

Foreign Creditor's Guide to Debt Enforcement in Turkey

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In this short guide, we would like to provide brief tips regarding the debt enforcement under Turkish laws. In this regard, our guide is separated in the following main sections: i) Foreign Creditor's Right to Sue and Initiate Enforcement Proceedings, ii) Injunctive Relief and Provisional Attachment, iii) Filing a Lawsuit, and iv) Enforcement Proceedings.

I. Foreign Creditor's Right to Sue and Initiate Enforcement Proceedings:

A foreign creditor is entitled to file a lawsuit or initiate enforcement proceedings under Turkish laws against a debtor located in Turkey. Nevertheless, unless there is a reciprocal agreement between Turkey and the creditor's country or the foreign creditor has no assets in Turkey (i.e. real estate), pursuant to the Turkish Conflict of Laws Rules, a foreign creditor may have to provide a security to the court to guarantee the court expenses and damages which may arise in case the creditor fails to prove its case. The amount of such security is determined by the court, usually as a certain percentage of the amount claimed in the lawsuit.

II. Injunctive Relief and Provisional Attachment:

Pursuant to the Turkish Civil Procedural Law and Bankruptcy and Enforcement Law, a foreign creditor, indifferently from local plaintiffs, is entitled to seek injunctive relief or provisional attachment as well.

Injunctive relief may be sought in cases where the subject of the case or the claim is related to a movable or immovable property. Therefore, for monetary claims, the courts do not grant an injunctive relief for the creditors as in such cases, the creditors must seek provisional attachment. Injunctive relief may be sought along with the filing of main lawsuit as well as separately, prior to the filing of the main lawsuit. Turkish Civil Procedural Law provides that a court may grant an injunctive relief in case i) the plaintiff can show that it is likely that the main lawsuit will be decided in his favor and ii) unless an injunctive relief is granted, it is likely that the plaintiff will incur irrecoverable damages. The court may as well, require the plaintiff to deposit a certain amount of security to guarantee the payment of defendant's possible damages in case the main lawsuit is decided in defendant's favor. In case an injunctive relief is sought separately, prior to the filing of the main lawsuit, the plaintiff is required to file the main lawsuit within ten (10) days from the grant of the injunctive relief.

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Unlike injunctive relief, a creditor may seek provisional attachment for monetary claims (unless it is secured by a lien-with limited exceptions) prior to the initiation of enforcement proceedings in order to prevent the debtor from transferring his assets to third persons. Provisional attachment may be sought for both due and payable debts and for the debts that are not yet due. However, for the debt which are not yet due, the creditor must prove that i) the debtor does not have specific residency or ii) it is likely that the debtor will transfer his assets to avoid paying the debt or to obstruct the enforcement of payment. In practice, the courts are likely to grant a provisional attachment in case the creditor can present the court a bill of exchange. Like the injunctive relief, the court will require the creditor to deposit a security in order to ensure the payment of debtor's possible damages that may arise due to the provisional attachment. In practice, the amount of the security is often decided as the fifteen (15%) percent of the amount claimed. In case a provisional attachment is granted by the court, the creditor, through enforcement offices, may start a preliminary enforcement proceeding and attach the property (movable or immovable) of the debtor without any prior notice.

III. Filing a Lawsuit:

A foreign creditor may as well directly file a lawsuit against the debtor in order to collect the debt without seeking any provisional attachment or initiating an enforcement proceeding. As stated above, in such case, a foreign creditor may be required to deposit a security to the court until the end of the lawsuit to guarantee the payment of court expenses or defendant's (debtor's) possible damages if the plaintiff (creditor) fails to prove his case. The place and court where the lawsuit is filed in determined pursuant to Turkish Civil Procedural Law, which in most cases is the defendant's place of residency. Competent court (i.e. Commercial Court or Civil Court of General Jurisdiction) is decided based on the nature of the case. When filing the lawsuit, the plaintiff is required the deposit the court expenses such as service, court expert, viewing and witness expenses, in advance. Moreover, a court charge which will be calculated based on the amount of the claim must also be paid at the time of filing. In general, courts render a decision within two (2) years of the filing whereas finalization of the decision may take up to four (4) or more years as in some cases, the plaintiff and the defendant are entitled to both apply to court of appeals and court of cassation respectively. When a judgement is rendered by the court, the creditor may initiate an execution proceeding based on the decision where the debtor will have no right to object. Therefore, except some cases, it is possible to initiate an enforcement proceeding based on a judgement, without waiting the finalization of it. However, if such judgement is not finalized, the debtor is entitled to seek a decision for stay of execution until the finalization from the court of appeals or the court of cassation. In such case, the debtor will be required to deposit the whole amount granted in the judgement to the enforcement office which will be directly paid to the creditor if the judgement of the court is approved by the court of appeals or the court of cassation and finalized.

IV. Enforcement Proceedings:

A foreign creditor is also entitled to initiate an enforcement proceeding for the collection of the debt without obtaining any judgement before. The type of the enforcement proceedings which a creditor should initiate differs depending on the nature of the debt (i.e. secured by a lien or a bill of exchange)

In case the creditor does not have a judgement and the debt is not secured by a lien or the debtor has not issued a bill of exchange, a creditor may initiate a general enforcement proceeding. In such case, the enforcement office serves an order of payment to debtor to which the debtor is entitled to object in writing within seven (7) days of the service. The creditor may not attach any of the debtor's property during this timeframe whereas if the debtor does not object within seven (7) days, the procedures for attachment may be initiated by the creditor. In case the debtor objects to the enforcement proceeding within seven (7) days (stating that he does not have such debt or he did not sign such agreement etc.), the creditor must file a lawsuit for the annulment of the objection within a year from the date of objection. The action for the annulment of the objection is filed before the courts of general jurisdiction or commercial court depending on the nature and cause of the debt. In case the creditor holds one of the documents listed under the Article 68 of Turkish Bankruptcy and Enforcement Law, proving the debt and its amount (i.e. a signed letter by the debtor), he can also file a case for the removal of the objection before the enforcement court within six (6) months.

If the creditor has a security (i.e. a bill of exchange) over the debt, Turkish laws entitles the creditor to initiate "special" enforcement proceedings. Special enforcement proceedings enable the creditor to move faster in collecting the debt as the timeframes and reasons for an objection on the debtor's part are more limited. Where there is a lien, securing the debt, the creditor mostly must initiate foreclosure proceedings, if it is available, before resorting to any other proceedings. Nevertheless, as foreclosure proceedings usually are the fastest and easiest way to collect the debt, it is also the usually most preferred choice of creditors. In case the whole amount of the debt is not satisfied after the foreclosure proceedings, the creditor may also resort to other means of enforcement and court proceedings.

The debtor, in all kinds of enforcement proceedings, is entitled to file a negative declaratory action, claiming that he does not have such a debt to the creditor. In such case, the enforcement proceedings may be stopped if the debtor deposits a security to the court which is usually determined as 115% of the disputed amount by the courts in practice.