

Composition with Creditors

LNB News 18/12/2018 32

Changes to Turkish Bankruptcy Law reflect the poor state of the economy. Partner at Gun + Partners, Ozan Karaduman explains the background.

It is no secret that the Turkish economy has been suffering from a few problems. As is usually the case for all economies under distress, various Turkish businesses have been in dire straits. The depreciation in Turkish lira and inflation, together with other factors, put a lot of pressure on the Turkish economy.

Various companies in Turkey started to have problems in making their payments in due time. A number of these companies applied for the procedure of composition with creditors. This procedure allows companies to have a stay on enforcement and execution proceedings against them. During this procedure, no creditor can perform an enforcement proceeding against the debtor whose application for composition has been accepted by the competent court. The businesses in financial distress saw this procedure as an opportunity to get a respite from the threats of execution proceedings and seizure of their assets. A lot of companies applied for this procedure, so much so that a Twitter account was created by an anonymous user which tweets the companies whose applications for this procedure are accepted.

The increase in the number of the applicants for the composition procedure pushed the Turkish Parliament to take new steps to regulate this procedure more strictly so the procedure would not be abused. A proposal to amend some of the provisions related to the composition procedure under the Enforcement and Bankruptcy Law was submitted to the Parliament and was accepted on 6 December 2018.

The most important amendment is related to the application process. This does not come as a surprise as the purpose behind the amendment is that only companies who are eligible for this procedure can benefit from it. In the composition procedure, if a company applies to the court for composition with creditors, it must submit several documents. The court makes an initial review just to determine if all the necessary documents are submitted and then grants a temporary period of three months during which no execution proceeding can be pursued against the relevant company. The court only goes into the detail and reviews whether the relevant company actually merits the composition procedure after granting the temporary period. The quality of the application documents is therefore very important; they form the basis of the whole procedure. The most recent amendment comes into play in this application phase. The amendment has considerably reduced the number of audit firms which can give a report confirming the company can benefit from the composition procedure (which is one of the application documents). Previously, there were around 250 firms which could give this type of report, after the amendment this number fell to around 110. Now, only the audit firms which are listed by the Public Oversight Accounting and Standards Authority as 'licensed to make audits on the entities related to public interest' can give the reports required for the application to the composition procedure.

The nature of the report to be prepared by the audit firm has been amended as well. The previous version of the relevant provision required a financial analysis stating it is highly likely the project prepared by the company to come out of the financial distress as a result of the composition procedure, would achieve its purpose. The new version requires this to be an audit report providing a reasonable confirmation as to the success of the project prepared by the company. As a result, the new amendments not only decrease the number of firms which can prepare a report but also requires these firms to make a more thorough review on the projects prepared by the applicant companies.

The new amendments explicitly state the audit firms will be held accountable for the mistakes and intentional misleading analyses in their reports and will be subject to administrative penalties.

Another important amendment is the previous version of the relevant provision exempted the small scale enterprises from submitting a report on the success of their composition projects whereas the new amendment revoked this exemption.

Another important amendment is related to appointing experts (called 'commissars' in the relevant provision) who will review the composition project during the temporary period of three months. The amendment now requires that if three experts need to be appointed, one of them needs to be an audit firm listed by the Public Oversight Accounting and Standards Authority.

As a final word; it would have been better if not so many companies had needed to apply to the composition procedure. However, in times of financial distress, it is normal for an increase in the application for this procedure. The important point is to separate the companies which actually need this procedure and can make a recovery after benefiting from this procedure and the ones which try to abuse this process. The new amendments aim to strengthen this point which is useful.

Document information

Published Date

18 December 2018

Jurisdiction

Turkey

Related Documents

Relevant Companies

Gun + Partners