



Debt Collection Series-1: Interim Attachment Order Against Debtors in Turkey

Interim attachment is a provisional remedy under the Enforcement and Bankruptcy Law No. 2004 [the “EBL”] which individuals or legal entities can request for their monetary claims. Thanks to this institution, the debtor’s assets could be frozen to secure due yet unsecured debts, and as a result, the debtor would be forced to pay its debt.

3 [three] conditions must be in place to get an interim attachment – these are:

1- A monetary claim must be in question

Interim attachment may also be granted for foreign currency debts. In this case, the request should be submitted with the Turkish lira [TRY] amount equivalent to the foreign currency debt.

2- Due debt must not be secured by way of a pledge

As a general rule, an interim attachment may not be requested when the debt in question is secured by a pledge. On the other hand, it can still be sought in cases where it is not mandatory to proceed with the “”prior debt collecting proceedings through the liquidation of the pledge”” [Article 45 of the EBL].

If only a portion of the debt has been secured by a pledge, it is possible to attain an interim attachment order for the amount receivable exceeding the amount secured by pledge.

3- Debt must be due [save for the exceptions regulated in Article 257/2 of the EBL].

Although an interim attachment order may not be granted for undue debts in principle, there are several statutory exceptions. The first exception arises when there is no specific domicile of the debtor, in which case it must be understood as a lack of communicable address. Another exception occurs when the debtor conducts one of the following actions, as they are deemed to be aimed at avoiding liability: if the debtor is preparing to conceal its assets or to transfer its assets or to flee, or if the debtor has fled or has been performing fraudulent transactions that violate the rights of the creditor.

Interim Attachment Process Before Court

Interim attachment claim must be initiated with a pleading submitted to the competent court according to the provisions of the Civil Procedure Law No. 6100 [the “CPL”] and the Articles 50 and 258/1 of the EPL. On the other hand, in case there is a pending lawsuit, the interim attachment could solely be requested from the court hearing the case by the creditor / claimant. The claimant must present evidence indicating the grounds of interim attachment, as well as the essential elements that must be included in the pleading. Determination of plausible proof [what the Court of Cassation seeks regarding “plausible proof” is the creditor proving the rightfulness in their claim of liability to an approximate extent] is deemed to suffice for the

court to award on an interim attachment order. Although, plausibility must be examined on a case-by-case basis, generally any evidence that proves liability along with debt relationship, such as cheque, promissory note and/or documents that contain acknowledgement of debt would be considered valid. On the contrary, documents such as a bill drawn up by one party without proving the consent of the counterparty would be considered to be invalid.

Interim attachment is subject to simple trial procedure. This means that the parties are only allowed to submit pleading and response petitions and no further can be filed, contrary to the written procedure in which exchange of written submissions [pleading, response, rebuttal, and rejoinder] can be carried out in two rounds. The judge also has the discretion to rule on an order granting interim attachment without hearing the debtor, if s/he believes that doing so may render the purpose of interim attachment futile.

Security for Possible Damages

The court generally order the creditor / claimant to provide a security in compensation for the possible damages that the debtor and third parties may incur in case the creditor may be found wrong in its claim.

Accordingly, ["i."] security will not be required where a receivable is secured by a judgment; ["ii."] the court enjoys discretion with respect to receivables secured by documents that are considered to possess same characteristics of a court decision; ["iii."] apart from the aforementioned cases, the court cannot award an interim attachment without imposing a specified amount of security on the creditor / claimant. In practice, security usually corresponds to approximately %15 of the amount in dispute.

The court must decide on interim attachment so long as the foregoing conditions have been satisfied. It is possible for the creditor to appeal to the Regional Court of Second Instance in case of refusal of the claim, thereby the Regional Court of Second Instance shall evaluate the appeal with priority and give its final decision.

In addition, due to its non-definitive essence, a new submission can be filed in case of change in circumstances of the interim attachment and the evidence.

Enforcement of the Interim Attachment Decision

The creditor must request from the relevant Enforcement Office the enforcement of the interim attachment within 10 [ten] days as of the decision date. If not, interim attachment order shall automatically cease to have effect.

Interim attachment poses a ""freezing"" effect on the debtor's assets and enables the creditor / claimant to conduct a seizure only, unless it turns into a definite attachment. This means that the creditor / claimant is not entitled to having the respective ""frozen"" assets sold to recover its debt. In exceptional cases, the enforcement officer may sell the goods – for instance, when the good's value depreciates rapidly, or it would be too costly to store them. However, in that case, the money collected will not be paid to the creditor / claimant and will be deposited to a credible bank or to the cash desk of the court or the enforcement office.

Objecting to the Interim Attachment Decision

The debtor has the right to object to the interim attachment decision within 7 [seven] days, however, only if s/he was not heard at the hearing of the interim attachment decision. In the objection, the debtor can merely rely on the jurisdiction of the court, the reasons for the interim attachment order and/or the amount of the security to be deposited by the creditor for potential damages [as explained above].

Alternatively, the debtor can ask the court to relinquish the seizure on the asset by providing security sufficient to cover to the sum of the principal and accessories of the debt. In this case, the consent of the creditor is not required.

Bu içerik yalnızca bilgi verme amaçlı olup hiçbir surette hukuki tavsiye niteliği taşımamaktadır. Fikri mülkiyet hakları Güleryüz & 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. Güleryüz & 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 Güleryüz & Partners Attorneys at Law.