THE RESTRUCTURING REVIEW

Thirteenth Edition

Editor
Dominic McCahill

THE LAWREVIEWS

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PREFACE

I am very pleased to present this thirteenth edition of *The Restructuring Review*. As with the previous editions, our intention is to help general counsel, government agencies and private practice lawyers understand the conditions that have been prevailing in the global restructuring market in 2020 and to highlight some of the more significant legal and commercial developments and trends during that period.

In particular, I would like to thank Chris Mallon for his editorship of all 12 of the previous editions. Having retired from a long and distinguished career as a restructuring lawyer in private practice, Chris is now a Senior Advisor in the Financial Advisory Group at Lazard, based in London.

2020 began with many market observers expecting a year of overall modest growth for the global economy. Of course, there were political and economic clouds on the horizon, as there usually are, such as the ongoing trade hostilities between the United States and China and the uncertain outcome of the Brexit negotiations between the United Kingdom and the Member States of the EU as the United Kingdom finally withdrew from the EU on 31 January.

However, the world is now in the midst of the covid-19 pandemic. Much of the world is in lockdown or taking tentative steps to emerge from lockdown. While the human cost is paramount, the economic impact has been enormous. This has prompted a huge response from governments and central banks around the world in an effort to support businesses and workers given the unprecedented drop in supply and demand. In some industries, the drop has been precipitous and virtually total. The full extent of the damage is yet to be assessed and the length and trajectory of the road to recovery are uncertain.

One prominent reaction to the crisis has been the emergence of new laws, rules and practices in restructuring, perhaps reflecting the maxim that one should never let a good crisis go to waste. These measures – as can be seen in the following chapters – include not only ones specific to covid-19, but also include broader reform of insolvency and restructuring law. Notwithstanding increasing nationalism in certain parts, the world's economies remain highly connected and interdependent. International, as well as national, efforts will be required to lead towards a full recovery. I hope that *The Restructuring Review* will be a useful guide at a time of evolution for restructuring law and practice internationally.

I would like to extend my gratitude to all the contributors for the support and cooperation they have provided in the preparation of this work, and to our publishers, without whom this would not have been possible.

Dominic McCahill
Skadden, Arps, Slate, Meagher & Flom (UK) LLP
London
July 2020

Chapter 22

TURKEY

Sera Somay and Doguhan Uygun[1]

I OVERVIEW OF RESTRUCTURING AND INSOLVENCY ACTIVITY

i Liquidity and state of the financial markets

Following the introduction of foreign exchange (FX) loan restrictions in May 2018, which aim to limit the foreign currency indebtedness of Turkish companies with no foreign currency earnings, the ratio of Turkish legal entities' FX debt decreased in 2019. According to the financial stability report published by the Central Bank of the Republic of Turkey (Central Bank), FX loan restrictions created an awareness of FX risk management.[2]

As at September 2019, the non-performing loan ratio of Turkish banks increased to 4.9 per cent, whereas it was below 3 per cent in September 2018. The increase is mostly on corporate loans, since retail loans seem to have stabilised at a ratio below 4 per cent.

Fitch kept its sovereign rating of Turkey as BB– on 21 February 2020, Moody's lowered the sovereign rating of Turkey to B1 from Ba3 in June 2019, and Standard & Poor's decreased the rate to BB– from B+ in August 2018.

Covid-19 has caused a slowdown in the Turkish economy, as is the case in other major economies, and the financial markets expect the Turkish economy to reopen gradually in the near future.

ii Impact of specific regional or global events

Turkey has geographical risk owing to its close proximity to conflict zones such as Syria. Furthermore, its natural trade partners, such as Iran and Russia, are sanctioned countries.

European countries are also significant trade partners for Turkey, and political relations with the United States and the European countries therefore have a substantial level of importance.

Additionally, we expect to see more impact caused by covid-19 on the Turkish economy in the short and medium terms. As of 1 May 2020, Turkey had 122,392 confirmed cases of the disease. According to Worldbank, economic growth is estimated to be 0.5 per cent now, while the estimate was approximately 3.5 per cent before the outbreak. Moody's states in its research paper[3] that covid-19 has accelerated capital outflows and reduced the foreign exchange reserve in Turkey.

1 Sera Somay is a partner, and Doguhan Uygun is a senior associate at Paksoy.

2 The Central Bank of Republic of Turkey, Financial Stability Report, November 2019, p. 3.

3 Moody's investors service, Credit opinion, p. 2

iii Market trends in restructuring procedures and techniques employed during this period

The preferred restructuring technique in the Turkish market has always been informal restructuring, usually in the form of bilateral negotiations between creditors and debtors, mostly by way of the refinancing of bank loans. The main reasons driving this trend, we believe, have been that formal restructurings generally provide broad discretion and authority to the courts over the creditors and that the banks are proactive in refinancing loans before a potential payment default.

Financial restructuring based on financial restructuring framework agreements published by the Banks Association of Turkey in 2019 and signed by financial institutions has also started to be used as a restructuring tool in the Turkish loan market. As of February 2020, 138 companies have initiated a financial restructuring process and 13 companies have concluded a financial restructuring agreement under large-scale financial restructuring framework agreements; likewise, 42 companies have initiated a financial restructuring process and seven companies have concluded a financial restructuring agreement with their financial creditors under small-scale financial restructuring framework agreements.

iv Number of formal procedures entered into or exited during this period

Most of the restructurings are based on informal procedures, and these data are not available. However, according to the data collected from announcements made by companies in the Trade Registry Gazette, 899 different companies applied for concordat in 2019.

II GENERAL INTRODUCTION TO THE RESTRUCTURING AND INSOLVENCY LEGAL FRAMEWORK

i Introduction

As explained above, the Turkish market is generally dominated by informal bilateral restructurings, but there are two formal restructuring mechanisms provided by Turkish legislation. These are: (1) concordat; and (2) restructuring upon settlement. These mechanisms also constitute a remedy to avoid bankruptcy. Postponement of bankruptcy was also a formal and popular restructuring method, but it was abolished in March 2018.

Financial restructuring based on financial restructuring framework agreements published by the Banks Association of Turkey in 2019 and signed by financial institutions has also started to be used as a restructuring tool in the Turkish loan market.

ii Informal negotiations

Informal negotiations are usually opted for by the relevant parties owing to their confidential nature. Since all structured and formal restructuring options require, at some stage, filing with the court, the financial status of the debtor becomes public knowledge. Parties generally try to limit disclosure of a debtor's financial difficulty so that it can manage its reputation, ongoing vendor relations, and relations with other creditors.

This is also generally preferred by creditors for the same reasons; under formal bankruptcy their chance of collecting their receivables would diminish significantly unless they are privileged or secured creditors.

However, it may not be easy to make these agreements work because all creditors must consent to the restructuring arrangement (even if not under the same document) to

ensure that inter-creditor relations and subordination of certain debts are secured. The risk of not including one of the creditors in these informal negotiations would be the initiation of bankruptcy procedures by such a creditor, which would prevent enforcement of the restructuring arrangement.

iii Concordat

Concordat is one of the formal restructuring options provided under the Enforcement and Bankruptcy Code No. 2004 (EBC) for debtors who are unable to pay their due debts and who will not be able to pay their undue debts at the due date. Accordingly, an insolvent debtor, or a creditor who is allowed to file for bankruptcy, may initiate concordat proceedings before the commercial court. Upon filing for concordat, the court announces such in accordance with the EBC.

The debtor is required to provide the following for the term of concordat, during which the restructuring negotiations are expected to be held:

a a preliminary concordat project that: (1) clarifies at what rate and over which term the debtor will pay its debts, whether the debtor will sell its assets to pay the debts, invest capital in cash, utilise loans or find an alternative way to pay its debts; and (2) includes a proposed payment plan reflecting postponed due dates and reduced amount of receivables;

b a table reflecting the amounts offered by the debtor to be paid to the creditors upon the restructuring, and amounts that the creditors are likely to be paid if the debtor is declared bankrupt;

c the balance sheet of the debtor;

d a full list of the debtor's creditors, including the amount due and priority of the creditors; and

e the financial reports prepared by independent audit companies, certified by the CMB or the Public Oversight Accounting and Audit Standards Authority, providing reasonable guarantee on the payment plan filed with the preliminary concordat project.

If concordat filing is made by a creditor, the court is required to grant a reasonable deadline to the debtor for submission of the above documents.

The concordat consists of a restructuring agreement between the debtor and its creditors under the court's supervision in light of the preliminary concordat project. Therefore, concordat means the debtors' postponement of the due debts or reduction of the debt amount, or both. The court appoints a temporary concordat trustee, or a panel of trustees, to review whether the restructuring can be successful and grants a temporary concordat term up to three months for such review. The three-month period may be extended to five months by the court. If the court appoints a panel of trustees, one of them shall be an independent auditor who is authorised by the Public Oversight Accounting and Audit Standards Authority and approved as cap auditor.

During the temporary concordat term, the temporary concordat trustee prepares its report, which determines whether the concordat can be successfully completed and files it with the competent court. The competent court schedules an oral hearing before expiration of the temporary concordat term, at which the court may decide to: (1) reject the concordat claim if it is not convinced that the restructuring will be successful, if the bankruptcy is

required for the protection of the assets, if the debtor does not comply with the instructions of the concordat trustee or acts against the interests of its creditors in bad faith, or if the debtor withdraws its concordat request; or (2) grant a definitive concordat term for one year.

The restructuring agreement or the payment plan suggested by the debtor is required to be accepted by the majority of creditors who have registered themselves with the concordat trustee. Moreover, the amount of the receivables of the creditors who accept the restructuring agreement must constitute the majority of the registered receivables amount. Alternatively, a quarter of the registered creditors and two-thirds of the registered receivables are sufficient for acceptance of the restructuring agreement or the payment plan. Secured and privileged creditors' receivables are not taken into consideration in calculation of the quorums, but if the security does not cover the debt pursuant to the valuation made during the proceeding the remaining unsecured debt will be taken into consideration. Therefore, the position of the unsecured creditors is essential during a concordat proceeding.

Once the required majorities are reached, the restructuring agreement should be submitted to the court for its approval within the definitive concordat term.

The court approves the concordat (the restructuring agreement or the payment plan) if the payment plan is proportional to the financial conditions of the debtor and if the court is convinced that the amount that will be paid to the creditors pursuant to the restructuring agreement is higher than the amount that will potentially be collected by the creditors in the event of bankruptcy; the concordat must be more beneficial than bankruptcy for the creditors. The court is required to list the discount made by the creditors and the postponed due dates in its decision approving the restructuring.

Once approved by the court, the restructuring agreement binds all creditors of the debtor, except for: (1) creditors secured by a pledge on movables or mortgage; and (2) public debts related to rights *in rem* attached to real estate (e.g., taxes arising from the mere existence of the secured assets). If the court rejects the concordat request, it declares bankruptcy.

The EBC also regulates concordat by way of abandonment of the debtor's assets.[4] This entitles the transfer of the debtor's assets to the creditors. In this case, the restructuring agreement will set out the details of the transfer instead of postponement of due dates and the discount of debts. The required quorum for this type of concordat is the same as for an ordinary concordat. If approved, the debtor's assets will be shared by the creditors or be liquidated through a liquidator appointed by the creditors. Concordat by way of abandonment of the debtor's assets is very rare in practice.

iv Restructuring upon settlement

The EBC also regulates restructuring upon settlement for companies that are insolvent, nearly insolvent or not able to pay their debts on time. This alternative is a negotiation scheme between the debtor and the creditors. The restructuring is finalised if agreed by the required majority, consisting of: (1) a simple majority of those creditors who are affected by the restructuring and participated in the voting, and (2) the receivables of such simple majority corresponding to two-thirds of the receivables of the creditors who are affected by the restructuring and participated to the voting.

4 Mal varlığının terki suretiyle konkordato.

The restructuring document once finalised should be submitted to the competent commercial court for approval; accordingly, although the court is not involved in the negotiations, it is still required to confirm or reject the restructuring plan. This is also not a commonly exercised restructuring option in the Turkish market.

v Framework agreement

The Banks Association of Turkey has published new financial restructuring framework agreements: one for large-scale financial debt restructurings of debtors with a financial debt exceeding 25 million lira (large-scale financial restructuring framework agreement) and one for small-scale financial debt restructurings of debtors with a financial debt up to 25 million lira (small-scale financial restructuring framework agreement), in October and November 2019 respectively, in line with the Regulation on Restructuring of Debts Payable to the Financial Sector issued by the Banking Regulatory and Supervision Agency (BRSA) in 2018 (the Regulation).

Currently, 47 Turkish financial institutions, including 24 banks, have signed the large-scale financial restructuring framework agreement, while the small-scale financial restructuring framework agreement has been signed by 53 Turkish financial institutions, including 23 banks.

The creditors entitled to participate in this restructuring regime are limited to: (1) the banks indicated under Article 3 of the Banking Law No. 5411; (2) factoring, financial leasing and financing companies indicated under the Financial Leasing, Factoring and Financing Companies Law No. 6361; (3) foreign banks and financial institutions that have provided loans directly to the respective debtor; (4) multinational banks and institutions that have direct investments in Turkey (i.e., ownership of 10 per cent or more of the shares in a Turkish company) and special-purpose vehicles established by these entities for debt collection; and (5) investment funds incorporated pursuant to Capital Markets Law No. 6362 (financial creditors).

Under large-scale financial restructurings, the financial creditors of the debtor form a consortium called a consortium of creditor institutions (CCI), which is the decision-making body of the restructuring process. Turkish financial institutions that are creditors of the debtor and have signed the framework agreement are members of this consortium. Financial creditors who have not signed the framework agreement and who would like to be members of the consortium must sign the framework agreement and be approved by at least two creditors enrolled in the consortium of the creditor institutions representing at least two-thirds of the total debt owed to creditor institutions enrolled in the CCI.

Under small-scale restructurings, the restructuring process will be conducted by one of the creditors of the three biggest debts of the debtor. The debtor will apply to the first, second and third financial creditors in order, and the creditor institution that accepted the application of the debtor will become the creditor who will carry out the restructuring process. Financial creditors who have not signed the framework agreement and who would like to take part in a small-scale restructuring should obtain the consent of at least two financial creditors representing at least two-thirds of the debtor's financial debt.

Foreign financial creditors who have not signed the framework agreements are entitled to join both small- and large-scale restructurings under the framework agreements on a case-by-case basis without the approval of the other creditors. Alternatively, foreign

financial creditors may choose to conduct separate restructuring proceedings in parallel with the restructuring under the framework agreement. In such cases, the framework agreement requires information flow between the parties to these parallel restructurings.

Article V of the framework agreements states that a debtor that is not bankrupt and that has a chance regaining the ability to repay its debts at the end of the restructuring process may apply to the financial restructuring process. For large-scale restructurings, the assessment of the financial status of the debtor shall be conducted by independent audit firms or any other expert institution. To nominate an expert institution other than an independent audit firm, the affirmative vote of at least two financial creditors enrolled in the CCI representing two-thirds of the total debt owed to creditor institutions enrolled in the CCI is required.

In large-scale restructurings, upon application of the debtor for restructuring in line with the framework agreement, a standstill period of at least 90 days starts. The standstill period can be extended to 180 days. During the standstill period, any enforcement action initiated by the financial creditors who signed the framework agreement and joined the restructuring (framework creditors) is suspended and no further enforcement action can be initiated by the framework creditors. In small-scale restructurings, the standstill period will start once the application is accepted by one of the financial creditors. Small-scale restructuring framework agreements do not contemplate any specific standstill period. However, they set forth time limits for any step to be taken during the standstill period. In this regard, the standstill period will continue for 40–45 days for small-scale restructurings.

At the end of the standstill period, the restructuring agreement should be executed between the financial creditors, debtor and sureties. Large-scale restructuring agreements that are signed by financial creditors representing two-thirds of the financial debt of the debtor will be also binding on other financial creditors. The execution of small-scale restructuring agreements requires the affirmative opinion of at least two financial creditors that represent two-thirds of the financial debt of the debtor.

The agreements to be executed, the loans to be extended and the collections to be made under a financial restructuring under the Framework Agreement are exempt from stamp tax, duties (including the judgment fees), prison fees, the Banking and Insurance Transactions Tax and the Resource Utilisation Support Fund.

vi The taking and enforcement of security during formal restructurings

The secured creditors may initiate the debt-collection proceedings during the definitive concordat term or continue the debt collection proceedings initiated before the grant of the definitive concordat term. However, liquidation of the security is prohibited. In other words, even secured creditors cannot finalise the debt collection proceedings. It is worth stating that unsecured debts will not accrue interest during the definitive concordat term unless the restructuring agreement provides otherwise.

Further, during the definitive concordat term, the debtor cannot give any security or guarantee, transfer its immovables (or the main equipment of its plants) or make gratuitous transactions unless the court permits it to do so. The purpose of this provision is to protect the assets of the debtor to avoid worsening the condition of the creditors. Finally, the secured creditors can enforce their security during the proceeding. Moreover, individual debt collection proceedings are not suspended, and new proceedings may be filed unless the relevant court orders an injunction to prohibit them. The creditors' table prepared in respect of Article 206 of the EBC outlines the priorities among the receivables or debts. Accordingly, secured debts, through a pledge on the movables or mortgage, and unsecured claims are treated separately

in terms of priority. Secured claims through a pledge on movables or mortgage are prioritised for proceeds of the security; they are solely preceded by the costs for the liquidation of the security. After payment is made to the secured creditors and reserving the liquidation costs, the public debts related to the security are paid.

vii Duties and liabilities of directors and shareholders of companies in financial difficulties

Liability of the board

According to Article 553 of the Turkish Commercial Code (TCC), the board members may be held liable for the losses incurred by the company if the losses or damages arise from their negligence or fault, such as breach of the relevant provisions of the applicable law or articles of association. There must also be a causal relationship between the loss or damage and the negligent or faulty action of the board.

In principle, damages claims against board members may be requested by the company itself or by the shareholders. However, if the company suffering the damage is bankrupt, the creditors would also be entitled to seek damages from the board. This right is only secondary though; creditors can only exercise it if the bankruptcy administration has not filed a lawsuit to seek such compensation, pursuant to Article 556 of the TCC.

Further, a debtor may be imprisoned for six months to three years and face a penalty of up to 1,000 days (see below) for an unjustified reduction of a company's assets after the initiation of an enforcement proceeding or two years before the date of the initiation of an enforcement procedure to prejudice the creditor. The financial penalty is calculated on a day-based system. The daily penalty amount (which varies between 20 lira and 100 lira) is multiplied by the number of days. The daily amount is decided by the court according to the financial circumstances of the perpetrator. If a company is found to be guilty, the board members (as the managing organ of the company) can be held personally liable for such crimes.

The members of the board may also be imprisoned for six months to two years for inflicting loss on a company's creditors by non-payment upon the complaint of the relevant creditor pursuant Article 333/a of the EBC.

Liability of the shareholders

Under Turkish law: (1) a joint stock company's liability against its creditors is limited to its assets; and (2) a joint stock company's shareholders' liability against the company is limited to their capital contribution in the company. As such, there is no look-through liability; the shareholder's liability ends with the payment of the capital contribution. A limited liability company's shareholders, on the other hand, may be held personally liable for payment of a company's debts, especially for public debts.

There are two exceptions to the above principle, discussed below: (1) the liability of the parent company, which would be the controlling or holding entity, and (2) piercing the corporate veil.

Liability of the parent company

A parent company can be liable if there is an abuse of power or unlawful act of the parent company instigating a loss or damage to its subsidiary. In such a case, normally the TCC requires the loss to be reimbursed by the parent company within the same fiscal year in which

the loss has occurred. Otherwise, the shareholders and stakeholders (i.e., the creditors of the subsidiary) would be entitled to recourse directly to the parent company or to the board of the parent company.

The parent company's liability is limited to the losses of its subsidiary, and the parent company is only liable to reimburse the subsidiary; the creditors or stakeholders cannot request payment from the parent company for their own receivables.

Piercing the corporate veil

Piercing the corporate veil (i.e., direct liability of the shareholders) is only applied in exceptional cases under Turkish law where the facts of the case deem it equitable. The Turkish Supreme Court has specific precedents where it decides to pierce the corporate veil and hold shareholders responsible alongside the company, and some other precedents in which it refers to and has accepted the concept of piercing the corporate veil. However, it underlines that this mechanism should be used meticulously on an exceptional basis. Therefore, pursuant to recent precedents of Turkish Supreme Court, piercing the corporate veil can only be justified and would be equitable when there is fraud or the shareholders, with no valid or reasonable purpose, render the company excessively indebted and disproportionately so to the total value of its assets, against the principle of good faith. In such cases, the courts may decide to pierce the corporate veil and decide to hold the shareholders directly liable with their own assets against the creditors of the company.

If a shareholder of a company is held liable owing to lifting the corporate veil, usually the liability would vest on the majority shareholders (i.e., minority shareholders who had absolutely no management control over the relevant entity would probably not be held liable for company actions).

In addition to the general principles set out above, Article 333/a of EBC provides that if the *de jure* or *de facto* executives of a company cause damage to the creditors by not paying all or part of the liabilities with the intention of causing damage to the creditors, the executives may be sentenced to imprisonment for six months to two years and a fine of up to 500,000 lira, provided that the relevant actions do not constitute another offence.

viii Clawback actions or voidable transactions

Pursuant to Article 277 et seq. of the EBC, the creditors of a Turkish debtor that is unable to pay its debts (the insolvent party) are entitled to apply to courts to invalidate certain transactions entered into by the insolvent party within five years of the date of the voidable transaction. The transactions that may be invalidated generally consist of those made for no consideration (including donations) or for a consideration that is significantly less than the actual value of the transaction.

The EBC provides different time limits to different types of transaction:

a Donations and similar transactions: transactions made without any consideration, such as donations, or transactions made with an insignificant consideration may be invalidated by the courts only if the transaction has taken place within the two years prior to the bankruptcy of the insolvent party. 'Insignificance' of the consideration in question would be evaluated on a case-by-case basis by the courts and experts, if necessary.

b Transactions providing advantage to certain creditors: the following arrangements would be voidable if such arrangements are made within one year before the declaration of the bankruptcy of the insolvent party:

- the creation by the insolvent party of a pledge over its assets to secure an existing debt where such person had not previously promised to execute such pledge or mortgage;
- any payments made by the insolvent party other than with money or ordinary payment methods;
- prepayment of debts that are not yet due; and
- annotations made to the title deed for the purpose of strengthening contractual rights.

The court would not declare any such arrangements void if third parties that benefit from such security arrangements prove that they were not aware of the financial condition of the insolvent party.

c Disposals made in bad faith: disposals made by the insolvent party acting intentionally against the interests of its creditors may be invalidated by the creditors of the insolvent party if such disposal took place within the five years prior to the initiation of either attachment or bankruptcy proceedings against the insolvent party. For such an invalidation request to succeed, the creditors must prove that the third-party purchaser of such assets, at the time it entered into the transaction, was aware or should have been aware of the insolvent party's financial condition and of the fact that the insolvent party was not acting in good faith.

A third party that has acquired assets of the insolvent party through a transfer of business or through transfer of commercial assets of a business is deemed by the EBC to be aware of the insolvent party's financial condition and of the fact that the insolvent party was not acting in good faith. The third party may, however, evade such assumption by: (1) giving three months' prior written notice to the creditors of the insolvent party, or (2) announcing the transfer via visible notes at the business premises and publishing the upcoming transfer in the Trade Registry Gazette, or by any other suitable means that would reach the creditors, three months prior to the transaction.

III RECENT LEGAL DEVELOPMENTS

i Recent legislative developments

The Turkish government has announced a number of economic policy responses designed to mitigate the impact of covid-19 for businesses and individuals. Pursuant to the Law on Amendment of Certain Laws No. 7226 and Presidential Decree No. 2279, except for enforcement proceedings concerning alimony receivables, all pending enforcement, debt collection and bankruptcy proceedings for all corporates as well as individuals were suspended until 30 April 2020 and the initiation of new enforcement and bankruptcy proceedings and implementing interim attachment orders was prohibited for all corporates as well as individuals until 30 April 2020. The prohibition was extended until 15 June 2020 and the proceedings started on 15 June 2020. Further, as of 30 March 2020, guarantees provided by the Ministry of Treasury and Finance to lending financial institutions have been increased to 50 billion lira from 25 billion lira.

The BRSA prolonged the default periods of for the loans to be classified as group 2 and as non-performing loans as follows:

a the 30-day default period for loans to be classified under group 2 loans pursuant to the BRSA Regulation on Classification of Loans and Provisions has been changed to 90 days; and

b the 90-day default period for loans to be classified as non-performing loans has been changed to 180 days for loans classified as group 1 loans and group 2 loans pursuant to the BRSA Regulation on Classification of Loans and Provisions.

ii Key cases

Ulusoy Ulaşım Petrol Sanayi Ticaret A.Ş. (Ulusoy), one of the leading passenger transportation companies operating in Turkey, applied for concordat in November 2018 and obtained a three-month temporary standstill period from the court. After the temporary standstill period, the Istanbul First Commercial Court refused a definite standstill period request from Ulusoy and ruled on the bankruptcy of Ulusoy on 20 February 2019. Likewise, Pamukkale Turizm İşletmeciliği A.Ş. (Pamukkale), another leading passenger transportation company, after having been declared bankrupt by the decision of the Izmir First Commercial Court in early 2019, appealed the bankruptcy decision. This decision was reviewed and annulled by the 17th Chamber of the Izmir Regional Court of Appeals in April 2019. The case is still under court review.

In January 2020, Tekin Acar, a company operating in the cosmetics industry, was officially declared bankrupt following various restructuring attempts.

In addition, Yörsan Gıda Mamulleri Sanayi ve Ticaret A.Ş. (Yörsan), a leading company in the food industry, has applied for bankruptcy through its major shareholder Dairy Fresh Süt Ürünleri ve Gıda Yatırımları A.Ş., controlled by the Abraaj Group headquartered in Dubai. Since then, the company has been managed by an appointed trustee and is negotiating the restructuring of its debts with the private banks.

Furthermore, the bankruptcy cases in the tourism industry were followed by the bankruptcy declaration of Atlasjet Havacılık AS (Atlasjet) in February 2020, a major Turkish airline company operating both domestically and internationally. Atlasjet has failed to repay debts in an amount of US$60 million, including a loan from Şekerbank T.A.Ş., debts to various airport and terminal operators, ground services and fuel companies. Moreover, Borajet, another Turkish regional airline company which suspended its operation in 2017 and entered into restructuring of its debts, was also declared bankrupt in early November 2019.

Most recently, a well-known energy company Yeni Elektrik Üretim A.Ş. (Yeni Elektrik), which is 40 per cent owned by the Italian Ansaldo Energia group and operates a power generation site in Gebze, was declared bankrupt on 20 February 2020 after the banks rejected the restructuring of its debts in an amount of US$560 million.

iii Impact of insolvency and restructuring on the market

It is reasonable to expect the number of bankruptcy and restructuring proceedings to increase in the near future due to the impact of covid-19, and a new wave of restructurings may emerge as soon as the markets reopen and conditions allow financial predictability.

IV SIGNIFICANT TRANSACTIONS, KEY DEVELOPMENTS AND MOST ACTIVE INDUSTRIES

Following the Turkish economic crisis in 2001, postponement of bankruptcy has been the most frequently used technique in restructuring. However, the system was abused by some companies, which were creating or reflecting fictitious debts to be able to apply for postponement of bankruptcy so as to benefit from halting payments. Accordingly, creditors complained about this owing to the abuse of the postponement of bankruptcy by malicious debtors. With the enactment of Law No. 7,101 on Amendments to the Enforcements and Bankruptcy Code and certain other Codes on 15 March 2018, the postponement of bankruptcy has been completely abolished. New rules and regimes were introduced to the concordat scheme, with the aim of simplifying the process and promoting such insolvency and restructuring methods. Following the amendments, concordat has become the new popular restructuring tool in the Turkish market.

Energy sector players took the lead in financial restructuring applications in 2019. Bereket Energy Group restructured its consolidated debts owed to nine different banks in an amount of US$4,600 billion in March 2019. Although the energy companies had restructured US$7.5 billion debt as of October 2019, the indebtedness of the energy sector, which was restructured through financial restructuring, is 4,934 billion lira as of February 2020, which is the highest amount of any sector. In addition to the energy groups, other major restructuring transactions have been conducted by construction sector companies. For instance, TAV İnşaat, one of the biggest construction companies in Turkey, restructured US$350 million of debt in 2019. Within the scope of this restructuring, transfer of Akfen Holding's shares in Tav İnşaat to other shareholders or to the third parties is on the table as part of the restructuring plan.

V INTERNATIONAL

i General

Although the European Convention on Certain International Aspects of Bankruptcy was signed by Turkey in 1990, the Convention has not come into force. Turkey accepted International Arbitration Law No. 4686, mainly a reflection of the UNCITRAL Model Law; it has not adopted the UNCITRAL Model Law on Cross-Border Insolvency. As a result, there have been no developments or key cases under the EC Regulation in Turkey since there is no international treaty, model law or EU legislation to which Turkey is a party in insolvency and bankruptcy restructuring.

ii Recognition and judicial assistance to proceedings commenced in another jurisdiction

According to Article 154 of the EBC (which regulates the competent authority for reviewing bankruptcy filings), there are contradictions and different approaches adopted by the Court of Appeal and the doctrine with regard to the recognition of foreign bankruptcy proceedings. Some scholars consider this Article an exclusive jurisdictional rule, while others assert that foreign bankruptcy decisions given in the country where the debtor's headquarters is located can be recognised in Turkey. As a result, there is a risk that Turkish courts will not recognise bankruptcy decisions given by foreign courts because of the principle of territorial sovereignty.

VI FUTURE DEVELOPMENTS

We expect the wave of restructurings to continue in Turkey and the restructuring methods to further develop based on the needs of the market. We do not expect any material changes to restructuring legislation for the time being.

Appendix 1

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Sera Somay is the partner heading the banking and finance practice of the firm. Ms Somay works on financing transactions and representing lenders and borrowers, including club loans, syndicated loans, regulatory capital, ECA covered loans, acquisition financing, various forms of secured financing and other structured financings. She has a specific focus on Islamic finance transactions and advised on the first international sukuk issuance by the Republic of Turkey and the first sukuk issuance by a Turkish Islamic bank. She also works on murabaha syndications of Turkish participation banks and Turkish corporates. Ms Somay advises on regulatory M&As across a variety of sectors with a focus on banking M&As. She is a member of the International Bar Association. In 2018 and in 2019, Sera Somay was named as a Women Leader by IFLR 1000, which is the guide to the world's leading financial law firms, recognising 300 female lawyers globally and seven from Turkey, that are considered to be among the best transactional specialists in their markets and practice areas.

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