

INFORMATION NOTE ON AMENDMENTS TO THE EXECUTIVE AND BANKRUPTCY LAW NUMBERED 2004

I. INTRODUCTION

Significant amendments have been made to the abovementioned articles of the Enforcement and Bankruptcy Law dated 9 June 1932 and numbered 2004 (“**EBL**”) with the Law Amending the Enforcement and Bankruptcy Law and Certain Laws No. 7327 (“**Law**”) published in the Official Gazette no. 31516. You may find the highlights of change below:

II. AMENDMENTS

With the amendment to Article 223 of the EBL, "Bankruptcy Administration and The Duties of the Bankruptcy Office", it is aimed to increase the qualifications of the bankruptcy administration officers who are tasked and authorized to carry out the bankruptcy liquidation process, thereby completing the liquidation process more effectively and quickly. Amendments have been made regarding the selection, qualifications, training and supervision of bankruptcy administration officers. In order to be elected as a bankruptcy administration officer, it is mandatory to receive the training specified in the regulation and to be registered on the list of bankruptcy administration officers created by the expert district boards. By regulation, one of the bankruptcy administration officers is required to be a certified financial adviser or a freelance accountant financial adviser and one must be a lawyer. The bankruptcy officer will not be able to take part in more than five cases simultaneously. Thus, bankruptcy administration officers will be prevented from not being able to deal with the task assigned to them because of the excessive workload and the liquidation process from being prolonged.

By amending the third paragraph of Article 241 of the EBL, "Liquidation of Assets", it is allowed to cash in/sell goods and rights that are commercial and economic integrity or that may generate higher income if sold as a whole, and the enterprises that contain these goods and rights as a whole. It is stated that the businesses included in the scope of this article will be sold as a whole and the provisions regarding the liquidation of immovable property will be applied to the sale transaction. In addition, if the sale cannot take place as a whole, rights and assets will be sold separately.

A second paragraph has been added to Article 295 of the EBL, "Consequences of the Definitive Term for Pledged Creditors." It has been regulated that the sale of the pledged asset may be allowed if it is not intended to be used by the business in accordance with the concordat project, if its value will decrease or if its preservation will be costly. As per this amendment, the pledged asset can also be sold during the definitive and temporary terms if it is not envisaged to be used pursuant to the composition project, or its value will decrease or its preservation will be

costly. As a result of the sale, a payment will be made to the pledged creditor from the sales revenue in the amount of the pledged amount in accordance with the procedure specified in Article 297/2 of the EBL.

With the amendment made within the scope of the second paragraph of Article 296 of the EBL, "Consequences of the Definitive Term for Agreements", it has been regulated that contractual obligations arising from the agreements that continue during the temporary and definitive terms will be performed mutually by the parties and it is stated that the agreements to which the debtor is a party and that are important for the continuation of the debtor's business will continue to be performed. Apart from this regulation, as per the amendment, the contracts, which the debtor can terminate the agreements with the commissar's approval and the court's permission if the execution of the agreement is "extremely burdensome".

The second paragraph of Article 297 of the EBL, "Consequences of the Definitive Term for Debtors", has been amended and it has been regulated that the debtor cannot establish a pledge, cannot be a guarantor and make gratuitous dispositions without the permission of the court. It is also regulated that the debtor cannot transfer his/her movables, which are important for him/her. In addition, it is stipulated that the approval of the committee of creditors with the opinion of the commissioner is obligatory before the court permits the execution of the transactions specified in the paragraph. In this way, it has been tried to ensure that the debtor works efficiently and maintains his potential to pay his/her debts.

With the paragraph added to Article 308 of EBL, "Failure to Certify Concordat and Bankruptcy of the Debtor", in cases which the concordat process ends by bankruptcy, the court that decides on bankruptcy will decide whether the liquidation should be carried out in a simple or ordinary manner and, if necessary, the ordinary liquidation shall be carried out by the commissioners, and in this case, the duties and powers of the bankruptcy administration shall be used by the commissioners.

Again, as per the amendment made in the first sentence of the fourth paragraph of sub-clause (c) of Article 308 of EBL, including the credits provided by credit agencies, the loans which are signed by the permission of the commissioner after the temporary despite decision in concordat, will not be subject to the terms of ordinary concordat and may be subject to enforcement proceedings in case of default. In addition, if the concordat request ends in bankruptcy, it will be among the desk debts to be paid before the bankruptcy creditors in the bankruptcy liquidation, and thus, an important guarantee will be obtained in terms of collecting its receivables in case of a possible bankruptcy.

In accordance with "Temporary Article 17" added with Article 8 of the Law No. 7327 and sixth paragraph of Article 223, until the bankruptcy administrative officers list is created, civil servants will be appointed from the list, regardless of the assignment procedure, and the appointed officers will be notified to the regional court of appeals expert panel, to which the enforcement court is affiliated, in order to follow up the prohibition of a person to take charge as a civil servant in more than five files simultaneously.

III. COMPARATIVE TABLE

| Article | Former Article | Amendment/ Addition |
|---|---|---|
| <p>223</p> <p><i>Bankruptcy Administration and The Duties of the Bankruptcy Office</i></p> | <p>-</p> | <p>(Additional paragraph:9/6/2021-7327/1 art.) Bankruptcy administration officers are selected from the list of bankruptcy administration officers created by the expert district boards. In this way, it is mandatory for one of the elected administration officials to be a certified financial adviser or a freelance accountant financial adviser and one to be a lawyer. To register on the list, completing the training taken from the institutions permitted by the Ministry of Justice is a must. In the absence of the officer to be assigned to the list, an off-the-list assignment is made, and this is reported to the regional board. The bankruptcy officer will not be able to take part in more than five cases simultaneously. Qualifications of bankruptcy administrative officers, supervision, training, institutions to provide training and those who will be exempted from training and other matters pertaining to the implementation of the article will be determined by the regulation put into effect by the Ministry of Justice.</p> |
| <p>241/3</p> | <p>Goods and rights that present commercial and</p> | <p>Goods and rights that present commercial and</p> |

| | | |
|---|---|---|
| <p><i>Liquidation of Assets</i></p> | <p>economic integrity or will bring higher income if sold as a whole are turned into cash as a whole.</p> | <p>economic integrity or will bring higher income if sold as a whole and businesses that contain these are sold as a whole. Continuity of business and economic contribution is taken into account in sales. In this case, the property cash conversion provisions apply. If the sale as a whole does not occur, the goods and rights are sold separately. Procedures and principles regarding the implementation of this paragraph are arranged in the regulation issued by the Ministry of Justice.</p> |
| <p>295/2</p> <p><i>Consequences of the Definitive Term for Pledged Creditors</i></p> | <p>-</p> | <p>The exact due date for creditors: In so far, if the pawned goods are not foreseen to be used in accordance with the concordat project or if its value will decrease or if its preservation will be costly it can be sell in accordance with the procedure asserted in the Article 297/2. From the revenue raised through the sale the payment will be made to the pledge owner limited to pledge price.</p> |
| <p>296/1</p> <p><i>Consequences of the Definitive Term for Agreements</i></p> | <p>Regardless of whether the other party of the contract is affected by the concordat project or not, provisions that are considered as debtor's request for concordat will mean to breach of the</p> | <p>Regardless of whether the other party of the contract is affected by the concordat project, the continuation of the contracts to which the debtor is a party, and which is important for the continuation of the</p> |

| | | |
|--|---|--|
| | <p>contract or will be count as just cause for the termination of the contract or in which such requests are seen as an infringement of the contract or which make the payment due , will not be applied if the concordat procedure is to be applied. Even if there isn't any provision concerning that, the contract shouldn't be terminated for the excuse of the application of the concordat.</p> | <p>business is essential. The provisions in these contracts stating that the debtor's request for a concordat will constitute a breach of the contract, will be considered as a just cause for termination or will make the debt due, shall not apply if the debtor applies for concordat procedure. Even if there is no such provision in the contract stating that, the contract cannot be terminated on the grounds that the debtor has applied for concordat. (Additional sentence: 9/6/2021-7327/4 art.) Within the scope of this paragraph, the debts due to contracts that continue during the temporary and final period are performed mutually.</p> |
| <p>296/2</p> <p><i>Consequences of the Definitive Term for Agreements</i></p> | <p>The debtor may terminate the permanent debt relationships that he is a party to and prevent the concordat from achieving its purpose, at any time with the approval of the commissioner and the approval of the court. The compensation to be paid within this framework is subject to the concordat project. Special provisions regarding termination of service contracts are reserved.</p> | <p>The debtor may terminate the excessively burdensome continuous debt relationships that he is a party to and prevent the concordat from achieving its purpose, at any time with the approval of the commissioner and the permission of the court. The compensation to be paid within this framework is subject to the concordat project. Special provisions regarding termination of service contracts are reserved.</p> |
| <p>297/2</p> | <p>Without the permission of the court, the debtor cannot</p> | <p>The debtor cannot establish a pledge, cannot be a</p> |

| | | |
|---|--|---|
| <p><i>Consequences of the Definitive Term for Debtors</i></p> | <p>establish a pledge, cannot act as a guarantor, and cannot transfer or limit the continuous installation of the enterprise, even partially. Otherwise, the transactions are invalid. Before the court decides on these transactions, it must take the opinion of the commissioner and the creditors' board.</p> | <p>guarantor or make gratuitous dispositions from the deadline, without the permission of the court; It cannot transfer and limit the immovable property, the movables that are important for the continuation of the operation of the enterprise and the continuous installation of the enterprise. Otherwise, the transactions are invalid. Before the court decides on these transactions, it has to obtain the opinion of the commissioner and the consent of the board of creditors.</p> |
| <p>308/2</p> <p><i>Failure to Certify Concordat and Bankruptcy of the Debtor</i></p> | <p>-</p> | <p>If the concordat process ends in bankruptcy, the court that issued the bankruptcy decision decides that the liquidation be carried out according to the simple or ordinary liquidation procedure and that the ordinary liquidation is carried out by the commissioners when necessary. In this case, the duties and powers of the bankruptcy administration are used by the commissioners.</p> |
| <p>308/c-4</p> <p><i>Failure to Certify Concordat and Bankruptcy of the Debtor</i></p> | <p>Including the credits provided by credit agencies, the signed loans with the permission of the commissioner within the respite, are not subject to the terms of ordinary concordat in ordinary concordat; they are</p> | <p>Including credits provided by credit agencies, the signed loans with the permission of the commissioner after the temporary respite decision, are not subject to the terms of ordinary concordat in ordinary concordat; in a case of</p> |

| | | |
|--------------------------------------|---|--|
| | <p>considered as a table debt in the concordat or a subsequent bankruptcy by abandoning the assets.</p> | <p>default, they might be subjected to enforcement proceeding even within the respite and in regards to article 206, they are paid right after the pledged debt, and before all other debts; they are considered as table debt in concordat or a subsequent bankruptcy by abandoning the assets in regards to Article 248.</p> |
| <p>Provisional Article 17</p> | <p>-</p> | <p>In accordance with sixth paragraph of article 223, until the list of bankruptcy administrative officers is formed, regardless of the assignment procedure, an officer will be appointed from the list. For the purpose of following the ban on serving as a civil servant in more than five cases, the appointed administrative officers of bankruptcy will be notified to the regional expert panel of the regional court with which the enforcement court is affiliated with.</p> |

IV. CONCLUSION

Significant changes in the provisions of the Law and the EBL regarding the concordat establishment and additions have been made. With the said changes demonstrated above, the interests of both creditors and concordat debtors are protected and clarity of some obscure applications in the concordat process has been acquired.

- Bankruptcy administration will consist of three officials elected from the list of bankruptcy administration officials created by the expert district boards. One of these officers is a certified financial adviser or a freelancer financial adviser and the other shall be a lawyer.

- Businesses that contain goods and rights that requiring commercial and economic integrity, can be sold at a higher price when it is sold as a whole can be sold in its integrity.
- According to the concordat project, the pledged property is not expected to be used by the business.
- The sale may be authorized by taking the opinion of the board of creditor directors or the court, if its value will decrease or its preservation will be costly.
- In the temporary and final respite processes, it is clearly arranged that the parties will continue to perform the contracts.
- From the temporary respite decision, the debtor cannot do without the permission of the court. It has also been added to the transactions that the movable cannot be transferred.
- After the temporary respite decision, including loans granted by credit institutions debts concluded with the permission of the commissioner, concordat in case of default conditions may be subject to enforcement proceedings even in the process of execution and debts will be paid with priority.

Contact

Can Güner
Managing Associate
cg@guner.av.tr

Sabahat Elif İpek
Associate
ei@guner.av.tr

Elif Şatır
Associate
es@guner.av.tr

Güner Hukuk Bürosu
Levent Caddesi, Alt Zeren
Sokak No.7
Levent 34330, İstanbul
T +90 212 282 4385
F +90 212 282 4305
info@guner.av.tr
www.guner.av.tr