

SIGNIFICANT AMENDMENTS TO ENFORCEMENT AND INSOLVENCY LAW IN FORCE AS OF NOVEMBER 30, 2021

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The fifth chapter of the reforms in field of Turkish judiciary has recently introduced a wide spectrum of amendments to Enforcement and Insolvency Law (“EIL”) varying from staying judgment’s enforcement to public auction of debtor’s seized assets.

1. Stay of Enforcement

A court judgment can be principally enforced even before its finalisation. This enforcement would be through a payment order dispatched by the enforcement office. The debtor can stay this enforcement until the end of respective appellate stage only by lodging a security to the enforcement office through certain procedural steps.

Before the amendment, the debtor was required to

- Allocate a security, most commonly by depositing cash or securing a bank guarantee letter, to the enforcement office and
- Apply, via the first instance court, to the regional appellate court or Court of Cassation, whichever is to handle the appellate review to obtain a decision to stay the enforcement.

This was easier said than done given that the debtor, in the course of this process, used to rush from pillar to post inside the triangle of enforcement office, first instance court and the appellate court. This was particularly burdensome in cases where the concerned enforcement office and first instance court situate at different places. This hurdle was often coupled as the appellate court, because if its workload, fails to decide on staying the enforcements within the time granted by the enforcement office.

Thanks to this amendment, the debtor will not be required anymore to apply to the appellate court to secure the decision to stay the enforcement. Instead of appellate courts, local enforcement courts become empowered to decide in this respect. Previously, the enforcement courts were only designated to supervise the enforcement offices’ conduct and admissibility of the security allocated by the debtor.

The return of the security, after a successful appellate application, is still to be evaluated by the first instance court according to the particularities of the overruling decision.

2. Attachment and Preservation of Assets

a. Preservation of Seized Asset

Seized assets shall be principally taken into the enforcement officer's custody. The assets other than cash, negotiable instruments and articles of value, can be left with the debtor or a third party as a custodian. The amendment requires such custodians to make the asset accessible and ready to be transferred at the time of sale by auction. The public auction would not take place if the custodian fails to do so or the enforcement office does not take precautionary measures in this respect.

b. In case of Third Parties' Entitlement Claim

The assets possessed by the debtor shall be deemed to belong to the debtor and seized due to the creditor's attachment. In case third parties (such as the debtor's household or partner) claim ownership over the assets in the debtor's possession, the amendment provides that these assets shall remain with this third party as a custodian. Such assets can be taken into the enforcement officer's custody only if the creditor or debtor objects to the entitlement claim and the court accepts this objection. This amendment is expected to ensure that the third parties' rights would not be prejudiced without a court decision.

3. Public Auction

a. Application for Sale and Its Timing

The amendment requires the application for an auction to be made within one year, whether the seized asset be movable or immovable. Previously, the time period for this application was six months in case of movable assets. If the application is not made in due time, the seizure would be revoked and the creditor would be required to start the attachment process from scratch.

If the seized good, despite a timely application, could not be sold by the auction, the period would be extended for another year.

The amendment also clarifies that debtor is also entitled to request sale of the seized assets.

b. Appraisal of the Seized Asset

As it used to be, the enforcement officer is required to appraise the value of the seized assets and consult to an expert opinion if deemed necessary. The amendment foresees that the Ministry of Justice shall issue a regulation in due course to regulate this procedure.

Those who apply for an auction are required to deposit costs of appraisal and other sale expenses in advance.

It is possible to challenge the enforcement officer's appraisal. The amendment stipulates that the enforcement court, if it decides that it has no jurisdiction, shall *ex officio* convey the challenge to the appropriate enforcement court.

c. E-Auction

The amendment requires the auctions for sale of seized goods to be conducted entirely electronically. The details of electronic environment and procedure are to be regulated by the Ministry of Justice. Various provisions of the amendment stipulate other details as to announcement of auction, procedure of bidding, payment of purchase price and cancellation of the auction.

d. Debtor's Authorisation for Sale

The role provided to the debtor is enhanced with the amendment to a considerable extent. In case the appraisal is in delay, the debtor is entitled to step in and accelerate the process. Following the appraisal, the debtor can also request within 7 days to be vested with authorisation to sell the seized asset on its own. For an admissible sale by the debtor, the purchase price should not be less than

- 90% of the appraised value or
 - The debt for which the seized asset constitutes a security.
- plus expenses incurred in the course of debt collection procedure.

The debtor should realise the sale within 15 days. The ownership shall pass to the bidder in case the enforcement court approves the sale. Otherwise, the purchase price shall be returned to the bidder.

4. Provisions for Registered Motor Vehicles

The enforcement officer has no discretionary power not to consult to an expert opinion when it comes to appraisal of a registered property.

Those applying for sale of the registered motor vehicles should pay costs for preservation of the vehicle in advance, in addition to appraisal and sale expenses.

5. Cancellation of Auction

In cases of sales by way of public auction, the involved parties may request cancellation due to irregularities and misconduct as per the provisions of Turkish Code of Obligations and the EIL.

The amendment provides that;

- This request may be asserted also by interested parties recorded in the registry of the asset (e.g. official registry of title deeds) and those having restricted rights *in rem* in addition to creditor, debtor and those bidding for the auction,
- For the purpose of discouraging requests in bad-faith, those who participated to the auction other than the creditor, debtor or interested right holders can request cancellation only if they pay a non-refundable fee proportionate to the purchase price and allocate a security amounting 5% of the purchase price.
- By the same token, a judiciary fine amounting to 10% of the purchase price shall be imposed on those whose request is decided to be unmerited.

6. Date of Effect

The amendments are in force as of November 30, 2021.

That being said, the amendments that concern procedure of public auction and preservation of the seized assets awaits the Ministry of Justice to issue required regulations to be fully effective. The legislator has granted a six-month period for the Ministry to sort out necessary regulative issues, which is due by June 2022. The Ministry is entrusted with the task to implement the amendments in its entirety and in a uniform basis across all the country within one year following the release of the awaited regulations. The Ministry will be announcing the progress reports and milestones to this end on its webpage.

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