

DEBT RECOVERY IN TURKEY

This article aims to explain the procedures regarding debt collection. There are two separate procedures in Turkey in order to follow your debt. 1. Debt Execution Procedure which will be provided by Administrative Body and 2. Litigation Procedure which will be examined by the Court.

As regards to the first method, component debt collection lawyer initiate debt execution procedure via debt execution administration after that administration submits order of payment to the debtor. If debtor shall object the order of payment by claiming the inexistence of debt within 7 days (duration of 7 days stems from ordinary debt / credit relationship, it is five days for the debt stemming from check and bonds) subsequent to submission of the letter, the execution process shall be frozen and the only way to proceed the execution process shall be filing a litigation case to the debtor company.

It is also noteworthy to mention that in case of the litigation decision shall be in favor of creditor, unfair objection to the debt during debt execution procedure shall be subjected to the penal fee as 40% amount of the debt. That penal fee must be awarded to the creditor. On the other hand, the party as a creditor can also file a litigation case directly regardless of initiating debt execution.

The administrative debt execution fee is 0.05% of the debt amount and almost 10 € extra fee. As mentioned above in case of objection, litigation shall come to an issue. The litigation process shall be governed by the court with the consideration of the evidences such as invoices, contracts, correspondences, accounting books and related proofs. This process will also encompass hearings including claim and counter claim procedure. The court fee related to litigation shall be also dependent on the amount of the debt. 59/1000 of the amount will be the litigation and the posting, expert fees and other possible court fees will be included to it. According to the act of fees of Turkey, it is sufficient to remit court fee's ¼ in order to initiate litigation in the beginning. The rest can be remitted in previous hearings in advance of the decision.

Litigation must be implemented by a Turkish Attorney on the basis of a valid power of attorney as debt execution procedure also requires. Power of attorney can be obtained from Turkish embassies and consulates by the Turkish legal entities or Turkish citizens. Foreigner citizens and legal entities must obtain from relevant authorities in their country which are capable of issuing power of attorney based on the country's law. Having power of attorney from these authorities will not make the power of attorney as valid in Turkey by itself. Apostille stamp requires for validity of Power of Attorney to be used in Turkey or approval of the power of attorney via Turkish embassy or consulate will be necessary. In case that the country is not the party of The Hague convention enabling Apostille, the only way to make power of attorney valid will be approval from mentioned Turkish embassies.

If the country of creditor applies some restrictions for Turkish Citizens and Turkish legal entities for filing a case particularly litigation case in the jurisdiction of said country, Turkish court will request security deposit from the creditor. In case that judicial assistance agreement or relevant convention's ratifications 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.

A 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.

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He graduated from Anatolian High School of Karadeniz Ereğli, after his graduation he studied in Belgium with AFS intercultural exchange program. He obtained his law license degree from Marmara University of Law Faculty. During his university education, he participated in Philip C. Jessup International Law Moot Court Competition on behalf of the Marmara University. After his admission to Istanbul Bar Association in 2009, he obtained master degree (LL.M) from Gent University / Belgium in the field of European and Comparative law. His master research was about Freedom of Establishment In Relation With Turkey and EEC in the frame of Ankara Agreement. He is specialized in International Private Law, European Law, Real Estate Law, Penal Law and Tort Law. He speaks fluent English and has good command of Dutch and French. He is also authorized as a solicitor, barrister.

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