

Turkey Introduced Amendments to the Enforcement and Bankruptcy Law

17 Aug 2021

The Law numbered 7327 on the Amendments to the Code of Enforcement and Bankruptcy and Certain Laws ("**Amendment Law**") was published in the Official Gazette dated 19 June 2021 and numbered 31516, and entered into effect on the same day.

The Amendment Law aims to eliminate the practical disruptions in the application of Enforcement and Bankruptcy Law numbered 2004 ("**CEB**") as well as enhancing the concordat process. Regulations introduced in this scope are summarized below:

- The amendment made to article 241(3) adds the statement that *"Properties and rights that constitute a commercial or economic integrity or would generate a higher income if sold in a body and enterprises that embody such properties and rights shall be sold in a body."* While former version of the provision listed the items to be sold in a body merely as properties and rights, new regulation incorporates the enterprises that embody such properties and rights as well and aims to favor the continuity of the enterprise and its contribution to the economy.
- The amendment made to article 295 adds that in the event that the pledged property is not foreseen to be used by the debtor in accordance with the concordat project, would lose value or would be costly to preserve; it may be permitted to be sold and the creditor shall be paid from the sale revenue in the amount of pledge.
- The amendment made to article 296 of CEB underlines that contracts which the debtor is a party to and hold significance for the continuation of the operations of the enterprise shall essentially continue. Additionally, the amendment adds that deeds that arise out of contracts that continue during the temporary and peremptory terms shall be performed reciprocally. In relation to the contracts which the debtor may terminate with the convenient opinion of the trustee and the permission of the court, a new condition of being *"exceptionally inconvenient"* in addition to preventing the concordat from attaining its aim.
- The amendment made to article 297 adds to the transactions which the debtor cannot perform during the peremptory term *"disposal of property without consideration, transferring an immovable property or a movable property that holds significance for the continuation of the operation of the enterprise."* Additionally, while former version of the provision necessitated the court to obtain the opinion of the trustee and board of creditors, the amendment introduced a necessity for the court to obtain the opinion of trustee and consent of board of creditors.
- The amendment made to article 308 of CEB provided that in the event that the concordat process results in bankruptcy; the court which ruled on bankruptcy shall decide on whether the simple or ordinary liquidation procedure shall be applied and if necessary, shall rule that the ordinary liquidation process shall be conducted by the trustees. In addition, according to amendment, in such case, the trustees shall assume the duties and authorities of the bankruptcy administration.
- The amendment made to article 308(c)(4) of CEB provides comprehensive explanation with regard to conditions which the debts incurred by the approval of the trustee are subject to. Pursuant to the regulation, debts that are incurred by the approval of trustee after the provisional term decision, can be subject to enforcement proceedings even during the term in the event of default, shall be paid right after pledged debts and before all other debts and shall constitute an estate debt in a concordat by abandonment of estate or in a future bankruptcy.
- Alterations in relation to proficiency and appointment processes of the bankruptcy administration officers were also introduced with the Amendment Law. The amendment made to article 223 of CEB foresees that qualities, trainings, and supervision of bankruptcy administration officers shall be determined with a regulation to be enforced by Ministry of Justice and individuals who meet the criteria and complete the training in the institutions designated by Ministry of Justice shall be registered in the bankruptcy

administration officers list to be composed by Regional Council of Experts.

Pursuant to the amendment, bankruptcy administration officers shall be chosen from this list and Regional Council of Experts shall be notified, in the event that an assignment is made off-the-list. Additionally, one of the officers to be chosen from the list shall be either a certified public accountant or an independent public accountant and one of the officers is a legal expert. In accordance with the provisional article 17 of CEB, which was introduced with the Amendment Law, until the list is composed, bankruptcy administration officers shall be appointed without taking the list procedure into consideration.

Amendment Law stipulated that a bankruptcy administration officer can participate in maximum of five cases at the same time. These regulations introduced amendments in relation to proficiencies and caseload of bankruptcy administration officers.

The full text of the Amendment Law is available at this [link](#) (Only available in Turkish).

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