

Gökçe

The Resolution

Victory Day
Special Issue

CONCORDAT IN TEN QUESTIONS



Happy Victory Day!

CONCORDAT IN TEN QUESTIONS

Since the Law no. 7101 amending the Enforcement and Bankruptcy Law and Certain Laws (the Law) abolished the postponement of bankruptcy procedure in March 2018, the concordat procedure became more important. Therefore, we would like to summarize the concordat procedure in ten questions in this issue.

1. What is Concordat? Who is Entitled to Apply for Concordat?

Basically concordat might be defined as a legal procedure allows the debtors to pay their debts within the scope of an agreement executed between the debtors and their creditors. The aim of such procedure is continuation of the economic existence of the debtor.

Any debtor having difficulties in paying his debts and acts in good faith may apply for concordat in conjunction with the other conditions that must be met. The Law finds the convincing proof sufficient for the debtors to prove their difficulties in paying the debts. The debtor must submit a preliminary concordat project to improve his financial situation when applying to the concordat.



Any debtor who has already started to follow his bankruptcy proceedings has the opportunity to benefit from the abovementioned procedure.

On the other hand, if the conditions are met, also creditors may apply for such procedure in order to collect their receivables.

2. What is the Purpose of Concordat?

Concordat introduces two options to the debtors: (i) a period of time to pay their debts or splitting their debts into installments. It is also possible that the creditors sometimes may waive from some of their receivables in the course of the concordat procedure. In some cases, the creditor may waive some of the receivable; and at the same time, may give the debtor a period of time to pay his debts or offer to split his debts into the instalments.

3. Which Courts are Competent and Authorized?

The commercial courts of first instance are determined as the competent courts for all proceedings relating to the concordat. Concordat applications may be made to the court of domicile of the debtor in case the debtors are not subject to the bankruptcy. In case the debtors are subject to the bankruptcy, commercial courts of first instance where are in the place of the registered office of the debtors are authorized.

4. Is It Possible to Claim the Bankruptcy of Any Debtor by means of Concordat?

The Law brought a condition for the bankruptcy of the concordat applicants which is being subject to the bankruptcy. By means of this amendment, since the debtor who is not subject to bankruptcy applies only for concordat; the debtor is prevented from facing bankruptcy risk.

5. What Does It Mean to Give a Respite Order?

The Court should be convinced that the financial situation of the debtor might be improved or the concordat proposal will be accepted by the creditors. In such case, the court will protect the debtor by giving a respite order after the submission of the required documents and the request of such respite order made by applicants. The main protection brought by the respite order is the prohibition of following execution proceedings. Within the course of the temporary respite order, the court shall give its decision on final respite order.



The court authorized to give the temporary respite order appoints a temporary commissioner with this order. This commissioner audits the transactions to be made by the debtor during the course of the temporary respite order; and the transactions are conducted under his/her supervision. The commissioner submits his/her report regarding the financial situation of the debtor before giving the order. The court shall take the measures concerning the assets of the debtor ex officio.

As a rule, the temporary respite order period is three months. This period may be extended not to exceed five months.

6. What is the Result of Giving the Decision of Final Respite Order?

If the final order is given by the court, the debtor shall take the measures in the preliminary concordat project submitted with the concordat request to the court. Mainly, the debtor makes an endeavour to improve his financial situation. As a rule, the final respite order period is one year and may be extended by six months. During this period of time, the receivables are recorded and, if necessary, the board of creditors is established.

7. Which Creditors are Affected on Approving of the Concordat?

The implementation of the court approved final concordat is also compulsory for the creditors who rejected the concordat at the first place or did not record their receivables to the concordat. The debtors must pay all of their debts according to the proportion and the period of time agreed in the concordat.

8. How Does Concordat Provide Protection?

During the course of the respite period, the execution proceedings of the creditors are ceased and initiating new execution proceedings are prohibited. However, regardless of the type of the suretyship, the surety may not benefit from the protections. In addition, the execution proceedings for the receivables arising from the employment relationship and alimony might be initiated and such proceedings are not fall in the scope of the above prohibition. During the respite period, any proceedings through foreclosure of pledged assets for the pledged receivables might be initiated or ongoing proceedings might be followed. Likewise, if the debt is incurred upon the consent of the commissioner within the period of the respite, the debt is also out of the prohibition scope.



9. Which Transactions Might Be Conducted by the Debtor During the Concordat?

In the course of concordat procedure, the debtor is especially prohibited from putting lien on his assets and conducting suretyship transactions, partially or wholly transferring his real estates and the utilities of his operation; and conducting unilateral transactions. For the above transactions, the debtor must obtain permission from the court. Otherwise, such transactions are invalid and void. In the course of concordat procedure, the debtor does not lose the power of disposition. However, the transactions must be conducted under the supervision of the concordat commissioner. In certain exceptional cases, the court is free to limit the power of disposition of the debtor and such limitation should be announced by the court.

10. What is the Most Common Mistake in Concordat?

Since the practice of concordat is still quite new, the debtor who applied for concordat seems in the press as insolvent. However, the aim of the concordat is to ensure that the debt can be traced in a manageable manner by the debtors and the creditors with clarity and predictability. The concordat procedure provides that the debts remain at a collectible level. In this respect, concordat procedure allows the debtors and creditors to structure the debt. The purpose is the payment of the receivables in a predictable manner under the supervision and approval of the court. Recently reported concordat news in the press show us that the functionality of such procedure is increasing.

Answers. Not theories.

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About our firm

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