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## **MEMORANDUM**

**Circular No** : 2016/14

**Subject** : Amendments on “Bankruptcy and Suspension of Bankruptcy” in 11 Q/A’s.

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**W**ithin the scope of the development plan, “Law for Amendments on Some Laws with the Aim of Improving Investment Environment” no.6728 approved on June 05, 2016 has been announced in the Official Gazette on August 09, 2016. Through the related articles of this Law following amendments have been made on Enforcement and Bankruptcy Code (“Code”) No: 2004 and dated June 09, 1932. Our memorandum related to the mentioned amendments on bankruptcy and suspension of bankruptcy is prepared in the form of Q/A and here as follows;

### **1. WHAT ARE THE PRECONDITIONS OF CLAIMING SUSPENSION OF BANKRUPTCY?**

#### **a. Being in de facto bankruptcy, namely being deep in debt:**

Being in de facto bankruptcy, namely being in deep debt is primarily required for claiming suspension of bankruptcy. It was regulated in the former Code that companies with share capitals shall go bankrupt *only if their debts are more than their assets*. With the recent amendments, “being deep in debt according to interim balance issued over possible market price of assets” is regulated as the precondition for going bankrupt.

#### **b. Submitting a recovery project:**

Individuals stated in the Code may claim suspension of bankruptcy from courts by submitting a serious and credible “recovery project” indicating precautions and objective and true resources



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including providing cash resource. With this amendment, the Article no.179 of Code is rendered in compliance with the Article no.377 of Turkish Commercial Code.

**c. *Debtor's being suitable for suspension of bankruptcy:***

With the recent amendments, the requirement "**Debtor's being suitable for suspension of bankruptcy**" is added to the requirements for suspension of bankruptcy. This regulation aims to emphasize that suspension is not a right, yet it is given to debtor as ex gratia. Debtor's objective and subjective good faith is also expected along with his submission of a financially good project. For example, debtors who keep false or double commercial records, hide assets and debts, absconds from claimants by changing address frequently and in this way try to influence court's authority and claim suspension of bankruptcy successively more than once will not be accepted as suitable for suspension of bankruptcy.

**2. WHAT SHOULD RECOVERY PROJECTS INCLUDE? IS THERE ANY AMENDMENT REGARDING OPERATING COSTS?**

Content of recovery projects is rendered as certain through the recent amendments. In recovery projects, objective and true precautions and resources including providing cash resource and how all operating costs to be incurred during suspension period and working capital will be covered should be shown.

By taking into consideration the complaints that in practice companies deep in debt and having no realistic chance to progress are applying for suspension of bankruptcy and enjoying suspension injunctions despite of being incapable of deserving then same and that causes time losses for their claimants, indication of how operating costs during suspension period and working capital will be covered in recovery projects is regulated as a new requirement for suspension of bankruptcy.

Likewise, since it is seen in practice that companies claiming suspension of bankruptcy cannot afford their general operating expenses and main production expenses, therefore debts and input items as rent, electricity, water and natural gas are left unpaid by them and furthermore they



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prevent those resources being cut out through the cited primarily injunctions, cover of operating costs is accepted as an essential requirement for recovery projects.

In addition to this, other information and documents indicating how serious and credible the recovery project is has to be submitted to court. In particular, (i) the list of current debts and their payment periods, (ii) the list of claimants' addresses, (iii) the list related to amounts, numbers and waiting periods of raw material, semi-product and product stocks prepared according to features of the related business sector, (iv) the very last balance sheet and income statements submitted to tax office and (v) certification of company's trade registry are required to be submitted.

### ***3. IS THERE A TIME LIMITATION FOR SUBMISSION OF RECOVERY PROJECT? HOW MANY TIMES THIS PROJECT CAN BE REVISED?***

Submission of documents proving seriousness and credibility of a recovery project within two weeks following claim of suspension of bankruptcy is rendered as mandatory with the recent amendment. If it is not submitted within the given time, suspension claim shall be deemed as not proven.

This amendment aims to prevent extension on judgment process and execution of injunctions of bankruptcy suspend by preventing late submission of the documents and lists stated in the related article and/or submission of the same after expert examination and thereby reclaim of a new expert examination.

During trials of suspension of bankruptcy, a revised project may be submitted to court only once. Since in practice debtors submit projects including pointless revises, but still courts send each project to experts for their opinion and by this means trials are extended, the cited regulation is made.



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#### **4. DOES A COMPANY THAT CLAIMED SUSPENSION OF BANKRUPTCY BEFORE MAY CLAIM IT AGAIN?**

Yes. However, successively claiming for suspension of bankruptcy has been precluded with the recent amendments. A company which benefitted from suspension of bankruptcy before cannot claim for the same again within one year after end of suspension period including possible extensions.

#### **5. IN HOW MANY DAYS CLAIMANTS MAY OBJECT CLAIM OF SUSPENSION? WHAT IS THE SCOPE OF THIS OBJECTION?**

Objection procedure against claim for suspension of bankruptcy has gained legal grounds, but since the objection procedure applied for bankruptcy is being applied currently, such procedure has remained the same. Claimants may object to suspension of bankruptcy within 15 (fifteen) days.

Objection scope is solely limited to *“absence of requirements for suspension of bankruptcy”* and *“other circumstances in which refusal of such claim might be claimed”*.

#### **6. WHAT KIND OF INJUNCTIONS CAN BE ISSUED DURING TRIALS?**

Content of injunctions which to be issued for protection of assets of the company claimed suspension of bankruptcy and shall be valid until issuance of a final decision on suspension of bankruptcy was not indicated in the Code.

Courts were issuing decisions similar to their final decisions as injunctions. With the recent amendment, content of injunctions has been specified and by this means such content are rendered as limited.

According to this, scope of injunctions to be issued by courts is limited to prevention of issuance and implementation of lien injunctions against the company claiming for suspension of bankruptcy and initiation of execution proceedings excepting the ones for mortgages and worker receivables



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and cease of the pending proceedings. By this means, Courts are restrained from issuing injunctions broad in scope and subject.

#### **7. HOW MANY YEARS *DECISION* FOR SUSPENSION OF BANKRUPTCY MAY BE ISSUED FOR? IS IT POSSIBLE TO EXTEND SUCH DURATION?**

Period of suspension of bankruptcy which could be given for 5 years in total (1 year + 4 years) previously has become limited to 2 years in total (1 year + 1 year). Thereby, the principal regarding the one year period for suspension of bankruptcy is reserved and extension of this period for one more year is rendered as possible, if it is found suitable by court.

Statics shows that companies mostly go bankrupt when period of suspension is extended and their debts are increased and assets are decreased during this period. Therefore, it has been detected that amount in bankruptcy estate after the decision of bankruptcy is less than the amount in the beginning of the suspension trial and this puts claimants into a worse situation.

#### **8. PROVISION OF “INTERIM INJUCTIONS ARE DEEMED TO PERIOD OF SUSPENSION” HAS BEEN REGULATED BY THE RECENT AMENDMENT. WHAT DOES SUCH PROVISION MEAN?**

In the former practice, courts used to issue injunctions for prevention of issuance of injunctions against the company claiming for suspension of bankruptcy and initiation of execution proceedings against the same, cases were finally concluded and decisions for suspension of bankruptcy were issued. Period of suspension which could be 5 years at the most could last eight up to ten years when this decision is appealed, accordingly cancelled and the related first instance court starts to re-examine the case, as the injunction in question was pending while this period. With the recent amendment, suspension period will be one year at the most following the issuance date of injunction.



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## **9. BEFORE WHICH COURT SUSPENSION OF BANKRUPTCY SHOULD BE CLAIMED?**

Debtor company may claim suspension of bankruptcy from the court where its headquarter is located for more than the last one year. By this means, the claimant company's arbitrarily determining the authorized court by successively changing its headquarters has been prevented.

## **10. HOW MANY COMPANIES AN INDIVIDUAL MAY BE ASSIGNED AS TRUSTEE?**

An individual may be assigned as a trustee in three cases at most. This limitation aims that trustee may spare enough time to their duty and properly perform their duty.

## **11. MAY THE AMENDMENTS BE APPLICABLE TO THE CURRENT SUSPENSION OF BANKRUPTCY ACTIONS?**

The amendments will be applicable for the claims for suspension of bankruptcy after August 09, 2016.

Kind regards,

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LAW OFFICE**