

Gökçe

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DEBT COLLECTION IN CONCORDAT PROCESS



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In concordat process, it is not possible to initiate enforcement proceedings including the ones for public receivables against the applicant of the concordat within the respite given with the respite order. Additionally, ongoing enforcement proceedings against the applicant of concordat shall be ceased, provisional attachment and preliminary injunction decisions shall not be applicable. No enforcement proceedings shall be conducted against the applicant by the enforcement office from the notification date of the temporary respite order to the enforcement office.

However, certain exceptions of such comprehensive protection ensured by the concordat are provided for specific receivables:

Privileged Receivables

According to the Enforcement and Bankruptcy Law (Law), the enforcement and attachment proceedings may be carried out for privileged receivables. Therefore, it is possible to initiate or continue the proceedings of the attachment and ongoing conservation, sale and foreclosure in terms of privileged receivables. Certain receivables arising from the employment relationship and in some cases, the alimony claims arising from family law are considered as privileged receivables.

In addition, it is obligatory to make full payments for the above-mentioned privileged receivables for the approval of the concordat.

Pledged Receivables

With respect to receivables secured by pledge, enforcement proceedings may be initiated through the foreclosure of pledged property or continued if it is already commenced. However, it is not possible to take measures of conservation during such enforcement proceedings and to sale the pledged assets.

Commissar Approved Debts After the Respite

Prohibition of the enforcement is for debts incurred before the temporary respite order or after the temporary respite order without the approval of the commissar. Therefore, any person who has become a creditor after the date of respite order with the approval of the commissar has right to apply to the enforcement proceedings for the collection of these receivables.

Actions of Debt

There is no provision in the Law that provides the suspension of the ongoing lawsuits initiated against the applicant during the temporary or final respite.

Since the execution of the decision given as a result of an ongoing lawsuit is not possible during the course of the concordat; the continuation of the ongoing lawsuits against the applicant does not aggravate its situation.

Attachment Proceeding in the Possession of Third Parties

The attachment of goods, rights and receivables of the applicant in the possession of third parties via attachment notification to such third parties is valid if the attachment minutes are issued by the enforcement office before the announcement date of the temporary respite order.

Since money attachment is not considered as encashment, the process is completed solely by the attachment proceeding. Therefore, in case the applicant's receivables in the possession of third parties are attached, the payment must be made to the creditor.

Situation of Assignees

The receivables may be arisen from "the contract of assignment of a claim". However, the Law introduced a special provision on the assignment of contingent receivables. According to the relevant provision of the Law; in case an assignment agreement is executed for a contingent receivable prior to the date of the respite order and the assigned receivable is arisen after the date of the respite order, such assignment is considered void. It is important when the receivable is arisen rather than when it becomes due and payable. It is worth noting that the assignment shall be valid if the receivable is arisen before the date of temporary respite order.

Interest

Unless otherwise provided in the approved concordat project, interest shall not be applicable to the unsecured debts with the decision of approval of the concordat. However, the interest to be accrued until the date of final respite order shall be calculated and added to the capital.

Situation of Sureties

The sureties cannot benefit from the concordat protection. For example, enforcement proceedings may be initiated against the surety of the promissory note and the proceedings already initiated against the surety may be continued. In addition, in case of any dishonoured cheques, it is possible to initiate enforcement proceedings against the sureties and the endorsers.

Answers. Not theories.

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