

LATEST AMENDMENTS ON CONCORDATUM



With the Law on Enforcement and Bankruptcy Law and Amendments on Some Laws No. 7101 published in the Official Gazette dated 15.03.2018 numbered 30361 the bankruptcy postponement institution was abolished and the concordatum institution was revised.

1. What is concordatum?

The Concordatum is regulated between the Articles 285-309 of the Execution and Bankruptcy Code no. 2004 and aims to protect borrowers whose debts have deteriorated and who are willing to pay them. Concordato in this context is a restructuring agreement between the debtor and the creditors.

2. What amendments have been made in the concordatum institution?

With the amendment made in article 285 of the related Code, it is accepted that non-merchants can also demand a concordat. It is important that the concordator be in danger of not paying their debts or paying in due time when the claimant arrives. However, if the concordat process fails, no bankruptcy decision will be made against non-merchants.

With another amendment, it is aimed to present the documents and the tables which clarify the financial situation of the demanding debtor company together with the request of the concordat. These documents and tables are:

- A table showing the preliminary concordat project between the documents,
- The documents showing the status of the assets of the debtor,
- The receivables, the receivable amounts and the list showing the privilege status of the receivables,
- The amount expected to be passed by the receivers according to the offer in the preliminary concordat and the possible amount that the receivables could be dispossessed
- Financial analysis reports prepared by the independent auditor authorized by the Capital Markets Board or the Public Oversight, Accounting and Auditing Standards Authority and based on the financial analysis reports indicating that it is highly probable that the proposal of the pre-concord will be realised.
- In the concordat, as a novelty, the cash flow table is included, which allows the identification of the merchant's financial and financial situation accurately.

In addition, the documents and tables submitted to the court together with the request for concordat are requested to be **no more than 45 days** prior to the application date.

With another amendment, a new institution was established under the name of 'Provisional concordat time'. This arrangement is intended to provide temporary legal protection to the debtor within the payment difficulty and may be extended for another two months with an application to be made with no more than 3

months. A provisional concordat commission, in particular with the provisional concordat time, decides on all the precautions the court considers necessary for the preservation of the property of the debtor, and requires a provisional conciliator commissary to appoint a temporary conciliator commissioner, in particular if it requires the number of creditors and the amount of receivables. The pursuance initiated against the indebted borrower will cease and new pursuits will not be initiated. It is also governed that the decision of provisional time shall be announced on the Commercial Registry Gazette, the portal of the Press Advertisement Agency and the related institutions and organisations. In addition, provisional injunctions and provisional seizures will not apply. The creditors may request the rejection of the concordat request, within 7 days of the announcement of the provisional concordat time.

With another amendment to, it is stated that the definite time will be given as one year and it can be extended up to six months in special situations where difficulties occur. The court which decides the definite time may establish a separate board of creditors. In making this determination, the Court will consider the criteria such as the number of creditors, the amount of credits, the size of the operator, and so on, based on the list of the creditors who are submitted together with the request for concordat.

The concordat time may be removed due to the improvement of the status of the debtor. Although the concept of recovery can be understood as the acquisition of the power of payment in such a way that the debtor can make full and timely payments to the creditor.

In the presence of one of the following the bankruptcy of the debtor will be decided:

- If it is necessary to open the bankruptcy for the protection of the assets of the debtor
- If the debtor fails to comply with the provisions of the commissioner or if it fails to comply with the instructions of the commissioner
- If the concordatum is found to be unsuccessful

The results of the definite time:

- No follow-ups will be made.
- It is stipulated that it can be followed up by foreclosure for the privileged receivables. For these receivables, follow-up can be started even if it is in definite time, and the started follow-ups will continue.
- It is stipulated that any kind of receivable which is not provided with pledge will cease the interest.
- It is stated that a transfer agreement was made before the issuance of the concordat and that the transfer will be null and void if the receivable was born after the issuance of the concordat.
- Except in cases where there is a risk in the case of delay, administrative lawsuits related to receivables subject to concordat and legal cases in which the debtor is the defendant will be ceased.
- The provisions shall be deemed invalid and shall not apply if the contract has provisions stating that the contract will be terminated against the debtor if the debtor requests concordat.
- Accordingly, it is foreseen that the debtors will continue their commercial activities

throughout the concordat time. But the debtor will continue his activities with the supervision of the commissioner.

The creditors will be invited to report receivables within 15 days from the announcement made by the Commissioner. The day of the meeting will be at least 15 days from the announcement.

For the acceptance of the concordat project by the creditors the following majority is required:

- a) half of the receivables and creditors recorded
- b) one in four of the creditors registered and two-thirds of the receivables

Creditors with pledge will participate only in the amount of their non-pledged receivables. Privileged receivables, debtors' relatives and pledged creditors will be deprived of voting rights.

Conditions of the recognition of the concordat:

- If the amount offered in the concordat will be more than the possible amount of money that can be passed on to the debtor's creditors; the proceeds obtained in the event of the conversion of assets into money on the concordat basis or the amount offered by the third party shall be deemed to exceed the amount that can be obtained in liquidation by bankruptcy,
- if the proposed amount is proportional to the resources of the debt,
- the acceptance of the concordat by the foreseen majority,
- the payment of the receivables of the privileged creditors and the performance of the

debts concluded with the consent of the commissioner within the time limit,

- The storage of the expenses of the proceedings and the necessary expenditure by the borrower in the court office before the approval of the attestation