

Turkey: Further details of the new pledge and assignment regime announced

Turkey recently introduced a range of secondary legislation, collectively outlining details of major legislative changes to the pledge and assignment regime for commercial transactions.

The updated regime facilitates access to finance for SMEs and boosts competitiveness. The most notable aspect of the changes are that possession of the pledged asset no longer needs to physically change hands. The latest announcements include detailed procedures and principles for applying movable pledges, establishing a central registry of moveable pledges, valuing moveables subject to pledges, as well as structuring and executing pledge agreements.

The new regime was introduced by the Law on Pledge on Movables in Commercial Transactions, numbered 6750, published, in Official Gazette number 29871 on 28 October 2016. However, the most recent developments were announced via a range of secondary legislation, published in Official Gazette number 29935 (bis) on 31 December 2016 and entering into effect on 1 January 2017.

Moveable Pledge Registry established

A central moveables pledge registry is established, intended to ensure records are complete and correct, as well as provide legal security to parties and provide public access to the records. The registry system will process requests to amend or erase pledge agreements, as well as transfer rights arising from pledges and changes to the degree of pledges. Records will be publicly accessible. Any third party who can prove their relevance will be able to make queries in the registry. Queries will be made either through physical registry offices or electronically.

Secondary legislation introduces principles and procedures for:

- establishing and operating a moveables pledge registry;
- duties and authorities of registry service units and access to these registry services;
- sharing data recorded in the registry; and
- fees for registry services.

Establishing pledge rights in commercial transactions and execution upon default

Secondary legislation addresses issues pertaining to the pledge agreement itself, establishing pledge agreements, pledge systems, registering pledge agreements, as well as the rights and obligations of the pledgee and pledger on default.

Accordingly, a statement in the pledge agreement of the parties' explicit intention to establish a pledge over the moveable will now be sufficient to establish the pledge. This represents an important change in practice for movable pledges. Previously, establishing the pledge required possession of the pledged moveable to pass to the pledgee.

Persons who can be pledgees under the Law are limited to credit institutions, tradesmen and craftsmen. Whereas, pledgers can only be tradesmen, craftsmen, farmers, producer organisations and self-employed persons.

Recent secondary legislation outlines detailed lists of:

- items which must be included in the pledge agreement; and
- assets which can be pledged, including receivables, intellectual property rights, rent incomes, commercial projects, and commercial enterprises.

Notable provisions in the secondary legislation include:

- Pledge agreements can be executed either electronically (signing via secure electronic signature) or in writing (signing before the registry officer or a notary public).
- Once signed, the pledge

agreement will then be registered in the moveables pledge registry.

- It is possible to establish a pledge over receivables that arise out of a specific agreement. However, agreements requiring pledge of all future receivables without any limitations will be deemed invalid.
- Detailed rules for applying the pledge degree system, which allows movable pledges to be ranked. Accordingly, it is possible to establish pledges with either progressive ranking (allowing advancement to a higher degree, if there is an empty degree) or fixed ranking.
- To fulfil the debts secured by the pledge on default, pledgees can now request transfer of ownership of the pledge moveable. The pledgee can now apply to execution offices to initiate an enforcement procedure, demanding ownership transfer. This right constitutes an exception to the *lex commissoria* principle for pledges under Turkish law.

Valuing Moveables in commercial transactions

Procedures and principles are now outlined for valuing moveables which are subject to pledge, assigning valuation experts, as well as fees for expert services.

Movables subject to pledge can be valued either independently by the parties, upon mutual agreement before establishing the pledge or by applying to the courts to determine the value.

If the parties request a court valuation, experts will be appointed in accordance with the Regulation on Authorization and Activities of the Entities Providing Valuation Services to Banks.

Fees for valuation services will be determined and announced by the Ministry of Customs and Trade. If parties apply to the courts for valuation, court expenses and valuation service fees will be paid equally by both parties.



THE UPDATED REGIME FACILITATES ACCESS TO FINANCE FOR SMES AND BOOSTS COMPETITIVENESS



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