

Methods of Debt Collection In The Light of Turkish Law

Status of Foreign Legal or Personal Entities Regarding Debt Collection

It is important to note that Swiss Enforcement Law is reference law for Turkish Enforcement Law. Accordingly, decisions of Federal Courts of Switzerland have a significant place in Turkish precedent.

In case that judicial assistance agreement lacks between Turkey and third countries, there is a security deposit obligation (*Cautio Judicatum Solvi*) for foreign legal entities or real persons who intends to initiate a lawsuit or enforcement procedure in Turkey. (Article 97 of the Turkish Code of Civil Procedure and Article 32 of the Code of Private International Law and International Civil Procedure). There is no certain provision laying down the percentage of amount related to deposit, however in practice courts determines %15 of disputed amount as a security deposit.

Judicial Assistance Agreement exists between Turkey and the countries mentioned below:

Germany, N. Cyprus ,Albania, Kuwait, Austria ,Lithuania, Azerbaijan, Hungary Bulgaria, Macedonia, Czech Republic, Algeria ,Moldova, China, Mongolia, Morocco, Uzbekistan, Georgia, Poland, India, Romania, Croatia, Tajikistan, Iraq, Tunisia, Jordan, Yugoslavia, United Kingdom, Ukraine, Switzerland, Italy, Kazakhstan

There are also countries exempt from security deposit due to reciprocity principle in Turkish Private State Law Act. These countries do not apply any security deposit to Turkish citizens and legal entities in case of debt recovery proceeding, accordingly Turkey does not seek any security deposit obligation for mentioned below countries: Russia, Egypt, Chile, Finland, Peru, Libya, Syria.

Remittance of Security deposit can be proved with several ways such as remittance of the amount to Turkish central bank account in foreign currency, guarantee letter from a bank, pledge on a real state, guarantee letter approved by a Turkish notary and bill of exchange. In the end of case or enforcement procedure, security deposit must be refund to creditor by the court. Real reason behind security deposit is to protect Turkish debtor for possible damages by foreign entities during procedure.

Methods of Debt Collections in Turkey

According to Turkish Law, debt enforcement proceeding and action of debt are the methods which can be applied.

Action of Debt

Advantage of filing an action of debt rather than debt enforcement procedure is to have an opportunity to implement interim measures against debtor. Therefore, action of debt enables creditor to request interim measure against debtor in order secure its possible debt. Creditor must convince the court by proving necessity of interim measure and collection risk related to the debt. According to Turkish Law, interim measure enables creditor to secure his debt during the case by pledging over the debtor's assets. Accordingly, as mentioned above it is necessary to prove that the debt is under risk.

In case that the court decides in favor of the creditor in connection with the debt, decision can be executed directly over the debtor. Subsequent to decision if the debtor shall not remit determined debt, assets pertaining to the debtor would be easily seized and it can be converted to cash with attachment procedure.

Debt Enforcement Proceeding

Apart from action of debt, creditor can also apply to Debt Recovery Governmental Office in order to follow his debt. Upon an application, the department shall submit order of payment to the debtor. In case that debtor shall not object to the debt within 7 days (duration is 5 days for debts stemming from cheque, deed, deed approved by notary or other official documents proving debt) subsequent to submission, the debtor shall be considered as a party recognizing alleged debt by the law. In this case, creditor can initiate attachment proceedings against debtor in order to recover the debt. On other hand, if the debtor objects to alleged debt, creditor must file an action of debt in order to prove the legitimacy of debt.

Subsequent to debtor's objection, continuation of debt collection process can be solely provided by filing a case called as action of debt. It is noteworthy to mention that if one of the party is a merchant or having a commercial legal entity in debt relation, component court must be commercial court rather than court of peace.

In case that debt stemming from a documents such as cheque, deeds, etc, legal case must be filed by the creditor at enforcement courts. In these cases, debtor must prove that the signature or stamp on the document does not belong to him. The subject matter in this case can be only the validity conditions of the document rather than context of debt.