

## Turkish Court Rules that a Company's Creditor Can Send Attachment Notices to Shareholders which owe Receivable to the Company

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Turkey's Court of Cassation recently ruled that a company's creditor is entitled to send an attachment notice to a company shareholder since the shareholder is deemed to be a third party relative to the company. The court held that if a limited liability company's shareholder owes any debts to the company and the shareholder owes any receivables to the company, the Execution and Bankruptcy Code allows creditors to attach these receivables.

In the case at hand, a creditor initiated an execution proceeding against a company ("**Debtor Company**"). After the attachment proceedings were finalized, the creditor sent an attachment notice to one of the Debtor Company's shareholders ("**Shareholder**"), as per Article 89 of the Execution and Bankruptcy Code ("**Code**"). The notice sought to attach any company receivables held by the shareholder.

The Shareholder filed a complaint to an Enforcement Court, seeking to cancel the attachment notice. The Shareholder argued that he cannot be identified as a third party relative to the Debtor Company and therefore, he cannot be sent an attachment notice under Article 89.

The Enforcement Court rejected the Shareholder's cancellation request. The Shareholder appealed the Enforcement Court's decision and a higher court overturned the ruling. However, the lower court insisted that its initial decision should stand. Therefore, the matter was escalated to the General Assembly, the highest body within the Supreme Court.

The General Assembly rejected the Shareholder's objections, ruling that the Enforcement Court's original decision should stand.

In reaching its decision, the General Assembly commented:

- A debtor's property, rights and receivables held by third parties can be attached (Article 89 of the Code).
- The precondition for sending an attachment notice is the existence of a valid execution proceeding.
- Capital companies are first degree liable for their debts to third parties with their assets.
- If a limited liability company's shareholder owes a capital debt to the company and the company has receivables from the shareholder (such as assets, right or receivables), Article 89 allows creditors to attach these receivables.
- The principle that a company is liable for its debts is unrelated to a shareholder's third party status against a company.
- The Debtor Company's creditors are entitled to send attachment notices to shareholders which are deemed to be third parties.
- In these circumstances, the Shareholder is a third party against the Debtor Company.

The General Assembly's decision dated 11 May 2016 is numbered 2016/600 and has file number 2014/12-1078 (only available in Turkish).

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