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Enforcement Proceedings and Bankruptcy in Turkey

Execution and Bankruptcy Law is the field of law that regulates procedures and rules in order creditors to collect their receivables by using the powers of the judicial state organs due to the debtor's failure to fulfill his/her debt. The Turkish Execution and Bankruptcy Law No. 2004 ("EBL") regulates various enforcement and bankruptcy procedures related to the collection and recovery of creditors' receivables.

Execution Proceeding without Judgement	Enforcement Proceeding with Judgement
<p>It is an enforcement proceeding method that can be initiated without the need for a court decision:</p> <ul style="list-style-type: none"> general execution proceedings; execution proceedings of negotiable instruments (such as promissory notes, cheques, etc.); eviction of leased real estate without judgment. 	<p>This is enforcement of a court decision or another document which can be assumed as a court order according to the applicable legislation:</p> <ul style="list-style-type: none"> for monetary debts; for delivery of movables; for delivery of a child and to form a personal relationship with a child; to perform or not to perform an action; for delivery and eviction of a real estate.

Execution Proceeding Without Judgment

General Execution Proceedings

Under the execution proceeding without a judgment, the creditor submits a request to the execution office which is provided as a standard form of request. Upon this request, the execution office sends a payment order to the debtor to pay the order within 7 days. If the request of payment order is based on a negotiable instrument, debtor is granted 5 days to pay the amount in the payment order rather than 7 days.

The debtor can pay the amount stated in the payment order or object to the payment order. If the debtor neither objects nor pays the amount, the debtor shall declare his assets and properties to the execution office.

If the debtor does not object, the payment order becomes final and the creditor can ask the execution office to seize and sell the assets of the debtor to collect creditor's receivable. If the debtor objects to the payment order, the proceeding suspends by the decision of the execution officer. Creditor then can go to the courts to have the objection of debtor cancelled or lifted. There are two possible options if the creditor decides to go to the court.

- ▶ the creditor can file for the "

cancellation of the objection

▶

- " before the civil or commercial courts within 1 year after the objection by the debtor;

- ▶ the creditor can file for the "

lifting of the objection

- ▶ “ before the execution courts if the objected execution proceeding is based on a document

(i)

- ▶ acknowledging the debt provided that the signature on such document is accepted by the debtor or certified by a notary or

(ii)



- duly issued by official authorities or other authorized bodies.

The execution courts’ review in the lifting of the objection cases is limited and such case is concluded faster compared to cancellation of objection cases to be filed before civil or commercial courts.

If the objection by the debtor is found to be unjust in cancellation of the objection case, the court will order a compensation not less than 20% of the claim amount (in practice courts are not inclined to order more than 20%) to the creditor in addition the claim amount (the amount in the payment order) Likewise, if the court decides the objection was made on just grounds and the creditor initiated the proceedings in bad will, the court then orders the creditor to pay a compensation to debtor not less than 20% of the claim amount. The same compensation regulation also applies in lifting of the objection cases. In lifting of the objection cases, 10% monetary penalty may also apply. If the debtor claims that the signature on the document which the execution proceeding was based on does not belong to him/her but it turns out that the signature in fact belong to debtor, the court orders a 10% monetary penalty.

If the court decides in favor of the creditor in lifting of the objection or cancellation of the objection case, the creditor can continue the proceedings before the execution office which creditor started. Upon lifting or cancellation of the objection, the execution office can seize and sell the assets of the debtor to collect creditor’s receivable in cases of:

- ▶ execution proceeding without court decision is only applicable for monetary and security receivables;
- ▶ it is a way where the creditor can directly apply to the execution office and initiate execution proceedings without a need for a court decision;
- ▶ it is possible to initiate execution proceedings without any document or promissory note. However, if the proceeding is based on a document such document should also be attached to the payment order sent to the creditor;
- ▶ general rule is that the execution office within the district of debtor’s address has the authority to initiate an execution proceeding without a court judgment. The parties may agree on the execution office’s authority. In this case, both execution offices, one at the district of debtor’s address and the district of the place agreed by the parties will have authority. The debtor can object to the authority of the execution office. If such objection is accepted by the execution office, the proceeding against debtor suspends.

Execution proceedings of negotiable instruments

While the execution proceeding regulated for negotiable instruments such as checks, promissory notes have similarities with general execution proceedings, there are some major differences.

Once the payment order based on a promissory note is sent by the execution office upon request of the creditor, the debtor has 5 days to object and 10 days to pay or declare assets. Unlike general execution proceedings, the debtor shall submit its objection(s) directly to the execution court rather than execution office in cases if:

- ▶ the debtor can prove with a signed document that the debt is paid or the debt no longer exists under statute of limitations;
- ▶ the signature on the promissory note does not belong to debtor;
- ▶ the proceeding is started by a bankruptcy office which is not authorized to start such proceeding.

Unlike the general execution proceedings, objections of the debtor do not suspend the execution proceedings other than the sale of seized assets of debtor. Unless the execution court orders a stay of execution, the creditor can even collect any seized cash of debtor. In other words, the objection only stops the sale of the assets, not the execution for debt.

Unlike the general execution proceedings, there are no cases of cancellation or lifting of the objection that creditor should pursue. The promissory note is considered as an acknowledgment and acceptance of the debt and it is debtor's burden to prove otherwise before the execution court by debtor's arguments of objection.

Eviction of Leased Immovable Properties without Judgment

In this execution proceeding, the execution Office sends a payment order stating that the tenant shall pay outstanding rents within 30 days otherwise the tenant will be evicted from the property. Tenant has 7 days to object to the payment order. If the debtor objects within 7 days, the execution proceeding will stop, and if the debtor pays the rent within 30 days the debtor cannot be evicted.

If the tenant does not pay the debts within 30 (thirty) days, creditor can file a claim before the execution court including all proceeding costs, for the eviction of the tenant.

Enforcement Proceeding with Judgement

This proceeding is the enforcement of a court judgment. If certain conditions required by concerning regulations are fulfilled, arbitral awards, in and out of court settlements, certain deeds executed before the notaries, certain undertakings given before the execution offices can be enforced under the enforcement proceedings for judgments.

The enforcement proceedings with judgment can be initiated for various matters decided by courts:

- ▶ money collection and recovery;
- ▶ delivery of a child to one if of his/her parents;
- ▶ establishing contact and personal relationship with child by one of his/her parents;
- ▶ performing or not performing an action;
- ▶ evacuation of a real estate.

There is no authorized execution office for enforcement proceedings. A court order can be enforced at any execution office. The statute of limitation for enforcement proceedings with judgment is 10 years. However, judgments related to ownership, rights on a real estate and some personal rights (e.g. right to see child in after divorce) are not subject to such statute of limitation. The order sent by the execution office is called "execution order" unlike payment order regulated under enforcement proceedings

without a court order.

Enforcement for the Foreclosure of Collaterals

If a receivable is secured by a collateral such as mortgage, account pledge, share pledge, immovable pledge, etc. the enforcement of such collateral is subject to a particular proceeding which is enforcement for the foreclosure of collaterals. The main rule is the enforcement of the collateral other than certain exceptions (mandatory application to the enforcement of collateral proceedings) Enforcement of the foreclosure of collaterals can be enforced by virtue of the rules under the enforcement proceedings for judgments if there is a collateral document clearly acknowledging the debt. There are some minor differences in terms of payment time of the debt.

Enforcement of Real property collaterals:

- ▶ ordinary enforcement proceedings: Execution office sends a payment order - 7 days to object - 30 days to pay the debt;
- ▶ enforcement proceedings for judgments: Execution office sends an execution order - no objection - debtor must prove the debt is paid to suspend the proceedings -30 days to pay the debt.

Enforcement of immovable property collaterals:

- ▶ ordinary enforcement proceedings: Execution office sends a payment order - 7 days to object - 15 days to pay the debt;
- ▶ enforcement proceedings for judgments: Execution office sends an execution order - no objection - debtor must prove the debt is paid to suspend the proceedings -7 days to pay the debt.

BANKRUPTCY PROCEEDINGS

General Bankruptcy Proceedings

Ordinary Bankruptcy Proceeding

Unsecured creditors, up to their discretion, may choose to pursue bankruptcy proceedings rather than execution proceedings described so far. Main differences of bankruptcy proceedings versus execution proceedings can be listed as the following:

- ▶ the execution office sends a “bankruptcy payment order” The debtor has 7 days to object or to make the payment. If the debtor does not make the payment or object to the bankruptcy order within 7 days, the debtor is declared bankrupt by the commercial court upon application of the creditor. The bankruptcy proceedings can be only initiated against merchants.

If an objection is made, the creditor has right to file a case before the commercial court to lift the objection and declaration of bankruptcy of the debtor. This case is a two-stage case. The court first deals whether the debtor has a debt to the creditor or not. Unlike a normal receivable claim case, if the court is in the opinion that there is a debt to be paid, the court orders at the end of the trial that the debtor to pay the debt into the court within 7 days otherwise the debtor to be declared bankrupt.

Bankruptcy proceedings of negotiable instruments

This procedure is similar to the execution proceedings of negotiable instruments. The execution office sends a bankruptcy payment order specific for bankruptcy proceedings. The debtor has 5 days to object or to make the payment. The rest of the

proceedings is the same as ordinary bankruptcy proceedings. The creditor needs to file a case before the commercial court to lift the objection and declaration of bankruptcy of the debtor like in the ordinary bankruptcy proceedings.

Direct Bankruptcy Proceedings

Filing bankruptcy of debtor by the creditor

The creditors can apply to the commercial court asking bankruptcy of a debtor under certain circumstances provide by the EBL. Some of these circumstances are:

- ▶ debtor does not have a permanent address;
- ▶ debtor is involved in fraudulent attempts or takes actions infringing creditors' rights;
- ▶ debtor is hiding assets in order not to pay debts;
- ▶ debtor suspends to make payments to its creditors;
- ▶ debtor's application for concordat is rejected;
- ▶ debtor did not pay an amount that it has to pay based on an execution order.

Debtor filing for its own bankruptcy.

A company can file for its own bankruptcy if the company's liabilities are more than its assets.

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