

**POSTPONEMENT OF BANKRUPTCY IN TURKISH
CAPITAL STOCK COMPANIES**

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In September 2008, it was announced that Lehman Brothers Investment Bank was filing for bankruptcy after the Federal Reserve Bank turned down its request to provide financial support to the once giant financial institution. Following Lehman Brother's filing and the downfall of other major financial institutions, the ramifications of the US subprime mortgage crisis has rapidly become a global crisis and has transformed into what has now become a worldwide financial catastrophe.

The crisis has had devastating effects in virtually every country, rich or poor, marked by the contraction of the global economy. Needless to say, companies across all industries will inevitably suffer from this economic downturn in one way or another. Companies that were once successful and stable are filing for bankruptcy or being liquidated. In Turkey, the first wave of the crisis was felt in October 2008 where it affected small to mid-sized companies. Consequently, the number of companies facing financial difficulty and bankruptcy has risen dramatically.

This article seeks to provide an outline of Turkish Law as regards the rules for postponement of bankruptcy and bankruptcy implications for capital stock companies and their creditors.

General Aspects of Bankruptcy

Bankruptcy proceedings are performed by execution offices and the decision with regard to the bankruptcy of the debtor is rendered by the commercial courts.

There are three different types of bankruptcy stipulated under the Execution and Bankruptcy Law No. 2004 ("EBL"), which are; (i) ordinary bankruptcy, (ii) bankruptcy pertaining to negotiable instruments and (iii) direct bankruptcy.

Ordinary bankruptcy and bankruptcy pertaining to negotiable instruments are similar to each other in terms of how the proceeding is initiated. Direct bankruptcy, however, is handled differently. If one of the conditions stipulated under the EBL exists, the creditor may request for the bankruptcy of the debtor by applying directly to the commercial courts. The purpose of direct bankruptcy is to eliminate the risks which may arise during the initiation of the bankruptcy procedure against the debtor and the delivery of the bankruptcy payment order from the creditor of its receivables to the debtor.

A) Direct Bankruptcy

Under the EBL, direct bankruptcy may be filed only in connection with certain company types and under specific circumstances outlined in the legislation. With respect to capital stock companies (joint stock companies and limited liability companies) and cooperatives, direct bankruptcy may be filed for when a company's liabilities are greater than its assets. Information on the company's capital structure and debt obligations is provided in an interim balance sheet.

B) Filing for Bankruptcy

Once a company recognizes a situation where its liabilities exceed its assets, the company is obliged to immediately notify the competent commercial court and submit a balance sheet. If the court determines that the liabilities of the company is impaired and if there is no request for the postponement of bankruptcy in accordance with the below mentioned procedure, the court shall immediately deem the company bankrupt.

C) Postponement of Bankruptcy

1. Request for Postponement:

The representatives of the company or any of its creditors may request postponement of bankruptcy, i.e. where bankruptcy is deferred until a more in-depth review of the actual financial situation is conducted. Postponement of bankruptcy will only be considered when the company submits to the court a proposal to restructure its financing, primarily to the benefit of its creditors. Should the court consider the restructuring plan viable, it may grant to the company the postponement of bankruptcy for a period of one year. The postponement period may be extended subject to the determination of the courts but shall not exceed four years.

2. Measures Taken by the Court

The court that rendered the decision to postpone bankruptcy may take all necessary measures to protect the assets of the company and may appoint a trustee upon making its decision. The court may either remove all authority vested in the company's management and assign it to the trustee, or enable the trustee to approve the decisions and transactions of the management.

3. The Implications of Postponement

Some restrictions are imposed on creditors enforcing their rights over companies under postponement of bankruptcy. For example, during the postponement period, no proceedings may be filed against the company and any proceedings previously initiated are suspended. Prescription periods and statute of limitations deadlines shall be suspended until the debtor is no longer under postponement of bankruptcy. It is important to note that foreclosure proceedings, mortgage claims and commercial pledges may be initiated or continued during such postponement period. Although such proceedings may be in effect, it is important to highlight the fact during the postponement period repossession measures may not be taken by creditors and the sale of pledged property may not be performed.

4. Post Postponement of Bankruptcy

During the initial one year postponement period, the company is deemed to be an on-going concern. In the course of this period, if the company is successful in reorganizing its financial position and is no longer impaired, the court absolves the postponement of bankruptcy over the company and the company is able to reemerge to continue with business as normal.

However, if before the expiration of the postponement period, the court decides that the company continues to be impaired, the court shall rescind the postponement of bankruptcy over the company and officially declare it bankrupt.

Considering the current economic environment, it is highly likely that there will be an increase in the number of companies filing for bankruptcy in Turkey. Thus, it is highly important that companies in Turkey and foreign investors alike be abreast with the rules and regulations regarding the issues surrounding bankruptcy.