Global Restructuring and Insolvency Guide - Turkey

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# Initial Considerations

## Can you take security over all types of assets, including accounts receivable?

**Financial restructuring**

Yes.

**Concordat/Composition (Turkish Scheme of Arrangement)**

Yes, but it will be up to the commercial court's and the commissars' approval.

## What is the nature of the insolvency process?

**Financial restructuring**

Essentially, a contractual process binding on banks that signed the Framework Agreement (FA) produced by the Turkish Banks Association and debtors that separately apply to enter the process.

**Concordat/Composition (Turkish Scheme of Arrangement)**

Composition is an application made before commercial courts by the insolvent company pursuant to Article 285 and continuous provisions of the Execution and Bankruptcy Code No. 2004 (EBC).

## What is the solvency requirement for a company to file a case in this jurisdiction?

**Financial restructuring**

Available for insolvent entities or those likely to become insolvent. Not available if the debtor has entered into bankruptcy proceedings.

Not available if creditors with more than 25% of aggregate claims have begun legal proceedings against the debtor.

**Concordat/Composition (Turkish Scheme of Arrangement)**

Available for an insolvent company unable to pay due debts or unlikely to pay debts upon maturity. Creditors in a position to file for the debtor's bankruptcy may also file for composition.

## Is there a requirement to demonstrate COMI ("centre of main interests") for a company to file a case in this country?

**Financial restructuring**

This procedure is only available for Turkish debtors. Furthermore, Turkish banks, financial leasing companies, finance companies, factoring companies, capital markets institutions, insurance and reinsurance companies, payment services and e-money institutions, and system operators cannot benefit from the FA as debtors.

**Concordat/Composition (Turkish Scheme of Arrangement)**

This procedure is only available for Turkish debtors.

## Is restructuring of both secured and unsecured claims possible?

**Financial restructuring**

Not a restructuring procedure to the extent that debt cannot be written off without 100% creditor consent. Similarly, security rights cannot be impaired without individual secured creditor consent.

There is the ability to change other terms of debt (unsecured and secured) with stipulated majority consent across the relevant creditor group.

**Concordat/Composition (Turkish Scheme of Arrangement)**

Yes. However, the provisions of the concordat process are different with respect to secured and unsecured creditors. For example, the debtor can negotiate and conclude a separate restructuring deal with its secured creditors.

## Are the claims of creditors and shareholders put into separate classes for purposes of voting and treatment under the plan or scheme?

**Financial restructuring**

No.

**Concordat/Composition (Turkish Scheme of Arrangement)**

Secured and unsecured creditors are separately classified. However, there is no separation between creditors and shareholders for purposes of voting and treatment under plan or scheme.

## Is shareholder approval needed to commence a case? Are shareholders entitled to vote on a plan?

**Financial restructuring**

No, unless the articles of association require this.

Shareholders are not entitled to vote on a plan.

**Concordat/Composition (Turkish Scheme of Arrangement)**

Voting approvals by shareholders are not required unless the articles of association require this.

No, shareholders are not entitled to vote on a plan. The creditors vote the composition plan.

## Is there an ability to bind minority dissenting creditors (i.e., cramdown)?

**Financial restructuring**

There is no ability to bind dissenting creditors to any write-off per voting majorities.

There is limited ability to bind dissenting creditors for additional lending per voting majorities.

Two-thirds by value majority in relation to other matters will bind dissenting creditors who are signatories to the FA.

Will not bind non-signatories.

**Concordat/Composition (Turkish Scheme of Arrangement)**

Dissenting creditors may be bound by the plan's terms subject to requisite majority approvals.

# Commencing the Process

## Who can commence?

**Financial restructuring**

Debtor's board of directors — see "Is there an ability to bind minority dissenting creditors?".

**Concordat/Composition (Turkish Scheme of Arrangement)**

The company's board of directors may commence voluntary proceedings at any time.

Creditors in a position to file for the debtors' bankruptcy may commence involuntary proceedings.

## Is shareholder's consent required to commence proceeding?

**Financial restructuring**

No, unless the articles of association require this.

**Concordat/Composition (Turkish Scheme of Arrangement)**

No, unless the articles of association require this.

## Is there an ability to consolidate group estates?

**Financial restructuring**

No.

**Concordat/Composition (Turkish Scheme of Arrangement)**

No.

## Is there any court involvement?

**Financial restructuring**

No.

Under the FA, an arbitral committee is created to resolve disputes arising from the failure of creditors to perform obligations under the FA. This does not appear to extend to creditors failing to perform obligations arising under any financial restructuring contract (FRC) struck with a particular debtor.

**Concordat/Composition (Turkish Scheme of Arrangement)**

Composition proceedings are overseen by the competent commercial court of first instance. The court also appoints a composition commissary whose scope of duties is decided by the court.

## Who manages the debtor?

**Financial restructuring**

The debtor continues to manage its affairs but, subject to the terms of an undertaking; it is obliged to provide an undertaking to commence the process, which limits its ability to do certain things, e.g., dispose of assets and grant security.

**Concordat/Composition (Turkish Scheme of Arrangement)**

Concordat officers/commissaries (konkordato komiseri) manages the debtor. The court determines the scope of their duties and authorizations on a case-by-case basis.

## What is level of disclosure of process to voting creditors?

**Financial restructuring**

The FA specifies that any FRC entered into should legislate for information flows from the debtor to the creditor. Furthermore, with its application for restructuring, the debtor undertakes to provide financial and other information about its affairs and the other members of its group.

Without prejudice to the provisions of Banking Law No. 5411 and Personal Data Protection Law No. 6698, the bank to which the debtor sends its application and the leader bank, if appointed, may provide information to the foreign credit institutions and international organizations regarding the debtor's financial restructuring process pursuant to their written requests.

**Concordat/Composition (Turkish Scheme of Arrangement)**

The concordat officers must provide adequate information about the debtor's financial affairs to allow creditors to make an informed decision when voting on the plan.

In practice, concordat officers prepare and submit financial reports regarding the financial status of the debtors so that the creditors and the court itself closely monitor the company's financial ability to comply with the concordat plan.

## What entities are excluded from customary insolvency or reorganisation proceedings, and what legislation applies to them?

**Financial restructuring**

Turkish debtors with at least TRY 100 million of financial indebtedness are eligible for financial restructuring.

Turkish banks, financial leasing companies, finance companies, factoring companies, capital markets institutions, insurance and reinsurance companies, payment services and e-money institutions, and system operators are also excluded from the FA as debtors.

Excluded debtors can apply for composition or bankruptcy in accordance with the Execution and Bankruptcy Code No. 2004 (EBC).

**Concordat/Composition (Turkish Scheme of Arrangement)**

All legal and real persons can apply for composition.

All composition proceedings are subject to the EBC.

## How long does it generally take for a creditor to commence the procedure?

**Financial restructuring**

Not long, the procedure automatically commences once the borrower applies to the lead bank with the required application documents.

**Concordat/Composition (Turkish Scheme of Arrangement)**

Not very long. No prescribed period is available.

# Effect of Process

## Does debtor remain in possession with continuation of incumbent management control?

**Financial restructuring**

The debtor continues to remain in possession with the continuation of incumbent management control but is subject to the terms of an undertaking, which it is obliged to provide to the creditors limiting its ability to take certain actions, e.g., asset disposal.

**Concordat/Composition (Turkish Scheme of Arrangement)**

The debtor may continue its regular activities under the supervision of the commissary. However, the court may require that the debtor obtain the commissary's approval for specific transactions or place the commissary directly in charge of the management of the debtor's commercial activities.

## What is the stay/moratorium regime (if any)? Is the stay or moratorium worldwide?

**Financial restructuring**

The stay will only continue for 90 days unless extended by the CIC (two-thirds by value and two by number approval). The moratorium will fall away if an FRC is not signed.

The moratorium is only local and concerns the creditors that have signed FA.

**Concordat/Composition (Turkish Scheme of Arrangement)**

During the initial and definitive grace period, the following applies:

No enforcement proceedings can be initiated or continued and no interim attachment and injunction decisions can be exercised, including the enforcement proceedings for public receivables.

The period of prescriptions and statute of limitations that can normally be halted due to the enforcement proceedings will be suspended.

Unsecured receivables will not accrue interest unless the composition plan states otherwise.

Should an assignment agreement for future receivables be executed between the debtor and the third party before the definitive period and if the receivables subject to this agreement arise thereafter, the assignment agreement will be deemed invalid.

Creditors secured with pledge may initiate or continue debt enforcement proceedings. 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, payment will be made to the pledged creditor from the sales revenue in the amount of the pledged amount.

If a contract bearing importance in the debtor's commercial activities provides that the composition application would be deemed a violation of the contract, would be considered a just cause for termination or would accelerate the debts, such provisions would not be enforceable. In other words, agreements cannot be terminated based on the composition application, even when the agreement allows.

The debtor may terminate a continuous contractual relationship that impedes the composition project upon the approval of the commissary and the court if the contract is extremely burdensome.

The debtor may continue its regular activities under the supervision of the commissary. However, the court may require that the debtor obtain the commissary's approval for specific transactions or place the commissary directly in charge of the management of the debtor's commercial activities.

The debtor cannot establish pledges over its assets; provide suretyships; transfer its immovable properties or necessary assets for its operations and movables that are important for continuing the business and/or establishing any collateral over those assets without the court's permission. The court is required to obtain the creditors board's permission to grant permission to these transactions. If the debtor violates this article, any transaction made would be deemed void.

The stay/moratorium decisions are Turkish court judgments binding for all the creditors and the relevant parties in Turkey.

## Is there a provision for debtor in possession or rescuer financing or superpriority or priming financing?

**Financial restructuring**

Yes, to the extent of the security granted over previously unencumbered assets. No priming security is permitted without the consent of the preexisting secured creditor whose rights would be affected.

**Concordat/Composition (Turkish Scheme of Arrangement)**

No.

## Can procedure be used to implement a debt-to-equity swap?

**Financial restructuring**

Yes, this is one of the actions that the creditors may take as part of restructuring.

**Concordat/Composition (Turkish Scheme of Arrangement)**

No.

## Are third party releases available?

**Financial restructuring**

Yes, subject to the approval of 100% of the creditors.

**Concordat/Composition (Turkish Scheme of Arrangement)**

No

## Are the proceedings recognised abroad?

**Financial restructuring**

This is highly questionable as it does not operate as a collective insolvency proceeding subject to the supervision of a court.

**Concordat/Composition (Turkish Scheme of Arrangement)**

No.

## Has the UNCITRAL Model Law been adopted?

**Financial restructuring**

No.

**Concordat/Composition (Turkish Scheme of Arrangement)**

No.

## Can a debtor continue to carry on business during insolvency proceedings?

**Financial restructuring**

As the FA contemplates "debtor-in-possession" proceedings, the debtor continues to carry on its business. It is, however, subject to the terms of an undertaking, which it is obliged to provide to commence the process, limiting its ability to take certain actions, e.g., dispose of assets and grant security.

**Concordat/Composition (Turkish Scheme of Arrangement)**

See "Does the debtor remain in possession with the continuation of incumbent management control?" above.

# Other Factors

## Are there any wrongful or insolvent trading restrictions and what is the directors' liability?

**Financial restructuring**

Wrongful trading directors may be held liable.

**Concordat/Composition (Turkish Scheme of Arrangement)**

Wrongful trading directors may be held liable.

## What is the order of priority of claims?

**Financial restructuring**

The EBC prioritizes claims as follows:

Secured creditors have priority in respect of collecting the proceeds of the sale of the secured assets, which in principle will be sold by the bankruptcy administration as soon as possible.

Unsecured creditors will be paid in the following order:

Taxes and other government charges accrued in connection with the asset to be sold

Employee or labor pension-related claims and alimonies

Claims of third parties whose assets are managed by the debtor under custody or guardianship

Claims prioritized under various laws

Other unsecured claims

**Concordat/Composition (Turkish Scheme of Arrangement)**

As the composition is a restructuring of debts and not a liquidation process, certain claims are prioritized over others.

Without prejudice to the difference between the secured and unsecured receivables, all claims are treated equally and paid according to the composition project.

## Do pension liabilities have any priority over other unsecured claims?

**Financial restructuring**

N/A

**Concordat/Composition (Turkish Scheme of Arrangement)**

N/A

## Is it possible to challenge prior transactions?

**Financial restructuring**

The FA does not refer to any voidable transactions. However, under the EBC, the following transactions executed by the debtor can be annulled:

Transactions executed within the two years prior to bankruptcy made for no consideration, such as donations, or for a considerably significantly less than the obligation of the bankrupt

Transactions concluded within five years prior to the bankruptcy with an intent to damage the creditors

The following transactions concluded within the year prior to the bankruptcy:

Pledges were given by the debtor as security for a legal and valid debt other than security previously granted by the debtor

Payments made other than with money and other common payment instruments

Payments for an executory obligation

Annotations made on title deeds for the benefit of third parties

**Concordat/Composition (Turkish Scheme of Arrangement)**

No.

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