

# The Resolution

June 2018

Issue

07

## DOES “ECONOMIC MANEUVER” CONSTITUTE A CRIME?



### Highlights of this issue

Intentionally Reducing the Assets with the  
Intention of Causing Damage to the Creditors

## DOES “ECONOMIC MANEUVER” CONSTITUTE A CRIME?

The concept of “debtor imprisonment” adopted in the old legal systems has been recently abandoned. In the Mongolian era, the debtor who did not pay his debts, was handed over by the creditor until he pays his all debt. Contrary, today’s enforcement mechanism is entirely based on assets of the individual. However, Turkish Execution and Bankruptcy Code stipulates imprisonment in certain cases. If you want to make some maneuvers as a merchant or a borrower, actually, you may only have committed crimes regulated under Turkish Execution and Bankruptcy Code (**Code**), not under Turkish Criminal Code.

Some of the attention-grabbing crimes set forth in Turkish Execution and Bankruptcy Code are:

- Intentionally Reducing his own Assets with the Intention of Causing Damage to his Creditors
- Causing Insolvency with a Personal Action or Knowingly Aggravating his Bad Economic Condition
- Not Paying the Debt of a Trading Company with the Intention of Causing Damage to the Creditors
- Not Requesting the Stock Company’s Bankruptcy if the Company’s Assets are not Sufficient to Cover its Debts

Since there is no Prosecution Office in Execution and Bankruptcy Law, you might be directly sued with a complaint petition filed against you and submitted to the Courts of Criminal Enforcement. Complaint is a precondition of the prosecution for the court.

All crimes designated in this Code are subject to reconciliation due to the dispute resolution between parties is the main purpose of the Code.

If the court believes that the conditions of the complaint petition are met, the prosecution phase directly begins. Otherwise, the complaint will be rejected. From this aspect, the procedure of examining the crimes and punishments regulated in Turkish Execution and Bankruptcy Code is distinctly different from the examination of the crimes and punishments regulated in Turkish Criminal Code.



## **INTENTIONALLY REDUCING THE ASSETS WITH THE INTENTION OF CAUSING DAMAGE TO THE CREDITORS**

The criminal act constitutes by disposing of, wasting or reducing the value of all or some of his assets or by concealing his assets or transferring or assigning his properties to third persons in fictitious transactions or by admitting simulated debts. The act should be committed after a petition for execution proceeding for attachment or during two years prior to the date of that petition.

For example, taking the annexes on the pledged real estates out of the real estate with the intention of causing damage to the pledgee, may also constitute such crime.

In order for the crime is deemed to have been committed, the creditor is required to receive an insolvency document or to prove with another way that the debt could not be collected. For this type of crime, the intention is not solely sufficient for the commitment of the crime according to the Code. In addition to foregoing, Turkish Code seeks the “direct intention to harm the creditor”, as *dolus specialis*, for the commitment of the crime.

In the event the above-mentioned conditions to commit the crime are met and there is no another reason for compliance with the law, the debtor might be imprisoned for six (6) months up to three (3) years and imposed on a judicial fine up to one thousand days. In case the annex on the pledged real estate is taken out of the real estate with *dolus specialis*, the debtor might be imprisoned for two (2) years up to four (4) years and imposed on a judicial fine up to one thousand days.

Moreover, postponement of the sentence or deferment of the announcement of the verdict is not possible for the punishments sentenced by the Courts of Criminal Enforcement.



# Answers. Not theories.

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