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## AMENDED LEGAL FRAMEWORK FOR DEBT RESTRUCTURING UNDER TURKISH LAW: CONCORDAT

### I. INTRODUCTION

As Law numbered 7101 (the “**Law No. 7101**”) dated 15 March 2018 entered into force, Turkish Restructuring law entered into a new path. Law No. 7101 removed the institution of “*Postponement of the Bankruptcy*”, which had already been prohibited during the *state of emergency*. Instead, the provisions regulating “*Concordat*”, another restructuring option provided under Enforcement and Bankruptcy Code numbered 2004 (the “**EBC**” or the “**Law**”), have become more practical and preferable for debtors as well as their creditors.

Under the provisions of the EBC, the concordat is regulated as a legal remedy for restructuring debts of an insolvent debtor. With Law No. 7101, the concordat is now providing an easier set of procedures and, more importantly, a total period of up to two to two and a half (2 – 2.5) years to the debtor during which the debtor is immune to ordinary execution proceedings.

### II. NOTION of CONCORDAT

#### 1. In General

The concordat, regulated under Articles 285 – 309 of the EBC, foresees an agreement concluded between the debtor and its creditors. Even though a type of concordat which does not require involvement of the competent court is also regulated under the EBC, this article focuses on the concordat obtained from the court through a legal proceeding.

Pursuant to Article 285 of the EBC, any insolvent debtor -*regardless it is a real person, a legal entity or a merchant*- who is unable to pay its due debts or who will most likely fail to duly pay its debts is entitled to file a concordat application. Likewise, such debtor’s creditor(s) may also apply for the concordat.

#### 2. Types of Concordat

There are three types of *concordat*:

- Deferred Concordat: Creditors grant the debtor a certain amount of time to pay the entirety of its debts.
- Acquitted Concordat: Creditors accept to make a discount.
- Combined Concordat: Combination of *Deferred Concordat* and *Acquitted Concordat*.

### III. CONCORDAT APPLICATION

#### 1. Competent Court and Jurisdiction

The competent court for a concordat proceeding is commercial courts in the jurisdiction of where the applicant resides.

## 2. Mandatory Documents

Article 286 of the EBC foresees several documents to be submitted together with the concordat application:

- Preliminary concordat project: This project has to demonstrate the general framework of the concordat process as well as the route to be followed by the debtor.
- Comparative table reflecting amounts offered by the debtor to be paid to its creditors upon the concordat and amounts in case of bankruptcy: This table must indicate that the concordat is a more preferable option, not only for the debtor but also for its creditors.
- Balance sheet of the debtor
- Full list of creditors, debt amounts and priorities
- Financial analysis reports prepared by independent audit companies, certified by Capital Markets Board or Public Oversight Accounting and Audit Standards Authority, verifying that the payment plan filed with the preliminary concordat project is likely to be successful: It should be noted that small sized enterprises are not required to submit this financial report.

Once these documents are duly submitted, the court is to grant the temporary term (as explained below) and announce the application to creditors who are invited to raise their objections, if any, within seven (7) days.

## IV. TEMPORARY TERM and DEFINITE TERM

Notion of the term is one of the most critical keyword of the concordat proceeding. "Term" is basically the period granted by the court until the finalization of the concordat preparations, during which (either temporary or definite term) execution proceedings initiated or to be initiated against the debtor are suspended.

### 1. Temporary Term (3+2 Months)

Provided that the mandatory documents are fully submitted, the court shall decide for **the temporary term**, up to three months. However, this three months period may be extended up to five months by the Court. Consequences of *temporary term* and *definite term* are the same.

After the court decides for the temporary term, actual examination on the concordat application and the project commences. Accordingly the court first appoints one or three temporary concordat trustee(s). This trustee drafts a report to the court, evaluating the likelihood of the concordat project being successful. At the same time, the court examines creditors' objections to the concordat application.

### 2. Definite Term (12 + 6 Months)

The court conducts a hearing within the temporary term to decide whether the concordat will be successful and whether the definite term shall be granted. At this hearing, the debtor, the objecting creditors and the trustee(s) will be present to assert their arguments and opinions. If the court is persuaded that the concordat may be successfully completed, it will grant a definite term of twelve months, which may be extended up to eighteen months. Otherwise the court will reject the concordat application and, where applicable, declare the applicant bankruptcy.

### **3. Consequences of Definite Term**

#### **3.1. Impacts on Debtor**

In principle, the debtor may continue its ordinary business within the scope of the concordat. Nevertheless, its *power of disposition* is subject to some restrictions.

First of all, the debtor has to conduct its business under the supervision of the trustee(s). In addition, the court may decide that some or entire transactions of the debtor are subject to the trustee(s) approval. Moreover the court may appoint the trustee(s) as managing trustee(s), similar to managing administrators.

On the other hand, certain transactions are subject to the court's approval such as establishing a pledge, assigning immovable and/or enterprise partially/entirely, making donation and being guarantor.

As for the existing agreements of the debtor, the trustee(s) will be entitled to terminate the agreements putting the debtor under continuous debts while clauses regulating that the concordat application constitutes a termination reason shall be null and void.

#### **3.2. Impacts on Creditors**

The main impact is that the execution proceedings initiated against the debtor are to be suspended during the definite term. Additionally initiating a fresh execution proceeding during the definite term either is not possible either.

With regards to pledgees, even though they are entitled to initiate an execution proceeding to foreclose their pledges, they cannot carry out the sale of the pledged assets.

### **V. ACCEPTANCE and APPROVAL of CONCORDAT**

As mentioned above, the concordat is technically an agreement between the debtor and its creditors. Therefore the performance of the concordat suggested by the debtor requires the acceptance of a majority of the creditors.

In order for the concordat to be deemed accepted, either (i) the creditors representing the half of all creditors and the half of the entire receivables shall accept the concordat or (ii) the creditors representing one fourth of all creditors and two third of the entire receivables shall accept the concordat.

It should be noted that secured and privileged creditors' receivables (privileged creditors of first degree pursuant to Article 206 of EBC) -*especially the employees*- are not taken into consideration in the above calculation regarding the majority to accept the concordat, for the purpose of protecting other creditors' rights and receivables as a privileged creditor would never accept a concordat project since its receivables will be collected first anyway.

Following the acceptance of the sufficient majority, the concordat shall be submitted to the court, for its approval. Once the court approves the concordat, it becomes binding for all creditors whether they accept the concordat or not, except for the pledgees and public debts. Following the approval of the concordat, the court may also appoint administrator(s) to supervise whether the conditions of the concordat are duly met.

In case the court rejects the concordat (on the grounds that bankruptcy would have been more favorable for the creditors), it will declare the debtor bankrupt.

## **VI. LEGAL PROCEDURES AGAINST APPROVED CONCORDAT**

### **1. Appeal Against Concordat Decision**

As stated above, the approved concordat is binding for all creditors including those who did not accept the concordat project. However these creditors objecting the concordat are entitled to appeal the decision approving the concordat within ten (10) days.

Concerning the contested receivables, the creditors whose receivables are refused are entitled to file a lawsuit before the competent court subject to the general provisions (similar to the basic action of debt).

### **2. Withdrawal of Concordat**

A creditor arguing that the debtor does not make payments in accordance with the concordat is entitled to request from the Court which approved the concordat, to exclude its receivables from the concordat project.

Moreover in case the concordat is paralyzed in bad faith by the debtor, any creditor may claim the definite withdrawal of the concordat.

The Court's decision upon these requests for withdrawal may be appealed within ten (10) days.

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Should you have any queries, please do not hesitate to contact us.

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