pledge in Commercial Transactions Code, numbered 6750, a pledge agreement can be executed by and between Turkish banks, financial leasing companies, factoring companies and Turkish public institutions that are authorised to lend or provide guarantees, merchants, craftsmen, farmers, producer organisations, self-employed individuals and legal entities acting as lenders, or merchants and craftsmen. The pledge agreement must be executed in writing (before the Pledged Moveable Registry (the Registry) or by having the signatures of parties approved by a notary) or in electronic form (signed with an electronically secured signature), and be registered with the Registry. Once the registration is completed, the right of mortgage is deemed established.

### Lien

In terms of article 950 of TCivC, 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 that are in his or her possession and that should be returned until the debt is paid and to convert the same into cash by giving a notice in advance.

### Retention of title

As per article 764 of TCivC, a 'retention of title' agreement or clause in a sale agreement can only be effective when the agreement is executed before the notary of the buyer's residence and registered with the special registry of the relevant moveable.

### Clawback and related-party transactions

#### 46 Transactions that may be annulled

##### What transactions can be annulled or set aside in liquidations and reorganisations and what are the grounds? Who can attack such transactions?

The transactions that may be cancelled may be classified into 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 the 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 the usual means of payment;
- the payments made for an overdue debt; and
- annotations given to the land registry for the purpose of strengthening 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. That is, 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 bankruptcy administration 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 bankruptcy administration 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 third-person defendant.

#### 47 Equitable subordination

##### Are there any restrictions on claims by related parties or non-arm's length creditors (including shareholders) against corporations in insolvency or reorganisation proceedings?

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 question 46 will apply.

### Groups of companies

#### 48 Groups of companies

##### 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 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.

#### 49 Combining parent and subsidiary proceedings

**In 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?**

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 the 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 each of the bankrupts' estates.

#### International cases

##### 50 Recognition of foreign judgments

**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?**

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, both an enforcement proceeding and also an action for recognition and enforcement should be initiated, due to the nature thereof.

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

##### 51 UNCITRAL Model Law

**Has the UNCITRAL Model Law on Cross-Border Insolvency been adopted or is it under consideration in your country?**

No.

##### 52 Foreign creditors

**How are foreign creditors dealt with in liquidations and reorganisations?**

There is no specific provision on registration of foreign creditors' claims. Therefore foreign creditors can register their claims under the same status as other creditors.

##### 53 Cross-border transfers of assets under administration

**May assets be transferred from an administration in your country to an administration of the same company or another group company in another country?**

No.

##### 54 COMI

**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.

##### 55 Cross-border cooperation

**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?**

Although the European Convention on Certain International Aspects of Bankruptcy (the 'Istanbul Convention') was signed in 1990, this Convention has not drawn sufficient interest and it has not come into force. In this respect 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

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appointment of a bankruptcy estate and its representative should be recognised. In this respect, a conclusion should be reached 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.

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**56 Cross-border insolvency protocols and joint court hearings**

**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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