

**THE LAW AMENDING THE
TURKISH EXECUTION AND BANKRUPTCY ACT**

Law No. 5092

Date of Enactment : February 12, 2004

Article 1. – The phrase “one of the five most circulated newspapers throughout the country” in the second sentence of the second paragraph of Article 114 of the [Execution and Bankruptcy] Act No. 2004 has been amended to read “in one of the newspapers circulated country-wide, with a circulation of over fifty thousand (50,000).”

Article 2 – The first sentence of the second paragraph of Article 128/a has been amended as follows:

“Reappraisal may not be requested before one year has elapsed from the date of finalization of the appraisal.”

Article 3 – The phrase “one of the five most circulated newspapers throughout the country” in the second sentence of the second paragraph of Article 166 of the Act No. 2004 has been amended to read “in one of the newspapers circulated country-wide, with a circulation of over fifty thousand (50,000)” and the phrase “most” in the third sentence has been amended to read “in one of the newspapers circulated throughout the country, having a circulation of over fifty thousand (50,000).”

Article 4. – The fourth paragraph of Article 179/b of the Act No. 2004 has been amended as follows:

“The [initial] duration of postponement shall be for a maximum of one year. This duration may be extended by the Court for additional, appropriate periods, based on the administrator’s reports. However, the duration of such extensions may not exceed four years in total. The administrator is required to submit periodic reports, as specified by the Court, on the business activities and the situation of the enterprise that is subject to postponement of bankruptcy.”

Article 5. – The phrase “one of the five most circulated newspapers throughout the country” in the first sentence of Article 288 of the Act No. 2004 has been amended to read “in one of the newspapers circulated country-wide, with a circulation of over fifty thousand (50,000).”

Article 6. – The second sentence of Article 302 of the Act No. 2004 has been amended as follows:

“The right to terminate the concordat and to benefit from security will be forfeit if a lawsuit is not filed within that period.”

Article 7. – The phrase “one of the five most circulated newspapers throughout the country” in subparagraph (4) of the first paragraph of Article 309/b of the Act No. 2004 has been amended to read “in one of the newspapers circulated country-wide, with a circulation of over fifty thousand (50,000).”

Article 8 – The title of Part 12 of the Act No. 2004 has been changed to “Concordat and Restructuring of Corporations and Cooperatives via Reconciliation” and Articles between 309/m and 309/ü have been added under the upper caption of “IV. Restructuring of Corporations and Cooperatives via Reconciliation” after Article 309/l.

“IV. RESTRUCTURING OF CORPORATIONS AND COOPERATIVES VIA RECONCILIATION”

In General

Article 309/m – A corporation or a cooperative that is unable to pay its mature monetary debts or whose assets and receivables do not cover its liabilities or that faces the imminent risk of one of these situations may file an application for the proceeding for restructuring via reconciliation before the Commercial Court at the principal place of its business if a restructuring plan has been previously negotiated and accepted by the requisite majority of affected creditors.

The term “affected creditors” used under the Articles 309/m to 309/ü shall indicate the creditors whose claims, rights or interests will be restructured by the restructuring plan.

The term “requisite majority” shall mean the majority required for the acceptance of the plan by a number exceeding half of the voting creditors affected by the plan, who hold at least two-thirds of the total amount of the claims of such voting creditors. Where the plan contains more than one class of creditors, each class of creditors must accept the plan by the requisite majority.

The Restructuring Plan

Article 309/n – The plan shall include the following:

- 1- Provide the treatment of creditors that are affected by the plan and indicate how the equality among the creditors holding similar claims will be maintained;
- 2- Specify the effects of the plan on the contracts of the corporation;
- 3- Specify the plan’s effect on the corporation’s right to dispose its assets;
- 4- Whether the debtor is allowed to obtain financing, such as receiving loans, if necessary to restructure the debts;
- 5- Provide means for the implementation of the plan, which may include the possibility of sale of all or any part of the debtor’s business, merger of the debtor with one or more persons, changes in the capital structure of the debtor’s business and/or the amendment of the debtor’s charter, identification of those responsible for future management of the entity, extension of a maturity date, change in an interest rate or issuance of any securities of the debtor;
- 6- Indicate how and by whom the implementation of the plan will be supervised after its approval; and
- 7- Provide the same treatment to rejecting creditors as to creditors holding similar claims, unless a creditor has agreed to accept a less favorable treatment than the other creditors in the same class.

The plan may group creditors into more than one class where the claims in each class are substantially similar in nature.

Additional Materials

Article 309/o – The debtor shall submit the following documents together with its application:

- 1- The restructuring plan;
- 2- Documents showing the debtor's financial standing, including, among other things, the balance sheet, table of income, table indicating the status of the books and records, and other appropriate records and information disclosing the debtor's financial standing;
- 3- The documents demonstrating that the plan will enable the debtor to become financially solvent and viable, that the plan will enable the debtor to repay its due debts according to its payment plan and that the cash flow will be maintained;
- 4- The list of all affected and unaffected creditors and a statement of their claims;
- 5- A description of the out-of-court negotiation process including the evidence that adequate information was given to affected creditors via appropriate means such as registered and reply-paid letter or notarized written notice that would enable them to make a reasonable decision about the plan and show that they had received proper notice;
- 6- Notarized reports dated and signed by the affected creditors demonstrating that they have accepted the plan;
- 7- Documents demonstrating the treatment afforded to creditors by the plan, the possible amount they would receive in bankruptcy proceeding and their comparison;
- 8- A table showing that the majority requirement has been satisfied both in number and in amount;
- 9- A financial analysis prepared by a duly qualified independent audit firm demonstrating that the plan will enable the debtor to become financially solvent and viable and that there is a reasonable likelihood that the debtor will be able to comply with the terms of the plan.

Procedure and Measures to be Taken by the Court upon Application and During the Interim Period

Article 309/ö – The Court shall establish a hearing date to be held within 30 days of the application; announce the application in accordance with EBA 288 as well as serving it upon all affected creditors whose addresses are known. The announcement and service shall demonstrate the scope and the results of the application, time and place the application file may be examined, the date and time of the trial where the objections may be raised.

Upon the request of the debtor and the creditors, the Court shall, in addition, take all measures it deems necessary to protect the assets of the business and for the activities of the corporation to be effective until the judgment. In this respect, the Court may hold an initial hearing before the actual hearing date, appoint one or more qualified interim supervisors jointly selected by the creditors and the debtor among the Turkish citizens with the required knowledge and experience, who will personally carry out or supervise the business activities of the entity from his appointment until the judgment regarding the approval or rejection of the plan. Where the debtor and creditors have not provided for or do not agree on the selection of an interim supervisor, and where the circumstances require the appointment of an interim supervisor, the Court may appoint one or more interim supervisors, with qualifications and duties as set forth in the regulations.

The Court, during the interim period, may suspend the enforcement actions and the lawsuits with regard to enforcement actions by affected creditors against the debtor including the proceedings in accordance with Act No. 6183, may forbid commencement of new proceedings by affected creditors and may declare that the preliminary injunction and attachment judgments will not be enforced. In this case, the statute of limitations and the statute of repose that may be tolled by an enforcement action will not run.

The debtor may obtain interim financing, such as receiving loans before the approval of the plan for the continued operation or survival of the business or the preservation or enhancement of the value of the assets of the estate. If security is required for the financing, it will first be obtained from the unencumbered assets.

The term “financing” includes the services and goods such as raw materials needed for the activities of the entity.

Examination of the Application and the Process of Law

Article 309/p – The Court shall hear the interim supervisor, debtor enterprise’s representatives, and creditors present at the hearing. If the Court concludes that the plan has been proposed in good faith, satisfies the conditions and requirements in Articles 309/m to 309/ö, and any rejecting creditors will receive at least as much as it would receive in a bankruptcy proceeding, it shall make a determination within 30 days approving the application or otherwise it will deny the plan.

Considering the opinions of the debtor and the creditors thereof, the Court, in its order approving the plan, may appoint one or more plan supervisors who will be solely authorized to supervise the implementation of the plan and to give periodic reports to creditors.

Where the debtor and creditors have not provided for or do not agree on the plan supervisor, the Court may appoint a plan supervisor with qualifications and duties further established by the regulations.

The Court’s order approving or rejecting the plan may be appealed within 10 days from service of the order by the debtor and the creditors who have raised objections at the confirmation hearing . The appeal will be handled in an expedited manner and the “correction of judgment” will not be applicable to the decision of the Court of Appeals.

All objections and appeals of the parties are subject to fixed public fees and charges.

Consequences of the Court’s Order

Article 309/r – The reorganization plan will have all its effects and consequences when the Court renders its judgment approving the plan. The terms of the plan will take precedence over all agreements with the affected creditors.

If the Court of Appeals reverses the judgment upon appeal, the implementation of the approved plan will be suspended. All transactions until the reversal decision will be upheld.

Provisions in any agreement of the debtor, whether or not such agreement is affected by the plan, that would allow or result in the modification or termination thereof or in a default or breach of such agreement solely as a consequence of the application for or commencement of a restructuring via reconciliation proceeding shall not be enforceable upon the application to commence the proceeding.

Upon the Court's order denying the plan, any Court-ordered measures will be dissolved, the enforcement actions and lawsuits stayed by the Court will continue.

Termination of the Restructuring via Reconciliation

Article 309/s – Articles 307 and 308/1 of this Act will be applicable by way of analogy to the provisions of restructuring by reconciliation. If the plan is terminated as a whole and the order approving the termination has become final, the final order shall be announced in accordance with Article 288. Within 10 days from the announcement, creditors may demand the bankruptcy of the debtor from the same Court that had approved the plan.

Modification of the Plan

Article 309/s – Where a breach in part of the plan affects certain parties, and those parties have reached an understanding to amend their rights and obligations, the amendment will be submitted to the approval of the Court. If the modification is essential to render the plan viable; and the modified treatment for the creditor(s) in question will not result in a better treatment than that afforded to creditors who are affected by the plan, the Court will approve the modified plan.

The procedure regarding the approval of the restructuring plan will also be applicable to the modification of the plan.

Breach of the Plan and Miscellaneous Provisions

Article 309/t – Where the debtor cannot timely fulfill its obligations set by the plan in part or in full, the plan supervisor, the debtor or creditors will notify the situation to the Commercial Court that approved the plan. The same remedy is available for the creditor who has provided the debtor with financing before

approval of the plan, such as by extending credit, regardless of whether he obtained security in exchange, and has not received his claim in part or in full. Upon such notification, the Court will take effective measures to protect the assets of the debtor, including the measures that limit debtor's right to dispose his assets, and will set a hearing date and will announce it in accordance with Article 288 of this Act. After hearing the objections of the affected or unaffected creditors and upon determination that the debtor has failed to perform his obligations in part or in full, and the modification will not be viable or upon determination that the creditor providing the financing has not received his claim in part or in full, the Court will decide on the bankruptcy of the debtor.

Banks and insurance companies shall not be eligible to apply as debtors for restructuring via reconciliation.

Article 334/a of this Law will be applicable to interim supervisor and plan supervisors.

Tax Exemptions and Incentive Certificates

Article 309/u – The following provisions will be applicable to the restructuring via reconciliation plans:

- 1- The transactions to be effected and the papers to be issued within the scope of approved restructuring plans will be exempt from the stamp duty payable according to the Stamp Duty Law No. 488 and from the fees payable according to the Law No. 492 on Fees;
- 2- The amounts to be collected by creditors under any name whatsoever pursuant to the approved restructuring plans will be exempt from the banking and insurance transactions tax payable pursuant to the Law No. 6802 on Expenditure Taxes;
- 3- The motor vehicles to be acquired by creditors pursuant to the approved restructuring plans will be exempt from the vehicle purchase tax payable according to the Finance Law No. 1318;
- 4- The credits made available or to be made available under the approved restructuring plan will be exempt from the resource utilisation support fund levy, as well as from other similar taxes, duties, fees and fund levy

obligations (excluding the Contribution Towards Education payable pursuant to the Law No. 4306).

The exemption (excluding Vehicle Purchase Tax) will also apply in cases where creditors dispose of the assets they have acquired pursuant to the restructuring plan.

The exemptions will also be valid from the standpoint of the taxes, duties and fees payable at the stage of legal collection of the claim in cases where the debtor fails or will be unable to fulfil the requirements of the approved restructuring plan.

The claim, collection of which has been waived pursuant to the provisions of the approved restructuring plan, will be taken into consideration as a “worthless claim” for the creditor and a “waived claim” for the debtor according to the provisions of the Tax Procedure Code.

The tax, duty and fee exemptions will not be revoked even if the transactions under the approved restructuring plan are not realised.

The export commitment periods and the validity periods of the incentive certificates obtained by the debtor who will be subject to a new repayment scheme according to approved restructuring plan are deemed to have been extended by the periods determined under the plan.

Regulations

Article 309/ü – Within two months following the publication of this Law, the Ministry of Justice shall issue regulations in order to elaborate the details of the implementation of restructuring via reconciliation.

Article 9 – Article 334 of Act No. 2004 has been amended as follows, together with its title:

“The penalties for debtors who mislead the authorities during concordat or restructuring via reconciliation, or who do not comply with the conditions of concordat or restructuring by reconciliation:

Article 334 - The debtors who mislead the creditors, observers or authorized officers regarding their financial status through

submission of non-factual account and balance sheet data in order to gain time for concordat or restructuring via reconciliation, or concordat or restructuring via reconciliation approval, or those debtors who do not comply with the provisions of the concordat or restructuring via reconciliation agreement, shall be sentenced to imprisonment from six months to one year.”

Article 10 – Provisional Article 5 paragraph 13 of the Act No. 2004 has been amended as follows, and the word “too” has been added after the “contracts” in paragraph 16 and the word “too” has been added following the “lawsuits” in paragraph 38:

“The amendment regarding Article 68/b will be applicable for the account summaries and warnings sent after the Law becomes effective.”

Article 11 – The following Article has been added to Act No. 2004:

Provisional Article 6 – The phrases “enforcement supervision authority”, “supervision authority”, and “authority” in this Law have been replaced with the term “Enforcement Court”; the phrases “supervision authority judge” and “authority judge” have been replaced with the term “judge”. Other legislation referring to enforcement supervision authority and supervision judge will be regarded as referring to Enforcement Court and judge.

Article 12 – This Law will become effective as of the date of its promulgation.

Article 13 – The provisions of this Law will be enforced by the Council of Ministers.