

Turkey Announces Further Details of New Pledge and Assignment Regime

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Turkey has introduced secondary legislation outlining details of major legislative changes to the pledge and assignment regime for commercial transactions. The updated legislative regime will facilitate access to finance for SMEs and boosts competitiveness (more). The latest announcements include detailed procedures and principles for applying movable pledges, establishing a central registry of moveable pledges, valuing movables subject to pledges, as well as structuring and executing pledge agreements.

The Law on Pledge on Movables in Commercial Transactions numbered 6750 was published in Official Gazette number 29871 on 28 October 2016, entering into effect on 1 January 2017. Subsequently, a range of secondary legislation was published in Official Gazette number 29935 (bis) on 31 December 2016, entering into effect on 1 January 2017:

- Regulation on Pledged Movables Registry ("**Registry Regulation**").
- Regulation on Establishing Pledge Right in Commercial Transactions and Execution Upon Default ("**Application Regulation**").
- Regulation on Valuation of Movables in Commercial Transactions ("**Valuation Regulation**").

Moveable Pledge Registry

Establishing the movables pledge registry is intended to ensure records are complete and correct, as well as provide legal security to parties along with and provide public access to the records.

The Registry Regulation introduces principles and procedures for:

- Establishing and operating a movables pledge registry
- Duties and authorities of registry service units and access to these registry services
- Sharing data recorded in the registry
- Fees for registry services.

The System of Movable Pledges Registry will process requests to amend or erase pledge agreements, as well as transfer rights arising from pledges and changes to the degree of pledges.

Records will be publicly accessible. Any third party who can prove their relevance will be able to make queries in the registry. Queries will be made either through registries or electronically.

Establishing Pledge Rights in Commercial Transactions and Execution Upon Default

The Application Regulation outlines issues pertaining to the pledge agreement itself, establishing pledge agreements, pledge systems, registering pledge agreements, as well as the rights and obligations of the pledgee and pledger on default.

A statement in the pledge agreement of the parties' explicit intention to establish a pledge over the moveable will be sufficient to establish the pledge. This represents an important change in practice for movable pledges. Previously, establishing the pledge required delivery of the pledged movable's possession to the pledgee.

Persons who can be pledgees under the Law are limited to credit institutions, tradesmen and craftsmen. Whereas, pledgors can only be tradesmen, craftsmen, farmers, producer organisations and self-employed persons.

The Application Regulation outlines detailed lists of:

- Items which must be included in the pledge agreement
- Assets which can be pledged, including receivables, intellectual property rights, rent incomes, commercial projects, and commercial enterprises.

Notable provisions in the Application Regulation include:

- Pledge agreements can be executed either:
 - Electronically (signing via secure electronic signature); or
 - In writing (signing before the registry officer or a notary public).
- Once signed, the pledge agreement will then be registered in the movables pledge registry.
- It is possible to establish a pledge over receivables that arise out of a specific agreement. However, agreements requiring pledge of all future receivables without any limitations will be deemed invalid.
- Detailed rules for applying the pledge degree system, which allows movable pledges to be ranked. Accordingly, it is possible to establish pledges with either:
 - Progressive ranking (allowing advancement to a higher degree, if there is an empty degree); or
 - Fixed ranking.
- To fulfil the debts secured by the pledge on default, pledgees can now request transfer of ownership of the pledge movable. The pledgee can now apply to execution offices to initiate an enforcement procedure, demanding ownership transfer. This right constitutes an exception to the *lex commissoria* principle for pledges under Turkish law.

Valuing Movables in Commercial Transactions

The Valuation Regulation outlines procedures and principles for valuing movables which are subject to pledge, assigning valuation experts, as well as fees for expert services.

Movables subject to pledge can be valued either:

- Independently by the parties, upon mutual agreement before establishing the pledge; or
- By applying to the courts to determine the value.

If the parties request a court valuation, experts will be appointed in accordance with the Regulation on Authorization and Activities of the Entities Providing Valuation Services to Banks.

Fees for valuation services will be determined and announced by Ministry of Customs and Trade. If parties apply to the courts for valuation, court expenses and valuation service fees will be paid equally by both parties.

Please see the links below for the full text of the secondary legislation (only available in Turkish).

- [Regulation on Pledged Movables Registry](#)
 - [Regulation on Putting Pledges in Commercial Transactions and Use of Rights regarding Default](#)
 - [Regulation on Valuation of Movables in Commercial Transactions](#)
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Related Attorneys

- DR. E. SEYF? MORO?LU, LL.M.
- C. HAZAL BAYDAR, LL.M.

Moroglu Arseven | www.morogluarseven.com