



**AN OVERVIEW OF EXECUTION
PROCEEDINGS WITHOUT ANY
ENFORCEABLE TITLE IN TURKEY
AND THE REQUIREMENTS TO
CREATE FORMAL EVIDENCE**

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The Turkish Execution and Bankruptcy Law (“EBL”) contains important provisions for banks and other financial institutions, entitling them to summary proceedings for the recovery of unpaid loans, provided that certain conditions are fulfilled. In this newsletter, we focus on execution proceedings that can be initiated without any enforceable title under Turkish law, with a focus on the possibility to initiate summary proceedings in order to lift objections to payment orders filed by debtors. We aim to provide information on what banks and financial institutions must do in order to have the required documentation available for use in the future.

Execution Proceedings without Any Enforceable Title Pursuant to Turkish Law

Pursuant to the EBL, it is possible to initiate execution proceedings for pecuniary and security claims, even if there is no final court judgement or arbitral award in favor of the creditor. This is an alternative way with some advantages in order to avoid lengthy civil proceedings, provided that some conditions are fulfilled.

The unpaid creditor may initiate an execution proceeding by submitting an **execution request** to the competent execution office. Within 3 days following the submission of an execution request, the execution office must issue a **payment order** which is served to the debtor. The debtor can either pay the debt or object to it in order to stop the execution proceeding.

If the debtor objects to the payment order within 7 days of the receipt of such order, the execution proceeding stops. In this case, the creditor must file a **lawsuit** which can be either of the following:

- (i) the cancellation of the debtor’s objection within the framework of a lawsuit before the competent ordinary civil or commercial court within 1 year of the notification of the objection of the debtor to the creditor; or
- (ii) the annulment of the objection before the competent execution court within 6 months of the notification of the objection of the debtor to the creditor.

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An annulment proceeding before an execution court (option (ii)) is a summary proceedings that allows creditors to have an enforceable title against their debtors within a shorter period in comparison to a court proceeding before ordinary civil or commercial courts. This important option is available to creditors who can prove their claim with documents listed in Article 68 of the EBL only, such as a document issued by or before a governmental authority; a promissory note, the signature of which is acknowledged by the debtor; or an acknowledgement of debt made before a notary public. Otherwise (with the exception of the possibility granted under Article 68/B explained below), the creditor only has the option to file a lawsuit of cancellation of the debtor's objection before the commercial courts, which is a much longer process.

Once the execution proceeding becomes final, either because the debtor does not object or the objection is removed through proceedings before ordinary civil or commercial courts or execution courts, the only way for the debtor to stop the execution is to file a claim for a declaratory judgement that the debtor is not indebted. This is a separate type of lawsuit under Turkish law, which is outside the scope of this newsletter.

Importance of Account Statements Regularly Notified by Creditors to Debtors in Line with the Requirements of the Law

In Article 68/B, the EBL foresees for creditors to create documentation within the meaning of Article 68 of the EBL by granting a special status to the records and the current account statements that have been regularly kept and notified by the creditors to the debtors via a Turkish notary. This possibility is particularly important if the creditor does not possess any document listed in Article 68 of the EBL as mentioned above.

Article 68/B of the EBL states that the account statements must be sent via a notary public to the address of the borrower indicated in the loan agreement within 15 days following the end of the periods stated in the debtor current account agreement or the interest periods shown in the short, medium, or long-term loan agreements. In case duly sent account statements are not objected to within 1 month after receipt by the borrower, the borrower can object to the correctness of the content of the bank account only after

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payment of the debt. According to Article 68/B, notifications via notaries as well as of account statements and other records and documents that have been drafted in line with the law and that have not been objected to within the foreseen deadlines (in the case of account statements, 1 month) constitute [quasi] definite evidence within the meaning of Article 68 of the EBL, and thus entitle the lender to initiate the annulment of the objection procedure before an execution court.

This is an important possibility granted to creditors, provided that they comply with the requirements of the law, in order to collect their receivables within the shortest available time. It is also relevant to note that a change of address of the borrower shown in the loan agreement will be effective only if and when the borrower designates a new address in Turkey and informs the lender of this new address via a notary public; otherwise, the date of delivery of the account statement at the last known address of the borrower will be considered and treated as the date of delivery thereof to the borrower.

If the creditor does not have any of the documents listed in Article 68 of the EBL or any account documents meeting the requirements of Article 68/B of the EBL, the only option available to the creditor is to file a lawsuit before the civil or commercial courts (option (i)). This is a lengthy process, which can take up to many years, including the appeal stages.

Execution Denial Compensation

If a creditor can get an execution court or a civil or a commercial court to lift the objection, then the enforcement proceedings (attachment of the assets) commenced by the creditor would resume. In addition, the debtor would have to pay an “enforcement denial compensation” in the amount of 20% of the principal debt to the creditor. If the court finds that the debtor’s objection was correct, the creditor will have to pay a compensation in the same amount to the debtor. The reasoning is to deter claimants from filing execution proceedings although a receivable does not exist, and debtors from filing objections although they are in fact indebted.

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Injunctive Relief

A lender may also request an injunctive relief from the competent court based on Article 257 of the EBL and Article 389 of the Code of Civil Procedure. According to Article 258 of the EBL, the court has the discretion to decide whether both parties will be heard prior to its decision on an injunctive relief. This means that the decision on the injunctive relief can be granted *ex parte*. According to the Turkish Court of Cassation, “*plausible proof*” would be sufficient to render a decision of an injunctive relief, which is in practice hard to obtain. Having a documentation in line with Article 68 or 68/B of the EBL would also increase the possibility to obtain an injunctive relief in the form of a preliminary attachment. If an injunctive relief is granted, a lawsuit must be filed before the competent court within 10 days after the decision of the court is notified to the claimant.

Conclusion and Practical Considerations

Banks and other financial institutions, with exposure to the Turkish financial market, must be aware of the important provisions of the EBL targeting at the collection of receivables within the shortest available period of time, and create documentation in line with the legislation in order to make use of the possibility to initiate summary proceedings in case their loans remain unpaid. Banks and financial institutions that are not present in Turkey can send the required notices by issuing a power of attorney to a representative located in Turkey, such as a lawyer. The costs are limited to the fees of notaries and any applicable professional fees to the representatives, and are minimal compared to costs of lengthy civil or commercial proceedings incurred should a debtor not pay its obligations.