



## Debt Collection Series-4: Collection of Debts from Bankrupt Entities in Turkey

In the ordinary course of commercial life, “bankruptcy” may be inevitable for financially distressed companies. In such case, the question arises with respect to the status of receivables from the bankrupt entity and how they will be collected.

### General Information on Bankruptcy

The debt collection methods regulated in the Enforcement and Bankruptcy Law No. 2004 [“EBL”] are divided into two: debt enforcement proceedings and bankruptcy. In the former, while there is a proceeding by a certain creditor to collect the debt from the assets of the debtor [that is sufficient to pay the debt]; the latter is a more general process which addresses “all” assets of the debtor and aims to pay all debts. Furthermore, bankruptcy proceeding can only be filed against entities subject to bankruptcy whereas any individual or legal entity may be subject to debt enforcement proceeding.

According to the Turkish Commercial Code No. 6102 [“TCC”], those who are merchants, those who are deemed to be merchants and are subject to the provisions on merchants, and those who are reported to be subject to bankruptcy according to the laws although they are not a merchant, are subject to bankruptcy. In this respect, legal entities are subject to bankruptcy under Turkish law. There are three different bankruptcy proceedings to follow depending on the case at hand: bankruptcy through debt enforcement, bankruptcy through debt enforcement based on exchange notes and bankruptcy through filing a case. Regardless of the method, the commercial court of first instance is the sole authority to declare bankruptcy. With the adjudication of bankruptcy, the debtor takes the title of “bankrupt”, regardless of where and who is in possession of it, all the seizable assets and rights of the bankrupt constitute the estate.

### Consequences of Bankruptcy for Creditors

Adjudication of the bankruptcy leads to some major consequences regarding the creditors. Accordingly:

- All the debt collection proceedings filed against the bankrupt shall halt and with the finalization of the decision, all proceedings drop. Although this is the general rule, enforcement proceeding related to foreclosure and the evacuation of the leased continue. It is possible for the lienor to initiate an enforcement proceeding against the estate.
- All civil lawsuits related to the property and rights included in the estate will halt with the bankruptcy decision. However, unlike enforcement proceedings, these cases will not drop. Statute of limitation period shall not apply during this period.

- All the debts of the bankrupt, including deferred debts, become due. This rule does not apply to the debts secured by mortgage. If the debt has interest, interest and proceeding costs incurred until the day of the bankruptcy decision are added to the main debt.

### Procedure of Collection of Debts in Bankruptcy Process

Creditors are required to register their receivables at the bankruptcy estate within 1 [one] month from the declaration of the bankruptcy decision. The assets shall be converted into cash and creditors who registered their receivables, join the distribution process of the cash in proportion of their receivables. The creditor who did not register receivables within the 1 [one] month period can apply to bankrupt's assets and register the receivables until the bankruptcy process is finalized. In that case, the creditor who applied late is obliged to bear the expenses incurred due to the late application such as notice expenses. In addition, the late applicants are unable to participate in the temporary distribution process, in which the creditors may retrieve some portion of their receivables in advance in case the liquidation process is prolonged.

Following the registration, receivables are separated in four ranks set forth in the EBL depending on their qualification and a list is made showing the sequence of payments to creditors. It is possible to object to this list through filing a lawsuit or a complaint. The first three of these ranks are privileged receivables and the fourth rank is non-privileged. Receivables in the same rank are shared among the same rank creditors in proportion to their receivables. The creditors in the lower rank could not collect their debts until the creditors in the upper rank are satisfied. The classes specified in the EBL are as follows:

- ✓ **First Rank:** Receivables arising from employment relations, including the notice and severance payments accrued within one year prior to the bankruptcy and the notice and severance payments arising upon the termination of the employment relationship due to bankruptcy.
- ✓ **Second Rank:** All receivables of those whose properties are left to the administration of the debtor due to guardianship and wardship.
- ✓ **Third Rank:** Receivables stated to be privileged in the relevant laws [e.g., receivables of the flat owners from the other flat owners who do not pay their share of building expenses, attorney fees etc.]
- ✓ **Fourth Rank:** Remaining non-privileged receivables that are not listed above.

In practice, even if all the cash amount collected from sale of the assets in bankruptcy is distributed, creditors might not be able to collect their receivables in full. For this reason, an "insolvency certificate" is granted for the unpaid portion to the creditor who cannot get the receivables in full. If the debtor acquires a new property after the liquidation of the asset, a new debt collection proceeding can be initiated based on the insolvency certificate. As regards the receivables that are not registered at the estate, the creditor would still have the right to request them following the bankruptcy process. However, it will not be possible to ask for any interest for these receivables.

Bu içerik yalnızca bilgi verme amaçlı olup hiçbir surette hukuki tavsiye niteliği taşımamaktadır. Fikri mülkiyet hakları Güleriyüz & Partners Avukatlık Bürosu'na ait olan bu içeriğin yazılı izin alınmaksızın çoğaltılması, kopyalanması ve kullanılması yasaktır.

This content is solely produced for informative reasons and do not constitute legal opinion or advice under any circumstances. Güleriyüz & Partners Attorneys at Law is the sole owner of the intellectual property rights of this content and shall not be reproduced, copied, or used without written consent of Güleriyüz & Partners Attorneys at Law.