İSTANBUL UNIVERSITY PRESS

Annales de la Faculté de Droit d'Istanbul, 70: 147–194

DOI: 10.26650/annales.2021.70.0006
http://annales.istanbul.edu.tr/

Submitted: 01.11.2021
Accepted: 15.11.2021
Published Online: 17.11.2021

Annales de la Faculté de Droit d'Istanbul

RESEARCH ARTICLE / ARAŞTIRMA MAKALESİ

Concordat Procedure as a Way to Escape Bankruptcy and the Evaluation of the Temporary Respite Decision Following the Amendment to the Law no. 7101: Current Developments and Experiences in Turkey

7101 sayılı Kanun Değişikliğinden Sonra İflastan Kurtulma Yolu Olarak Konkordato Prosedürü ve Geçici Mühlet Kararının Değerlendirilmesi: Güncel Gelişmeler ve Türkiye'deki Deneyim

Serpil Işık*

Abstract
Concordat is a restructuring law which enables the debtor whose business does not go well and economic situation has deteriorated due to reasons beyond his control to pay their offer under proper conditions after the offer is accepted by the number of creditors provided in the law and ratified by the authorities. The legislator has opened the way for the debtors to terminate their debts by paying only a certain amount of them or at certain maturities by an agreement between the debtor and the creditor under the court supervision with the arrangement of bankruptcy. The significant legal amendments to the Law no. 7101 add another dimension to the concordat which is regulated by the provisions 285 and 309/I in Enforcement and Bankruptcy Law. The amendments in the Law no. 7101 regarding the provisions of concordat was affected by Swiss Enforcement and Bankruptcy Law. In these amendments, many provisions which prevented the concordat in the previous term were revised or revoked. The provisions on the postponement of bankruptcy that are in the favor of debtor were included into the concordat and temporary respite decision was accepted. Therefore, the follow-ups that the creditors commenced will stop and new follow-ups will not start during the respite thanks to the opportunity to decide on temporary respite within the provisions on the concordat. Our study aims to make explanations and evaluations regarding the temporary respite decision which had not been included in Enforcement and Bankruptcy Law with the concordat procedure in Turkish Law until the significant amendments in the Law no. 7101. In this regard, general information will be provided about the concordat in Turkish Law, the concordat procedure will be explained and we will continue with the temporary respite following the request to arrange bankruptcy. Lastly, our study will be concluded with the evaluation of the concordat experience in Turkey within the current developments and implementation on the arrangement of bankruptcy.

Keywords
Concordat, Amendment to the Law no. 7101, Non-bankruptcy concordat, Concordat procedure, Temporary respite decision, Current developments on the concordat and experiences in Turkey

Öz
Konkordato, elinde olmayan nedenlerle işleri iyi gitmeyen ve ekonomik durumu bozulmuş olan borçlunun, yaptığı teklifin kanunda öngörülen çoğunluğu karşılayan sayıdaki alacaklıları tarafından kabul edilerek yetkili makamlarca tasdik

* **Corresponding Author:** Serpil Işık (Res. Assit. Dr.), İstanbul University, Faculty of Law, Department of Civil Procedure and Enforcement - Bankruptcy Law, Istanbul, Turkey. E-mail: isikserpil1988@hotmail.com; serpil.isik@istanbul.edu.tr ORCID: 0000-0003-4329-1138

To cite this article: Işık S, "Concordat Procedure as a Way to Escape Bankruptcy and the Evaluation of the Temporary Respite Decision Following the Amendment to the Law no. 7101: Current Developments and Experiences in Turkey", (2021) 70 Annales de la Faculté de Droit d'Istanbul 147. https://doi.org/10.26650/annales.2021.70.0006

edilmesi sonucunda ileri sürdüğü teklif doğrultusunda ve uygun koşullar çerçevesinde ödenmesini sağlayan bir iyileştirme hukuku (*Sanierungsrecht*) müessesesidir. Kanun koyucu, konkordato ile mahkeme denetimi altında borçlu ile alacaklının anlaşarak alacaklıların sadece belirli bir miktarını ya da belli vadelerde ödeyerek borçlarını sona ermesinin yolunu açmıştır. İcra ve İflas Kanunu'nun 285 ilâ 309 hükümlerinde düzenlenmekte olan konkordato kurumunda, 7101 sayılı Kanun ile önemli yasal değişiklikler gerçekleştirilerek kuruma bambaşka bir çehre kazandırılmıştır. 7101 sayılı Kanunla konkordato hükümlerinde gerçekleştirilen değişikliklerde, İsviçre İcra ve İflas Kanunu'ndan etkilenilmiştir. Gerçekleştirilen değişikliklerle önceki dönemde konkordatonun işlememesinin sebebi olan pek çok hüküm revize edilmiş ya da yürürlükten kaldırılmıştır. İflasın ertelenmesi kurumunun borçlu menfaatine olan hükümlerinin konkordatoya dâhil edilmesi sağlanarak bu kapsamda geçici mühlet kararının kabul edilmesi söz konusu olmuştur. Böylelikle, konkordato hükümlerine geçici mühlet kararı alınabilme imkanının getirilmesi sayesinde, mühlet içerisinde alacaklıların borçluya başlattıkları takipler duracak ve yeni takiplere başlanamayacaktır. Çalışmamızda, 7101 sayılı Kanun değişikliği çerçevesinde gerçekleştirilen önemli değişiklikler sonrasında Türk Hukukunda konkordato prosedürü ile daha önce İcra ve İflas Kanunu'nda söz konusu olmayan geçici mühlet kararı hakkında açıklamalar ve değerlendirmelerde bulunulması amaçlanmaktadır. Bu amaç doğrultusunda, genel olarak, Türk Hukukunda konkordato hakkında genel bilgiler verilecek sonrasında konkordato prosedürü ifade edilecek ve konkordato talebi açıklandıktan sonra geçici mühletin ortaya konulması yoluna gidilecektir. Son olarak, konkordatoya ilişkin güncel gelişmeler ve uygulamada Türkiye'nin konkordato konusundaki deneyiminin değerlendirilmesi ile çalışmamız sonlandırılacaktır.

Anahtar Kelimeler
Konkordato, 7101 sayılı Kanun değişikliği, İflas dışı (adi) konkordato, Konkordato prosedürü, Geçici mühlet kararı, Konkordato konusunda güncel gelişmeler ve Türkiye'deki deneyim

Concordat Procedure as a Way to Escape Bankruptcy and the Evaluation of the Temporary Respite Decision Following the Amendment to the Law no. 7101: Current Developments and Experiences in Turkey

I. Introduction

Concordat is one of the institutions of the remedial law whereby the well-intentioned and honest debtor whose business derails and the economic condition deteriorates due to any reason beyond control makes an agreement with majority of the creditors and this agreement is validated by ratification of the competent authorities allowing the debtor to pay the debt in line with the proposal stipulated in this agreement and within the framework of favorable conditions[5].

Concordat is also a regime that aims to prevent the bankruptcy of the debtor who fails to pay its debt by postponing the legal proceedings that may be filed against the debtor by the creditors[6]. Owing to the Concordat regime; the legislator has paved the way for the debtor and the creditor to agree under court supervision and allowed the debtor to make an arrangement with the creditors either by paying back only a certain amount of the debt or all of the debt in certain installments[7].

Concordat is nearly the most important institution in Swiss law (SchKG[8] Art. 293-336)[9] in terms of improving the economic situation of the debtor and ensuring the

5 Hakan Pekcanıtez, Oğuz Atalay, Meral Sungurtekin Özkan and Muhammet Özekes, *İcra ve İflâs Hukuku Ders Kitabı* (7. Bs, On İki Levha 2020) 477; Murat Atalı, İbrahim Ermenek and Ersin Erdoğan, *İcra ve İflas Hukuku* (3. Bs, Yetkin 2020) 617; Selçuk Öztek, Ali Cem Budak, Müjgan Tunç Yücel, Serdar Kale and Bilgehan Yeşilova, *Yeni Konkordato Hukuku, 7101 sayılı Kanunla Değişik İcra ve İflas Kanunu m. 285-309 Şerhi* (Editör: Selçuk Öztek), (1. Bs, Adalet 2018) Madde 285, N. 7. For the similar definitions of concordat, *see*: İlhan E. Postacıoğlu, *Konkordato (538 Sayılı Kanun Hükümleri Göz Önünde Tutularak Yazılmıştır)*, (Banka ve Ticaret Hukuku Araştırma Enstitüsü, Fakülteler Matbaası 1965) 12; Saim Üstündağ, *İflas Hukuku (İflas-Konkordato-İptal Davaları)* (8. Bs., Fakülteler Matbaası 2002) 227; Baki Kuru, *İcra ve İflas Hukuku El Kitabı* (Tamamen Yeniden Yazılmış ve Genişletilmiş İkinci Baskı Adalet 2013) 1443; Ramazan Arslan, Ejder Yılmaz and Sema Taşpınar Ayvaz, *İcra ve İflas Hukuku* (3. Bs, Yetkin 2017) 625; Süha Tanrıver and Adnan Deynekli, *Konkordatonun Tasdiki* (Yetkin 1996) 29; Timuçin Muşul, *İcra ve İflas Hukuku* C II (Gözden Geçirilmiş ve Genişletilmiş 6. Bs, Adalet 2013) 1672; M Serhat Sarısözen, *Konkordato* (Yetkin 2020) 75; Timuçin Muşul: İflas ve Konkordato Hukuku Uzlaşma Yoluyla Yeniden Yapılandırma, Güncellenmiş ve Gözden Geçirilmiş 2. Baskı, Ankara, Adalet Yayınevi, 2019, § 16, s. 375; Şakir Balcı, *Türk Hukukunda Konkordato* (Güncel 2007) 21; İbrahim Kaplan, 'İsviçre İcra ve İflas Hukukunun Borçların Ertelenmesine (Konkordatoya) İlişkin Malvarlığı Yönetimi Sözleşmesi Hükümleriyle Mukayeseli Olarak Yeni Türk Konkordato Hukuku' (Yetkin 2019) 17; Sümer Altay and Ali Eskiocak, *Konkordato ve Yeniden Yapılandırma Hukuku* (5. Bs Vedat 2019) N. 21 p. 15; Talih Uyar, *Yeni Konkordato Hukukumuzun Temel İlkeleri* (Güncellenmiş 2. Bs, Bilge 2019) 3; Mert Namlı, 'Türk ve İsviçre Hukuku'nda Gerçekleştirilen Reformların Konkordato Hukuku Bakımından Getirdiği Değişiklikler' (2018) 44 (4) Yargıtay Dergisi 1494; Kurt Amonn and Fridolin Walter, *Grundriss des Schuldbetreibungs- und Konkursrechts* (9. vollständig aktualisierte Auflage, Stämpfli Verlag AG Bern 2013), N. 2, p. 515.

6 M Serhat Sarısözen, *7101 sayılı Kanun Kapsamında İcra, İflas ve Konkordato Hukukundaki Yenilikler* (Yetkin 2018) 45.

7 Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 477.

8 Bundesgesetz vom 11. April 1889 über Schuldbetreibung und Konurs (SchKG; SR 281. 1).

9 For the concordat stipulated between Art. 293-336 of Swiss Debt Enforcement and Bankruptcy Law, *see*: Daniel Hunkeler, *Kurzkommentar, SchKG Schuldbetreibungs- und Konkursgesetz,* (2. Aufl., Helbing Lichtenhahn 2014) 1317 ff.; Jolanta Kren Kostkiewicz and Dominik Vock, *Kommentar zum Bundesgesetz über Schuldbetreibung und Konkurs SchKG* (4. Auflage, basierend auf der 1911 erschienenen 3. Auflage von Carl Jaeger, Schulthess Kommentar, Schulthess Verlag 2017) 1641 ff.; Basler Kommentar-Adrian Staehelin and Alexander Vollmar, *Bundesgesetz über Schuldbetreibung und Konkurs II, Art. 159-352 SchKG Art. 1-47 GSchG, Art. 51-58 AVIG* (Basler Kommentar) in Adrian Staehelin, Thomas Bauer, Daniel Staehelin (Hersgeber) (2. Auflage, Helbing Lichtenhahn 2010), Art. 293-336, p. 2555-2831; Carl Jaeger, Hans Ulrich Walder, Thomas M. Kull and Martin Kottmann, *Das Bundesgesetz über Schuldbetreibung und Konkurs (SchKG): Erläutert für den praktischen Gebrauch, Band III Art. 293-352 Schlussbestimmungen Anhange Sachregister* (4. Auflage,

debtor to settle this difficult situation by restructuring the debts, however it has until recently lost its significance in Turkish Law[10]. The main reason why concordat lost its significance in Turkish Law is that it has become inapplicable in practice on the grounds of Law No. 4949[11] which was enacted on 17.07.2003 and entered into force as of 2004[12]. On the other hand, new provisions on the bankruptcy postponement were introduced by Law No. 4949[13]. Thus, bankruptcy postponement has gained immense popularity for *"equity companies and cooperatives"* which are on the verge of bankruptcy or already deep in debt[14]. The bankruptcy postponement has frequently been criticized in the *doctrine*[15] for not responding to the needs and for leading to unfair consequences[16]. For this reason; concordat, *which may be requested by all debtors in difficult situations unlike the bankruptcy postponement*, could not actually be put into practice although Law No. 6728[17] entitled *"Law Regarding the Amendment of Certain Laws Aiming the Improvement of the Investment Environment"* introduced some amendments in the provisions of the bankruptcy agreement[18].

By Decree Law No. 669[19], the opportunity to apply to the bankruptcy postponement regime was suspended in 2016[20]. Thereupon, the need for a mechanism that allows

Schulthess 1997/2001) 1 ff.; Bettina Kopta-Stutz, 'Gerichtliche Sanierungsverfahren für Schweizer Aktiengesellschaften Unter Berücksichtigung des aktienrechtlichen Konzepts zur Auslösung von Sanierungsmassnahmen' in *ZStP -Zürcher Studien zum Privatrecht Band/Nr. 295* (Schulthess 2019) 34 ff.

10 Mehmet Kâmil Yıldırım/Nevhis Deren-Yıldırım: İcra ve İflas Hukuku, Genişletilmiş ve Gözden Geçirilmiş 7. Baskı, İstanbul, Beta Basım, 2016, s. 517.

11 Official Gazette 17.7.2003, Number 25184.

12 Hakan Pekcanıtez and Güray Erdönmez, *7101 sayılı Kanun Çerçevesinde Konkordato* (Vedat 2018) 3. For the amendments introduced by Law No. 4949 regarding concordat, *see*: Hakan Pekcanıtez, '4949 Sayılı Kanun'la, İcra Hukukunda Yapılan Değişikliklerin Değerlendirilmesi' (2003) 49 Türkiye Barolar Birliği Dergisi 137; Sema Taşpınar, 'Adi Konkordato Hakkında İcra ve İflas Kanunu'nda Yapılan Değişiklikler' (2003) 22(2) Banka ve Ticaret Hukuku Dergisi 49 ff.

13 M Kâmil Yıldırım, '4949 Sayılı Kanunun Getirdiği Değişikliklerle İcra İflas Kanunu'nda Yer Alan İptal Davalarına ve İflasın Ertelenmesine İlişkin Yeni Hükümler' in *İcra ve İflas Kanunu'nda 4949 Sayılı Kanunla Yapılan Değişiklikler Sempozyumu* (2004) 1(2) Yeditepe Üniversitesi Hukuk Fakültesi Dergisi 480; Namlı, 'Değişiklikler' (n 1) 14489. Significant changes have occurred in the Article 179 of the Debt Enforcement and Bankruptcy Law regarding the bankruptcy of capital companies and cooperatives due to insolvency with the Law No. 4949 (Law No. 4949 Art. 50) (Ahmet Türk, 'Sermaye Şirketleri ile Kooperatiflerin Barca Batık Olmaları Nedeniyle İflası ve iflasın Ertelenmesi Konusunda İcra ve İflas Kanunu'nda Yapılan Son Değişikliklerin Değerlendirilmesi ve Öneriler' 2004 6 (1) Dokuz Eylül Üniversitesi Hukuk Fakültesi Dergisi 295). Also, *see*: Mustafa Göksu, 'Concordat and Restructuring in Turkish Insolvency Law (Areview from ADR Perspective)' (2020) 24(4) Ankara Hacı Bayram Veli Üniversitesi Hukuk Fakültesi Dergisi 124.

14 Serpil Işık, 'Sermaye Şirketleri ile Kooperatiflerin Borca Batık Olmaları Sebebiyle Doğrudan İflaslarının Söz konusu Olması Durumunda İflasın Ertelemesi Kurumuna Başvuru Şartlarının Kanuni Değişiklikler Çerçevesinde Değerlendirilmesi' (2016) İstanbul Üniversitesi Hukuk Fakültesi Mecmuası (*Prof. Dr. Fevzi Şahlanan'a Armağan Özel Sayı, Cilt: II*) 1296.

15 For the criticism of the institutions of bankruptcy postponement in the doctrine, *see*: Sümer Altay, 'İflasın Ertelenmesi Hakkındaki Yeni Hükümlerin Yeniden Yapılandırma Kurumları Üzerindeki Olumsuz Etkisi ve Çözüm Yolları' in *Prof. Dr. Ergun Özsunay'a Armağan* (Vedat 2004) 625 ff.; Abdurrahim Karslı, 'İflasın Ertelenmesinde Bazı Problemler' *Haluk Konuralp Anısına Armağan C. 2* (Yetkin 2009) 263 ff.

16 Sarısözen, *7101 sayılı Kanun* (n 2) 39; Sarısözen, *Konkordato* (n 1) 63.

17 Official Gazette 15.7.2016, Number 29796.

18 Pekcanıtez and Erdönmez (n 8) 3.

19 Official Gazette 31.7.2016, Number 29787. In our study, *the "Decree Law on Taking Certain Measures Under the State of Emergency and the Establishment of a National Defense University and Making Amendments to Certain Laws"* has been used by abbreviating as "*Decree Law No. 669*".

20 Serdar Kale, '7101 Sayılı İcra ve İflas Kanununda Değişiklik Yapılmasına Dair Kanun Çerçevesinde İflas Dışı Konkordato' (Bahar 2018) 5(1) İstanbul Medipol Üniversitesi Hukuk Fakültesi Dergisi 213; Hakan Albayrak, *İflas Dışı Adi Konkordatoda Konkordato Mühletinin Sözleşmeler Bakımından Sonuçları* (Yetkin 2020) 29.

debtors with difficulty in repaying their debts to restructure their debts came to light again[21]. Following the suspension of bankruptcy postponement within the period of state of emergency, significant amendments to the provisions of concordat were introduced and the provisions on the bankruptcy postponement were repealed on the grounds of Law No. 7101 on *"The Amendments In Execution And Bankruptcy Law And Certain Laws On The Institution Of Concordat"* published in the Official Gazette dated 15 March 2018 and numbered 30361[22].

With the amendment to the Law No. 7101; significant legal amendments were introduced to the concordat institution which is regulated within the framework of the provisions 285 to 309 para 1 of the Execution and Bankruptcy Law (=EBL) and the regime has acquired a completely different scheme[23]. The revision of the Swiss Federal Execution and Bankruptcy Law, which entered into force on January 1, 2014 in Switzerland, significantly expanded the function of the concordat moratorium[24]. The amendments to the provisions of concordat on the grounds of Law No. 7101 were affected by the Swiss Execution and Bankruptcy Law (SchKG Art. 293-336) which was revised on 1 January 2014[25]. Based on these amendments, many provisions that previously caused the disruption of concordat were either revised or abolished[26]. The provisions of the bankruptcy postponement to the benefit of the debtor are included

21 Pekcanıtez and Erdönmez (n 8) 4-6.

22 Kale, 'Konkordato' (n 16) 213-214; Oğuz Atalay, 'Konkordato Reformu Hakkında Değerlendirmeler' in Muhammet Özekes (eds), *7101 sayılı Kanunla Konkordato ve Elektronik Tebligat Konularında Getirilen Yenilikler* (On İki Levha 2018) 112; Namlı, 'Değişiklikler' (n 1) 1486; Cenk Akil, 'Konkordato Prosedürü Çerçevesinde Sürekli Borç İlişkisinin Feshi (İİK m. 296, II)' (2019) 143 Türkiye Barolar Birliği Dergisi 222. According to the Government Justification of the Law No. 7101*, "When the exclusion of creditors from the processes in the bankruptcy institution, carrying out these processes between the debtor and the court, and the trial problems are evaluated together, it has been deemed as a necessity to completely abolish this institution, and instead to more effectively and actively use the concordat institution, in which the creditors and the debtor agree after a negotiation and this agreement is approved by the court."* (General Justification of Law No. 7101).

23 Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 478; Kale, 'Konkordato' (n 16) 214.

24 Oliver Kälin, 'Die Sanierung der Aktiengesellschaft Ein Rechtshandbuch für Verwaltungsräte' (Schulthess 2016) N. 682, p. 270. The restructuring law, which entered into force on 1 January 2014, originates from reasons such as the Swissair crisis and the restructuring of companies experiencing financial difficulties (Lukas Müller and Ronja Lind, 'Fünf Jahre neues Sanierungsrecht: Erfahrungen, Befunde und Entwicklungen – Die Schweiz auf dem Weg zum "Swiss Chapter 11"?' (2019) Expert Focus, EXPERTsuisse 637). In other words, the concordat procedure is the result of a revision project initiated in response to the collapse of the Swissair company (Daniel Oehri, **'**Der Sachwalter im Nachlassverfahren: Ein Diener zweier Herren' (Herausgeber: Peter Gauch) in *AISUF – Arbeiten aus dem Iuristischen Seminar der Universitat Freiburg Schweiz Band/Nr 380* (Schulthess 2018) N. 46, p. 17). An important goal of the restructuring law revision as of 1 January 2014 was to encourage and facilitate company restructuring (Daniel Hunkeler and Zeno Schönmann, 'Grundriss des prepacks' (Thomas Sprecher Herausgeber) *Sanierung und Insolvenz von Unternehmen IX Neue Entwicklungen*, (EIZ – Europa Institut Zürich Band/Nr. 192), (Schulthess 2019) 45).

25 Pekcanıtez and Erdönmez (n 8) 5; Kale, 'Konkordato' (n 16) 214; Cenk Akil, 'Konkordato Mühletinin Alacaklılar Bakımından Sonuçları (28.02.2018 Tarih ve 7101 Sayılı Kanunla Yapılan Değişikliklere Göre)' (2019) 141 Türkiye Barolar Birliği Dergisi 228. It should be noted that there have also been changes in the Swiss law recently. Accordingly, with the new concordat provisions that entered into force on 1 January 2014, significant changes have occurred in the Swiss Federal Debt Enforcement and Bankruptcy Law in the regulations regarding concordat (Oliver Kälin, 'Chancen und Risiken der aktienrechtlichen Sanierung – ein Überblick' (Thomas Sprecher Herausgeber) *Sanierung und Insolvenz Unternehmen X* (EIZ – Europa Institut Zürich Band/Nr. 198, 2020) 9). As a result of these changes, the conditions for the approval of the concordat have been facilitated, and at the same time, it has been aimed to improve the financial situation of the debtor (Serdar Kale, 'İsviçre İcra İflas Kanununun Adi Konkordato Hükümlerine Genel Bir Bakış' (Güz 2017) 4(2) İstanbul Medipol Üniversitesi Hukuk Fakültesi Dergisi 154).

26 Kale, 'Konkordato' (n 16) 214.

in the concordat regime and in this context, the decision regarding temporary relief was accepted[27] (EBL Art. 287; SchKG Art. 293 (a)). Thus, the opportunity to take a temporary relief decision has been included within the concordat provisions through which legal proceedings initiated by creditors against the debtor within the temporary relief will be suspended and new proceedings will be prevented[28] (EBL Art. 288 para 1; EBL Art. 294 para 1).

This study aims to make explanations and evaluations about the Concordat procedures in Turkish Law following the major changes realized within the framework of the amendments to the Law No. 7101 and the temporary relief decision which was not previously mentioned in the Execution and Bankruptcy Law. In line with this purpose we aim to put forward general information about the Concordat procedures and principles in Turkish law and within this context we shall reveal the concept of concordat, the purpose and types of concordat. Further we shall refer to the court commissioned and authorized in the application of concordat and we shall explain the procedures and principles of Concordat mechanism shaped within the framework of the amendments to Law No. 7101. After explaining the stages of Concordat in Turkish Law, we shall respectively refer to the persons who can apply for concordat, the documents to be attached to the concordat application and the assessment and approval of the concordat application. Thus, we shall clarify the *"temporary relief"* included in our legislation as per Law No. 7101 which is one of the aims of this study (EBL Art. 287; SchKG Art. 293 (a)). In this context, we shall specify the measures to be taken regarding the temporary relief decision introduced as a new mechanism, the announcement of the temporary relief, whether there is a possibility to apply to legal remedies against the temporary relief, the duration of the temporary relief and the consequences of the temporary relief. Our study will be concluded with the recent developments and current practices and experiences in Turkey related to Concordat.

II. General Information About the Concordat in Turkish Law as An Alternative to Suspension of Bankruptcy

A. The Concept and Purpose of Concordat

Concordat is an institution that, conceptually, enables the debtors whose financial situation has been deteriorated to get rid of the pressure of the possible creditors

27 Kale, 'Konkordato' (n 16) 214; Müjgan Tunç Yücel: Konkordato Mühletinin Alacaklılar Bakımından Sonuçları, On İki Levha, İstanbul, 2020, § 1, s. 6.

28 Pekcanıtez and Erdönmez (n 8) 32; Kale, 'Konkordato' (n 16) 214; Sarısözen, *7101 sayılı Kanun* (n 2) 56-57; Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 487. As can be seen, the result of the temporary respite decision for concordat is not the cancellation of the execution proceedings initiated. Accordingly, the result that will occur upon the decision of temporary respite in terms of concordat is that the proceedings are suspended. Therefore, proceedings will continue from where they left off in order for the creditors to collect their receivables as soon as the respite comes to an end (Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 487).

who may undertake legal proceedings against them, to restructure their debts and at the same time to avoid coming to the brink of bankruptcy[29].

The purpose of the Concordat is to make an agreement between the debtor who have difficulty in repaying the debt and the creditors[30]. Thus, owing to Concordat, the debtor will be relieved of the enforcement proceedings filed against him/her, the creditor shall be able to collect an amount higher than the amount that he/she would in case he/she had applied for enforcement proceedings and finally the public interest will be protected via preventing unemployment by ensuring the continuity of the activities of the enterprises[31]. As is seen Concordat basically aims to secure the interests of the *"debtor"*, the *"creditor"* and the *"public"*[32].

It is not necessary for the debtor to be a person subject to bankruptcy in order to conclude a concordat with his/her creditors[33]. Likewise concordat can be concluded by the debtor whose bankruptcy can be claimed and a debtor who is not subject to bankruptcy can also apply for concordat[34]. In this context, it is possible for all real or legal persons - *joint stock companies, limited companies, ordinary partnerships, limited partnerships, associations and foundations* - to apply for non-bankruptcy (ordinary) concordat, regardless of whether the applicant is subject to bankruptcy or not[35]. The same rule applies in Swiss Law, however, it is foreseen in the *doctrine* that the "*estate"* can take the advantage of concordat in the liquidation of the inheritance and the "*the board of property owners*" can take the advantage of concordat in the property ownership[36]. On the other hand, it is stipulated that the ordinary partnership without legal personality cannot benefit from concordat, considering that it would not be subject to execution proceedings[37].

29 Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 477; Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 617. For the similar definitions of concordat, *see*: Postacıoğlu (n 1) 12; Üstündağ (n 1) 227; Yıldırım and Deren-Yıldırım (n 6) 517; Kuru, El Kitabı (n 1) 1443; Arslan, Yılmaz and Taşpınar Ayvaz, *İcra* (n 1) 625; Tanrıver and Deynekli (n 1) 29; Muşul, *C. II* (n 1) 1672; Muşul, *İflas ve Konkordato* (n 1) 375; Altay and Eskiocak (n 1) N. 21, p. 15; Sarısözen, *Konkordato* (n 1) 84; Balcı, Konkordato (n 1) 21; Kaplan (n 1) 17; Uyar, *Yeni Konkordato* (n 1) 3; Baki Kuru, Ramazan Arslan and Ejder Yılmaz, *İcra ve İflas Hukuku Ders Kitabı* (Gözden Geçirilmiş, 6352 sayılı Kanunla Getirilen Yenilikler ve Yapılan Değişiklikler İşlenip Değerlendirilmiş 28. Bs, Yetkin 2014) 625; Namlı, 'Değişiklikler' (n 1) 1494; Mert Namlı, 'Concordat as a Way of Restructiıng in Turkish Insolvency Law after the 2018 Reform' (2019) 30 (8) International Company and Commercial Law Review 443; Amonn and Walter (n 1) N. 2.

30 Yıldırım and Deren-Yıldırım (n 6) 517.

31 Yıldırım and Deren-Yıldırım (n 6) 517.

32 Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 619. As a matter of fact, as stated in the justification of the Law No. 7101, improvement of the investment environment in Turkey was one of the intended purposes with the amendments made in the concordat provisions of Debt Enforcement and Bankruptcy Law No. 2004. An indicator revealing the aspect of the concordat institution that protects the interests of the public is that this institution provides a great support to the State in terms of fulfilling its public obligations by ensuring the continuity in tax resources and providing employment with the continuation of the enterprises. Thus, it will be possible to prevent economic turmoil in times of crisis by means of the existence of law improvement institutions such as concordat (Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 620).

33 Yıldırım and Deren-Yıldırım (n 6) 520; Muşul, *C. II* (n 1) 1673; Levent Börü and Şafak Parlak Börü, 'Konkordatonun Kefalet Sözleşmesine Etkileri' (2020) 78(3) İstanbul Hukuk Mecmuası 1243; Uyar, *Yeni Konkordato* (n 1) 20.

34 Muşul, *C. II* (n 1) 1673.

35 Michel Kähr, 'Ein Sanierungsrecht für Versicherungen' (Thomas Sprecher Herausgeber) *Sanierungd und Insolvenz von Unternehmen IX Neue Entwicklıngen* (EIZ – Europa Institut Zürich Band/Nr. 192, 2019) 77.

36 KUKO SchKG-Hunkeler, Art 293 (n 5) N 10-11.

37 KUKO SchKG-Hunkeler, Art 293 (n 5) N 10-11.

However, the opportunity to apply to the abolished bankruptcy postponement mechanism was only available to "*equity companies and cooperatives*"[38] [EBL Art. 179 ff.; Turkish Commercial Code (= TCC) Art. 376 para 3]. In this respect, it was not possible for real person merchants and sole proprietorships other than equity companies and cooperatives over-indebtedness to apply for bankruptcy postponement[39]. For this reason, the fact in the ***doctrine*** of Turkish Law stipulating that *non-bankruptcy ordinary concordat, which is one of the types of concordat* is an opportunity that every debtor can benefit from, whether it is subject to bankruptcy or not causes it to be considered as a mechanism that is distinguished from other restructuring institutions and ensures equality among debtors[40]. In our opinion, it was an appropriate decision to introduce such amendments to the Law No. 7101 as well as the Execution and Bankruptcy Law and to improve the functionality of the concordat mechanism.

B. Types of Concordat in Turkish Law

Concordat is discussed in different types within the framework of various criteria[41]. As a matter of fact, concordat is subjected to examination by categorizing into types according to (1) the time it is concluded, (2) the way it is concluded, (3) the content (or the purpose)[42]. Types of concordat in accordance with its content are; "*deferred concordat*", "*acquitted concordat*", "*combined concordat*" and "*concordat through asset abandonment*"[43]. Types of concordat is divided into two in accordance with the

38 Selçuk Öztek, *İflasın Ertelenmesi* (Arıkan 2007) 26; İsmet Sayhan, 'Anonim Şirketlerde Aktiflerin Pasifleri Karşılayamamasının Sonucu Olarak İflas ve İflasın Ertelenmesi' (2005) XXIII (1) Banka ve Ticaret Hukuku Araştırma Dergisi 98. In other words, the legislator did not introduce the possibility of requesting the postponement of bankruptcy to all persons subject to bankruptcy but only to *"capital companies and cooperatives"* that are deeply in debt. Furthermore, the banks could not request the postponement of bankruptcy despite having a stock company status (Hakan Pekcanıtez, 'İflasın Ertelenmesi' İstanbul Barosu Dergisi (2005) 79(2) 323 ff.).

39 At this point, postponement of bankruptcy institution differs from the (non-bankruptcy) concordat, which is a type of concordat (SchKG Art. 293 ff.), which we can express as another institution that temporarily prevents the immediate adjudication of bankruptcy. Because, postponement of bankruptcy institution can only be in question in terms of capital companies and cooperatives that are deeply in debt, while the concordat (non-bankruptcy) may be in question for all kinds of debtors (Schönenberger v B, 'Der Konkursaufshub nach Art. 725a OR' (BlSchk, 2002-Heft 5, s. 161-189). (Çev Üstündağ, S), "İsviçre Borçlar Kanunu (OR) madde 725a'ya göre İflasın Ertelenmesi' (Mart 2005) 111 Yargı Dünyası 25; Yıldırım and Deren-Yıldırım (n 6) 503; Evren Kılıçoğlu, 'İflasın Ertelenmesinin Konkordato ve Uzlaşma Yoluyla Yeniden Yapılandırma Kurumuyla Karşılaştırılması' *Prof. Dr. Yavuz Alangoya İçin Armağan* (Beta 2007) 456). Although the legislator has granted capital companies the opportunity to postpone bankruptcy; as stated in the Supreme Court decisions and doctrine, it is not possible for banks to be established as capital companies to request a postponement of bankruptcy (**In doctrine** *see*: Schönenberger, *Art. 725a* (n 35) 15; Pekcanıtez, 'İflasın Ertelenmesi' (n 34) 334; Abdurrahim Karslı, *İcra ve İflas Hukuku* (Yenilenmiş ve Gözden Geçirilmiş 3. Bs., Alternatif 2014) 495; Karslı, 'İflasın Ertelenmesi' (n 11) 264; Şakir Balcı, *İflasın Ertelenmesi Usul ve Esaslar* (Gözden Geçirilmiş Yenilenmiş 3. Bs., Seçkin 2010) 247; Kılıçoğlu (n 35) 456; Also *see*: Supreme Court 19. CD, 17.11.1995, M. 7299, D. 9852. For the decision *see:* https://lib.kazanci.com.tr/kho3/ibb/anaindex.html). It must be stated that in EBL (Enforcement and Bankruptcy Law) Art. 179, the legislator has not explicitly stated the banks as one of the capital companies that cannot demand postponement of bankruptcy (*See*: EBL Art. 179). On the other hand, the legislator explicitly states that the provisions restructured through reconciliation cannot be applied to banks (*See*: EBL Art. 309t para 2).

40 Yıldırım and Deren-Yıldırım (n 6) 517.

41 Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 479; Uyar, *Yeni Konkordato* (n 1) 19.

42 Yıldırım and Deren-Yıldırım (n 6) 518; Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 621.

43 Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 621-622; Muşul, *C. II* (n 1) 1674; Öztek, Budak, Tunç Yücel, Kale and Yeşilova, Madde 285 (n 1) N 3; Uyar, *Yeni Konkordato* (n 1) 20.

time of execution of bankruptcy proceedings[44]. Accordingly, the types of concordat in terms of the time of execution are "*non-bankruptcy concordat*" and "*concordat after bankruptcy*"[45]. The types of concordat in terms of the means of execution are "*judicial (official) concordat*" and "*private (special) concordat*"[46].

The concordat regulated as per Article 285 of the Execution and Bankruptcy Law is a judicial (official) concordat[47]. Accordingly, in order for the judicial (official) concordat to take place, it is necessary to follow the legal procedure stipulated in the law (EBL Art. 285 ff.)[48]. In this way the debtor, by applying to judicial (official) concordat, ensures the settlement of its debts in full by making an agreement upon the approval of all creditors and under the supervision of the court[49]. The private (special) concordat, on the other hand, is the concordat realized under the conditions agreed upon by the debtor and the creditor, without the involvement of the court[50]. This type of concordat only binds the creditor and the debtor who have mutually agreed upon and is also subject to the provisions of the Code of Obligations instead of the Execution and Bankruptcy Law[51].

Execution and Bankruptcy Law incorporates provisions governing *"ordinary concordat (non-bankruptcy concordat)"* (EBL Art. 285-308/h), *"concordat after bankruptcy"* (Art. 309) as "*concordat through asset abandonment*" (EBL Art. 309/a-309 para 1)[52]. Ordinary concordat refers to a situation governed within the scope of Art. 285 ff. of Execution and Bankruptcy Law out of concordat through asset abandonment and non-judicial (private) concordat[53].

This study shall focus comprehensively on *"judicial (official) concordat"* governed within the scope of Art. 285 ff. of Execution and Bankruptcy Law and

44 Yıldırım and Deren-Yıldırım (n 6) 519.

45 Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 622; Öztek, Budak, Tunç Yücel, Kale and Yeşilova, Madde 285 (n 1) N. 2.

46 Tanrıver and Deynekli (n 1) 42; Muşul, *C. II* (n 1) 1673; Muşul, *İflas ve Konkordato* (n 1) 376; Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 622; Yıldırım and Deren-Yıldırım (n 6) 518; Kuru, El Kitabı (n 1) 1444; Sarısözen, *Konkordato* (n 1) 86; Kaplan (n 1) 18; Uyar, *Yeni Konkordato* (n 1) 20.

47 Kuru, El Kitabı (n 1) 1444; Yıldırım and Deren-Yıldırım (n 6) 518.

48 Yıldırım and Deren-Yıldırım (n 6) 518.

49 Yıldırım and Deren-Yıldırım (n 6) 518.

50 Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 621; Öztek, Budak, Tunç Yücel, Kale and Yeşilova, Madde 285 (n 1) N. 1; Uyar, *Yeni Konkordato* (n 1) 20.

51 Kuru, El Kitabı (n 1) 1445; Öztek, Budak, Tunç Yücel, Kale and Yeşilova, Madde 285 (n 1) N 1; Yıldırım and Deren-Yıldırım (n 6) 518; Muşul, *C. II* (n 1) 1673; Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 478; Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 621; Uyar, *Yeni Konkordato* (n 1) 20.

52 Muşul, *İflas ve Konkordato* (n 1) 376; Levent Börü 'Adi konkordatoda Alacaklıların Alacaklarını Bildirmesi" (2019) 10(1) İnönü Üniversitesi Hukuk Fakültesi Dergisi 174; Börü and Parlak Börü (n 29) 1243; Göksu (n 9) 130. Concordat through asset abandonment that were not previously available in Turkish law, entered our Enforcement and Bankruptcy Law with the amendment of Law No. 4949. In terms of types of concordat, the distinction between non-bankruptcy (ordinary) concordat and concordat after bankruptcy was accepted in the law. Ordinary concordat is a type of concordat that is commonly used in *practice* (Ejder Yılmaz, *İcra ve İflas Kanunu Şerhi* (Yetkin 2016) 1257).

53 Süha Tanrıver, '4949 sayılı İcra ve İflas Kanunu'nda Değişiklik Yapılmasına Dair Kanun'un Adi Konkordato ile İlgili Hükümlerde Getirmiş Olduğu Değişikliklerin Tespiti ve Değerlendirilmesi' (2004) 51 Türkiye Barolar Birliği Dergisi 67-68.

shall make explanations about the temporary relief decision included in the non-bankruptcy (ordinary) concordat. Below, the procedure to be followed in non-bankruptcy (ordinary) concordat will be outlined first.

III. An Overview of the Concordato Procedure Following the Amendment to the Law No 7101

A. The Court Commissioned and Authorized as per Turkish Law for the Application of Concordat

In order to be able to request concordat, the relevant debtor/creditor party should initially apply to the Court commissioned and authorized in this regard. In Turkish law, the Court commissioned and authorized by Execution and Bankruptcy Law Art. 285 para 3 against the creditor or the debtor who wants to apply for concordat is the *"commercial court of first instance"*[54]. One of the major changes introduced by Law No. 7101 for the regulations regarding concordat in Turkish law is related to the Court where the concordat application will be submitted[55]. Thus, the duties of the enforcement court in the concordat procedure were terminated following the amendments of Law No. 7101[56].

With the amendments of Law No. 7101, the legislator has introduced a regulation parallel to Swiss law by designating the commissioned Court for Concordat procedures in Turkish law as the *"commercial court of first instance"*[57]. ***In our opinion***, it is an appropriate decision to terminate the assignment of enforcement courts for the concordat proceedings and to assign solely the commercial courts of first instance, as thereby only a single court will be responsible for the same procedure.

In brief, the duty of the enforcement court in the concordat procedure has been terminated with the amendments of Law No. 7101[58]. The fact that the Court solely

54 Kale, 'Konkordato' (n 16) 217; Pekcanıtez and Erdönmez (n 8) 13; Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 635, Namlı, 'Değişiklikler' (n 1) 1502. Pursuant to the decision of the High Council of Judges and Prosecutors, in regions with three or fewer commercial courts of first instance, the first commercial court is authorized; and in places where there are more than three commercial courts of first instance, the first, second and third commercial courts are authorized in this matter (Altay and Eskiocak (n 1) N. 41, p. 34-35). For the decision of the Council of Judges and Prosecutors (Official Gazette 05.04.2018, Number 30282), *see*: https://www.resmigazete.gov.tr/eskiler/2018/04/20180405-1.pdf. As can be seen, after this decision of the Council of Judges and Prosecutors, the relationship between the commercial courts of first instance has been turned into a duty relationship in terms of the applications regarding concordat. Moreover, a decision was made in this direction by the Istanbul Regional Court of Justice. The aforementioned decision includes the following statements: *"The duty of the courts is regulated in the article 1 and in the following articles of the Civil Procedure Law numbered 6100 and is related to the public order. Therefore, it is taken into consideration by the Court ex officio and at every stage of the trial. Thus, Therefore, the relationship between the Istanbul 1-2-3rd Commercial Courts of First Instance and the other commercial courts in the same courthouse has turned into a duty relationship in terms of the disputes and cases determined by the Council of Judges and Prosecutors…"*(Istanbul Regional Court of Justice, 17th Civil Department, 7.2.2019, M. 2018/3154, D. 2019/230; For the decision *see:* https://lib.kazanci.com.tr/kho3/ibb/anaindex.html). For the same decision, *see*: Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 636.

55 Pekcanıtez and Erdönmez (n 8) 13; Öztek, Budak, Tunç Yücel, Kale and Yeşilova, Madde 285 (n 1) N 36.

56 Kale, 'Konkordato' (n 16) 217; Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 636.

57 Pekcanıtez and Erdönmez (n 8) 13-14.

58 Sarısözen, *7101 sayılı Kanun* (n 2) 48-49; Kale, 'Konkordato' (n 16) 217; Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 636; Pekcanıtez and Erdönmez (n 8) 13-14.

assigned for Concordat procedures has been designated as the "*commercial court of first instance*" with Law No. 7101 will prevent making contradictory decisions, so it has become an appropriate arrangement for procedural economy[59]. In addition, the fact that only a *"commercial court of first instance"* is appointed to deal with Concordat proceedings instead of different courts with this amendment and that the procedures will be carried out by a single court commissioned for the concordat procedure has become an appropriate arrangement as it will ensure that the procedure to be carried out faster and healthier[60].

The competent court in terms of Concordat procedures is designated as per the third paragraph of Article 285 of the Execution and Bankruptcy Law[61]. The legislator has designated a dual distinction in Turkish law as per Article 285 para 3 of the Execution and Bankruptcy Law according to whether the debtor who will apply for concordat is subject to bankruptcy or not[62]. The competent court in terms of concordat proceeding of debtors subject to bankruptcy as per Art. 154 of the Execution and Bankruptcy Law is *"the commercial court of first instance in the jurisdiction where the debtors resides"*[63] (EBL Art. 154 para 1-2; EBL Art. 285 para 3). The commercial court of first instance authorized for concordat proceedings of trade companies whose headquarters are located abroad is "*the Commercial Court of First Instance where the company's Turkey branch is located and is the Commercial Court of First Instance where the main branch is located in case the company has more than one branches in Turkey*"[64] (EBL Art. 154 para 2). In the event that the debtor on behalf of which the Concordat procedures are executed is not subject to bankruptcy, the competent court is *"the Commercial Court of First Instance in the debtor's settlement"* in accordance with paragraph 3 of Article 285 of the Execution and Bankruptcy Law[65] (EBL Art. 285 para 3).

59 Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 636.

60 Sarısözen, *7101 sayılı Kanun* (n 2) 49.

61 Öztek, Budak, Tunç Yücel, Kale and Yeşilova, Madde 285 (n 1) N 39. *In accordance with* third paragraph of Article 285 of the Enforcement and Bankruptcy Law*, "Authorized and competent court for the debtor subject to bankruptcy is the commercial court of first instance in the region mentioned in the first or second paragraphs of article 154 and for the debtor who is not subject to bankruptcy is the commercial court of first instance in the residence place of the debtor."*

62 Pekcanıtez and Erdönmez (n 8) 14; Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 636; Namlı, 'Değişiklikler' (n 1) 1502.

63 Postacıoğlu (n 1) N. 10, p. 17-18; Sümer Altay, *Türk İflâs Hukuku, 1. Cilt* (Vedat 2004) 76; Sarısözen, *7101 sayılı Kanun* (n 2) 49; Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 636; Kale, 'Konkordato' (n 16) 217; Pekcanıtez and Erdönmez (n 8) 14; Kaplan (n 1) 58; Uyar, *Yeni Konkordato* (n 1) 28; Namlı, 'Değişiklikler' (n 1) 1502. The authority rule stipulated by the legislator here is related to the public order and it is the absolute authority. Therefore, an authorization agreement contrary to this rule cannot be signed with the creditors (Öztek, Budak, Tunç Yücel, Kale and Yeşilova, Madde 285 (n 1) N 39). Changing the procedure center after the debtor has requested a concordat will not change the jurisdiction of the court (Uyar, *Yeni Konkordato* (n 1) 29).

64 Postacıoğlu (n 1) N. 10, p. 18; Kale, 'Konkordato' (n 16) 217; Öztek, Budak, Tunç Yücel, Kale and Yeşilova, Madde 285 (n 1) N 42; Namlı, 'Değişiklikler' (n 1) 1502.

65 Pekcanıtez and Erdönmez (n 8) 14; Öztek, Budak, Tunç Yücel, Kale and Yeşilova, Madde 285 (n 1) N 43; Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 637; Kale, 'Konkordato' (n 16) 217; Sarısözen, *7101 sayılı Kanun* (n 2) 49; Namlı, 'Değişiklikler' (n 1) 1502.

B. Concordat Procedures in Turkish Law Following the Amendments of Law No. 7101

Although the general understanding regarding the concordat procedure has been preserved in Turkish law following the amendments introduced by Law No. 7101, various significant amendments have occurred in the functioning and proceedings of the concordat procedure[66].

After the new regulations introduced by Law No. 7101, the concordat proceedings will be initiated by the application of either the debtor or creditors to the commercial court of first instance with a preliminary concordat project[67]. It has been stipulated that the debtor or creditors who wish to request concordat should submit their petitions along with some documents and financial statements specified in the law (EBL Art. 286) to the assigned commercial court of first instance[68]. The amendment introduced a new regulation stipulating that not only the debtor but also each creditor who can claim bankruptcy can also apply for concordat proceedings[69] (EBL Art. 285 para 2).

The old regulation stipulating that enforcement courts are in charge in the first place when applying for concordat has been repealed[70]. Instead, with the amendments of Law No. 7101, it was stipulated that the court responsible for receiving the concordat application would be the *"commercial court of first instance"*[71].

In accordance with the concordat procedure; following the application to be filed to the commercial court of first instance with a petition and the documents specified in EBL Art. 286, the commercial court of first instance will evaluate whether it is compulsory to give a temporary relief decision[72]. The court receiving the concordat application will immediately decide a temporary respite upon determining that the documents specified as per Article 286 of the Execution and Bankruptcy Law have been duly, completely and properly submitted[73] (EBL Art. 287 para 1).

66 Muhammet Özekes, 'Konkordatoya Başvuru ve Geçici Mühlet Kararı' in Muhammet Özekes (eds), *7101 sayılı Kanunla Konkordato ve Elektronik Tebligat Konularında Getirilen Yenilikler* (On İki Levha 2018) 44.

67 Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 483; Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 647; Pekcanıtez and Erdönmez (n 8) 13; Özekes, 'Geçici Mühlet Kararı' (n 62) 44; Kale, 'Konkordato' (n 16) 214; Altay and Eskiocak (n 1) N. 41, p. 34.

68 Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 483; Altay and Eskiocak (n 1) N. 49, p. 44. In Swiss law, according to the Art. 293 (a) provision of SchKG, the application must include a provisional restructuring plan, current balance sheet, income statement and liquidity plan, or relevant documents demonstrating current and future assets (Bettina Kopta-Stutz, 'Gerichtliche Sanierungsverfahren für Schweizer Aktiengesellschaften Unter Berücksichtigung des aktienrechtlichen Konzepts zur Auslösung von Sanierungsmassnahmen' in *ZStP -Zürcher Studien zum Privatrecht Band/ Nr. 295* (Schulthess 2019) 35).

69 Kale, 'Konkordato' (n 16) 214; Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 485; Sarısözen, *7101 sayılı Kanun* (n 2) 48.

70 Sarısözen, *7101 sayılı Kanun* (n 2) 48. Also *see:* section III, A above.

71 Sarısözen, *7101 sayılı Kanun* (n 2) 48; Sarısözen, *Konkordato* (n 1) 89; Namlı, 'Değişiklikler' (n 1) 1502.

72 Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 485.

73 Kale, 'Konkordato' (n 16) 214-215; Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 485; Özekes, 'Geçici Mühlet Kararı' (n 62) 45; Altay and Eskiocak (n 1) N. 49, p. 44; Öztek, Budak, Tunç Yücel, Kale and Yeşilova, Madde 287 (n 1) N 4; Uyar, *Yeni Konkordato* (n 1) 39; Namlı, 'Değişiklikler' (n 1) 1504. This issue is also stated in the first paragraph of

The temporary respite is *"three months"*[74]. However, the court may extend the temporary respite by no more than two months upon the request of the debtor or temporary commissioner (trustee) before the expiry of this period of three months[75]. The court receiving the concordat application shall appoint a temporary concordat commissioner (trustee) together with the temporary respite[76].

In the event it appears that it is possible to reach the success within the temporary relief period, the Court may grant a "*peremptory (definitive) respite*" upon the request of the creditor or the debtor who applies for the concordat[77] (EBL Art. 289 para 3). The period stipulated by the legislator for the peremptory (definitive) respite is *"one year"*[78]. In exceptional circumstances where it appears that the one year period ruled by the court will not be enough, the peremptory (definitive) respite may be extended by the court to six months upon a request by the debtor or the commissioner (trustee)[79] (EBL Art. 289 para 6 sentence 1). The court, which takes the peremptory (definitive) respite decision, will also appoint a peremptory (definitive) respite commissioner (trustee)[80].

The Court may compose a "*creditors council*", if required, at a time deemed appropriate within the peremptory (definitive) respite[81]. In fact, an important novelty introduced by Law No. 7101 regarding the concordat proceedings is the opportunity to compose a "*creditors council*" upon the peremptory (definitive) respite or within the peremptory (definitive) respite period[82]. In exceptional cases stipulated by the law, it is obligatory to compose a creditors council[83].

Article 287 of the Enforcement and Bankruptcy Law as follows: *"Upon the request of concordat, the court decides upon a temporary respite after determining that the documents specified in Article 286 are presented in complete, and takes all measures deemed necessary to protect the assets of the debtor, including the situations in the second paragraph of Article 297."*

74 Kale, 'Konkordato' (n 16) 215; Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 486; Uyar, *Yeni Konkordato* (n 1) 44.

75 Kale, 'Konkordato' (n 16) 215; Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 486; Altay and Eskiocak (n 1) N. 49, p. 44-45; Uyar, *Yeni Konkordato* (n 1) 44.

76 Özekes, 'Geçici Mühlet Kararı' (n 62) 46; Kale, 'Konkordato' (n 16) 215; Altay and Eskiocak (n 1) N. 49, p. 44. The temporary concordat commissioner must "*immediately*" start his/her duty upon receiving the notice of the court decision from the court registry (Ali Cem Budak and Serdar Kale, *Konkordato Komiserinin Kontrol Listesi* (Adalet 2019) 13).

77 Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 491; Kale, 'Konkordato' (n 16) 215; Altay and Eskiocak (n 1) N. 50, p. 45. Hence, in the third paragraph of Article 289 of the Enforcement and Bankruptcy Law, this issue is stated as follows: *"Upon understanding that the concordat is possible to succeed, the debtor is given a one-year peremptory respite. Together with these decisions, the court decides that the temporary commissioner or commissioners will continue to work unless there is a situation that requires a new assignment and submits the file to the commissioner*."

78 Kale, 'Konkordato' (n 16) 215.

79 Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 491; Kale, 'Konkordato' (n 16) 215; Altay and Eskiocak (n 1) N. 50, p. 45. In the first clause of sixth paragraph of Article 289 of the Enforcement and Bankruptcy Law, this issue is regulated by the legislator exactly as follows: *In special cases that pose difficulties, the peremptory respite may be extended up to six months by the court upon request and the justified report of the commissioner."*

80 Kale, 'Konkordato' (n 16) 215.

81 Özekes, 'Geçici Mühlet Kararı' (n 62) 46; Kale, 'Konkordato' (n 16) 215.

82 Sarısözen, *7101 sayılı Kanun* (n 2) 62.

83 Kale, 'Konkordato' (n 16) 215.

The commissioner (trustee) appointed by the Court during the concordat proceedings invites the creditors to declare their receivables[84]. Based upon the amendments introduced by Law No. 7101, the commissioner (trustee) will give the creditors a period of "*fifteen days*" to determine who the creditors are and invite them to declare their receivables[85]. As can be seen, the legislator shortened the "*twenty day*" period stipulated in the former law and decreased it to "*fifteen days*"[86].

Having completed the stages of preparing the concordat project and the creditors' declaration of their receivables, the concordat commissioner (trustee) invites the creditors to convene and negotiate the concordat project, with a new announcement[87]. The purpose of the creditors meeting is to inform the creditors about the assets of the debtor and at the same time to receive their approval to the concordat[88]. Creditors who have declared their receivables within the required period or those who are proven to be creditors as per the detailed balance sheet -*although they have not declared their receivables on time*- may attend the creditors meeting[89]. In addition, the debtor him/herself is obliged to participate in the creditors meeting in order to provide the necessary information[90] (EBL Art. 302 para 2).

The next stage following the creditors meeting is *"the submission of the concordat project to the Court for approval"*. In this context, the concordat commissioner (trustee) will prepare a report specifying whether the concordat project is accepted by the creditors and whether the project is appropriate to be approved together with its justifications and will submit them to the commercial court of first instance together with all the documents regarding concordat[91] (EBL Art. 302 para 8).

The commercial court of first instance examines the concordat plan and initiates a judicial process in order to evaluate whether it can be approved or not[92] (EBL Art. 304-308b). The finalized decision on whether the concordat plan shall be approved or not should be made within the peremptory (definitive) respite period[93]. However, if the court realizes that it cannot make a decision within the peremptory (definitive)

84 Sarısözen, *7101 sayılı Kanun* (n 2) 75; Kale, 'Konkordato' (n 16) 215.

85 Kale, 'Konkordato' (n 16) 215; Sarısözen, *7101 sayılı Kanun* (n 2) 76.

86 Sarısözen, *7101 sayılı Kanun* (n 2) 76.

87 Kale, 'Konkordato' (n 16) 215; Sarısözen, *7101 sayılı Kanun* (n 2) 76; Altay and Eskiocak (n 1) N. 51, p. 45.

88 Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 507.

89 Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 507; Altay and Eskiocak (n 1) N. 52, p. 45-46.

90 In the second paragraph of Article 302 of the Enforcement and Bankruptcy Law, this issue is stated exactly as follows: *"The debtor is obliged to be present at the meeting to make the necessary explanations*".

91 Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 508. This issue is stated in the eighth paragraph of Article 302 of the Enforcement and Bankruptcy Law exactly as follows: *"The Commissioner shall submit all documents regarding concordat and the justified report regarding whether the concordat project is accepted and the approval is appropriate within seven days at the latest after the end of the adherence period*".

92 Kale, 'Konkordato' (n 16) 215.

93 Sarısözen, *7101 sayılı Kanun* (n 2) 81; Kale, 'Konkordato' (n 16) 215.

respite period, it will be able to order the extension of the peremptory (definitive) respite period until the decision is taken[94]. In any case, this period to be ruled by the court will not exceed six months[95].

If, as a result of the examination, the court finds out that the necessary conditions for the approval of the concordat are met, it may decide on either to approve the concordat or to reject the request for approval[96].

IV. Concordat Application and Assessment of the Concordat Application

A. Principles Regarding the Concordat Application

1. Persons Who Can Apply for Concordat

As a general rule, every debtor has the right to benefit from the concordat procedure regardless of the title[97]. It is possible for the non-merchant debtors to apply for concordat[98]. The persons who can apply for concordat and the situations that may be found appropriate to apply for concordat are regulated in the first paragraph of Article 285 of the Execution and Bankruptcy Law[99]. As per EBL Art. 285 para 1, *"any debtor who cannot pay his/her debts on due date or who is in danger of not being able to pay his/her debts on due date"* may apply to concordat proceedings[100]. The regulation preceding the amendments of Law No. 7101 included the expression *"any debtor who wants to benefit from concordat provisions"*[101]. As is seen, Law No. 7101 as well as Article 285 governing concordat application introduced significant amendments[102]. In addition, all creditors who can claim bankruptcy are also entitled

94 Kale, 'Konkordato' (n 16) 215; Sarısözen, *7101 sayılı Kanun* (n 2) 81-82.

95 Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 511; Sarısözen, *7101 sayılı Kanun* (n 2) 82; Kale, 'Konkordato' (n 16) 216.

96 Sarısözen, *7101 sayılı Kanun* (n 2) 82.

97 Postacıoğlu (n 1) N. 11, p. 18.

98 Postacıoğlu (n 1) N. 11, p. 18; Altay and Eskiocak (n 1) N. 21, p. 15; Muşul, *C. II* (n 1) 1673; Uyar, *Yeni Konkordato* (n 1) 23. Moreover, whether the heirs can request a concordat or not is a controversial issue in the doctrine (Altay and Eskiocak (n 1) N. 104, p. 143). In this context, *in the* ***doctrine***, it is a matter of debate whether the heirs can make a concordat agreement with the creditors of the inheritor by claiming the inadequacy of the properties in the inheritance (Postacıoğlu (n 1) N. 12, p. 19; Uyar, *Yeni Konkordato* (n 1) 24). At this point, another discussion emerges about whether it is possible for the debtor to conclude a concordat agreement with his/her creditors who have certificate of insolvency (Postacıoğlu (n 1) N. 13, p. 20-21; Altay and Eskiocak (n 1) N. 103, p. 142).

99 In the first paragraph of Article 285 of the Enforcement and Bankruptcy Law, there is a regulation as follows: *"Any debtor who is unable to pay his/her debts when due or is in danger of not being able to pay the debts in due time, can request a concordat in order to be able to pay the debts by receiving more time or abatement; or in order to avoid a possible bankruptcy"*.

100 Pekcanıtez and Erdönmez (n 8) 14; Sarısözen, *7101 sayılı Kanun* (n 2) 49; Namlı, 'Değişiklikler' (n 1) 1494; Namlı, 'Concordat' (n 25) 444.

101 Yıldırım and Deren-Yıldırım (n 6) 520; Sarısözen, *7101 sayılı Kanun* (n 2) 46; Kuru, El Kitabı (n 1) 1446; Muşul, *C. II* (n 1) 1674; Arslan, Yılmaz and Taşpınar Ayvaz, *İcra* (n 1) 629.

102 Öztek, Budak, Tunç Yücel, Kale and Yeşilova, Madde 285 (n 1) N 12; Sarısözen, *7101 sayılı Kanun* (n 2) 46. Hence, this issue is regulated exactly as follows in Article 13 of Law No 7101:
Article 285 of Law No. 2004 has been amended as follows:

to request concordat[103] (EBL Art. 285 para 2).

2. Situations Appropriate to Apply for Concordat

As per amended Article 285 para 1 of Law No. 7101, situations appropriate to apply for concordat are stipulated as *"the debtor's inability to pay its debts that are due"* and *"where the debtor is in danger of being unable to repay the debts that are due"*[104]. On the other hand, another situation appropriate to apply for concordat is the regulation stipulated in the amended Article 377 of Turkish Commercial Code (TCC) No. 6102 as a result of Law No. 7101[105]. In fact, the first paragraph of the amended Article 377 of Turkish Commercial Code (TCC) stipulated that "*The administrative board or any creditor can request a concordat together with the bankruptcy claim to be filed pursuant to the third paragraph of Article 376 or during the bankruptcy proceedings executed in this context in accordance with Article 285 and following articles of the Law No. 2004"*[106]. The first paragraph of the amended Article 377 of Turkish Commercial Code (TCC) and Article 376 para 3 regulates[107] the "*over-indebtedness*" (*die Überschuldung*) situation and foresees that a concordat can be requested in such a case[108]. Upon all these statements, we would like to state that:

"*Any debtor who is unable to pay his/her debts when due or is in danger of not being able to pay the debts in due time, can request a concordat in order to be able to pay the debts by receiving more time or abatement; or in order to avoid a possible bankruptcy.*
Any creditor, who can request bankruptcy, may request, with a justified petition, concordat procedures to be initiated against the debtor.
Authorized and competent court for the debtor subject to bankruptcy is the commercial court of first instance in the region mentioned in the first or second paragraphs of article 154 and for the debtor who is not subject to bankruptcy is the commercial court of first instance in the residence place of the debtor.
The person requesting concordat is obliged to pay the concordat expense advance specified in the tariff that was implemented by the Ministry of Justice. In this case, Articles 114 and 115 of the Civil Procedure Law dated 12/1/2011 and numbered 6100 are applied by comparing. "

103 Öztek, Budak, Tunç Yücel, Kale and Yeşilova, Madde 285 (n 1) N 19. It should be noted that, as a result of the amendment of Law No. 4949, a regulation that the creditors can also request concordat has been accepted in our Enforcement and Bankruptcy Law. The justification for this amendment adopted with Law No. 4949 can be expressed as follows*: "With the paragraph added to the article, the creditors have been given the opportunity to request the initiation of concordat procedures with a justified petition about the debtor and thus to ensure equality between the creditors"* (Justification of the article of Law No. 4949).

104 Öztek, Budak, Tunç Yücel, Kale and Yeşilova, Madde 285 (n 1) N 24; Namlı, 'Değişiklikler' (n 1) 1496; Namlı, 'Concordat' (n 25) 444.

105 Pekcanıtez and Erdönmez (n 8) 9.

106 Öztek (n 34) N. 25. For detailed explanations on this issue, *see*: Arslan Kaya, *Notlu Türk Ticaret Kanunu* (Güncellenmiş 8. Bs, Beta Basım 2020) 131.

107 Thus, the third paragraph of Article 376 of the Turkish Commercial Code is regulated as follows: *"In the event that there are signs of suspicion that the company is in debt, the board of directors shall issue an interim balance sheet on the basis of both the continuity of the business and the possible sales prices of the assets. Provided that it is understood from this balance sheet that the assets are not sufficient to meet the receivables of the creditors of the company, the board of directors notifies this situation to the commercial court of the place where the company headquarters is located and requests the bankruptcy of the company. This situation is valid unless the creditors of the company debts that could meet the deficit and avoid insolvency of the company agree upon the order change in terms of privileges in written form and that the validity and reliability of this declaration or agreement is confirmed by the experts appointed by the court to be applied for bankruptcy. Otherwise, the application made to the court for expert examination is deemed as a bankruptcy notification."*

108 Oruç Hami Şener, *Teorik ve Uygulamalı Ortaklıklar Hukuku Ders Kitabı* (Gözden Geçirilmiş 4. Bs, Seçkin 2019) 388; Fatih Bilgili and Ertan Demirkapı, *Şirketler Hukuku Dersleri* (7. Bs., Dora 2020) 286; Şaban Kayıhan, *Şirketler Hukuku* (Gözden Geçirilmiş 4. Bs., Seçkin 2020) 196. Furthermore, bankruptcy could be postponed before the amendment of the regulation in Art. 377 of TCC with the Law No. 7101. For detailed explanations on this issue, *see:* Hasan Pulaşlı, *Şirketler*

considering TCC Art. 376 para 3 and TCC Art. 377 together, the *over-indebtedness* of the equity companies and cooperatives is one of the conditions stipulated in the law as an appropriate situation to apply for a concordat[109]. In accordance with Article 377 of Turkish Commercial Code (TCC) No. 6102, *the administrative board or any creditor can request a concordat together with the bankruptcy claim to be filed pursuant to "over-indebtedness" stipulated in the third paragraph of Article 376 or during the bankruptcy proceedings executed in this context in accordance with Article 285 and following articles of Execution And Bankruptcy Law*[110].

In brief, the situations appropriate to apply for Concordat can be summarized as; (1) the debtor's inability to pay its debts that are due; (2) where the debtor is in danger of being unable to repay the debts that are due; and (3) "*over-indebtedness*" of the equity companies and the cooperatives.

The situation where the debtor is in danger of being unable to repay the debts that are due is stipulated as one of the situations appropriate to apply for Concordat however, it refers to a conceptually abstract situation[111].

The over-indebtedness (*Überschuldung*) of equity companies and cooperatives, in the most general terms, is defined as the inability of the company's assets to meet its liabilities, i.e. its debts[112]. In Turkish law and ***doctrine***, over-indebtedness is referred to as the inability of the company to meet its debts with its assets and receivables[113].

Hukuku Genel Esaslar (Güncellenmiş ve Genişletilmiş 4. Bs, Adalet 2016) N. 262; Soner Altaş, *Türk Ticaret Kanununa Göre Anonim Şirketler* (Güncellenmiş ve Genişletilmiş 8. Bs, Seçkin 2017) 345; İsmail Kırca, Feyzan Hayal Şehirali Çelik and Çağlar Manavgat, *Anonim Şirketler Hukuku, C. 1, Temel Kavram ve İlkeler, Kuruluş, Yönetim Kurulu* (Banka ve Ticaret Hukuku Araştırma Enstitüsü Türkiye İş Bankası A.Ş. Vakfı, Sözkesen 2013) 590-591.

109 Pekcanıtez and Erdönmez (n 8) 10; Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 644; Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 483; Sarısözen, *Konkordato* (n 1) 94. It should be noted that, the regulations stipulated in the provision of Article 376 of TCC titled *"Capital loss and over-indebtedness"*, do not completely allow the request for concordat because it is stated in the Art. 376 para 1 of TCC that *"In the event that it is understood from the last annual balance sheet that half of the total of the capital and legal reserves are unrequited due to loss, the board of directors shall immediately call the general assembly to a meeting and present the remedial measures it deems appropriate"*. In this context, for detailed explanations regarding Art. 376 para 1 of TCC, which is crucial for our subject and differs from Art. 376 para 3 of TCC, *see:* İbrahim Çağrı Zengin, *Türk Ticaret Kanunu'na Göre Anonim Ortaklık Genel Kurulunda Yeter Sayılar* (On İki Levha 2020) 42.

110 İsmail Cem Soykan, *Türk Ticaret Kanununa Göre Anonim Ortaklıklarda Sermaye Taahhüdü Yoluyla Sermaye Arttırımı* (On İki Levha 2019) 335.

111 Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 644. On the other hand, financial difficulties, payment delays, liquidity crises (*Liquidiätskrise*) and capital loss (*Kapitalverlust*) and over-indebtedness (*Überschuldung*) are concrete situations that threaten the existence of the company (Marina Schwizer, 'Arbeitsrechtliche Fragen bei der Sanierung des Arbeitgebers' in SGRW – St Galler Schriften zur Rechtswissenschaft Band/Nr. 40 (Dike 2020) 4).

112 Basler Kommentar-Wüstiner H, *Obligationenrecht II, Art. 530-1186 OR*, *3. Abschnitt: Organistaion der Aktiengesellschaft* (3. Aufl., Helbing Lichtenhahn 2008), Art. 725, N. 29; Alexander Dubach, 'Der Konkursaufschub nach Art. 725a OR: Zweck, Voraussetzungen und Inhalt' (1998) 94 Schweizerishe Juristen-Zeitung 154; Roger Giroud, *Die Konkurseröffnung und ihr Aufschub bei der Aktiengesellschaft* (2. Aufl., Schultess 1986) N. 75 ff.; Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 645; Muhammet Özekes: "İflasın Ertelenmesi (İİK m. 179-179b; TTK m. 324)", Legal Hukuk Dergisi, 2005, (s. 3249-3283), s. 3261. In Switzerland, if the assets are not sufficient to cover the company's debts, the board of directors will inform the court (Yaşar Karayalçın, 'İsviçre Borçlar Kanununda Anonim Şirketler Hukuku Alanında Yapılan Değişiklikler' (1993) 17(1) Banka ve Ticaret Hukuku Araştırma Dergisi 30). When the assets are not sufficient to cover the debts of the company in Switzerland, the board of directors reports this to the court. In Switzerland, significant changes have been made to the provisions of OR Art. 725 and OR Art. 725a with the 1991 Act. (Karayalçın (n 108) 29).

113 Ünal Tekinalp, *Sermaye Ortaklıklarının Yeni Hukuku* (Değişiklikler ve İkincil Düzenlemelerle Güncelleştirilmiş 5. Bs

In the decisions of the Supreme Court, over-indebtedness is referred to as the situation where the assets of any equity company or the cooperative fails to meet its liabilities[114]. As is seen, in order to be able to talk about the over-indebtedness of equity companies and cooperatives, the company's assets and receivables should not be sufficient to cover their debts[115]. In this regard; in case the assets of the company or cooperative are sufficient to cover its debts however the payments are due for other reasons whatsoever, it is not possible to speak of over-indebtedness [116] therefore it is not even a matter of discussion to directly claim for the bankruptcy of the company or to apply for the bankruptcy postponement[117] (EBL Art. 179; SchKG Art. 192).

Vedat 2020) N. 12-132, p. 295; Reha Poroy, Ünal Tekinalp, Ersin Çamoğlu, *Ortaklıklar Hukuku I [Giriş, Adi Ortaklık, Ticaret Ortaklıklarına İlişkin Genel Hükümler, (Perdenin Kaldırılması, Birleşme, Bölünme, Tür Değiştirme) Kollektif, Komandit, Anonim, Halka Açık Anonim Ortaklıklar, Sermaye Piyasası Hukukunun Esasları]* (Güncellenmiş, Yeniden Yazılmış 14. Bası, Vedat 2019) N. 144e; Öztek (n 34) 57; Oğuz Atalay, *Borca Batıklık ve İflasın Ertelenmesi* (Gözden Geçirilmiş ve Yenilenmiş 2. Bs., Güncel Yayınevi 2007) 20 et seq; Pulaşlı, *Şirketler Hukuku* (n 104) N. 262; Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 378; Arslan Kaya, 'Borca Batık Anonim Şirketlerin İflasının Ertelenmesi' *Prof. Dr. Erdoğan Moroğlu'na 65. Yaş Günü Armağanı* (Beta 2001) 283; Altay, İflasın Ertelenmesi, s. 628; Kuru, El Kitabı (n 1) 1159; Özekes, 'İflasın Ertelenmesi' (n 108) 3261; Manavgat (Kırca and Şehirali Çelik) (n 104) 585; İsmail Kayar, 'Limited Ortaklıkta Mali Durumun Bozulması ve Alınacak Tedbirler' *Prof. Dr. Erdoğan Moroğlu'na 65. Yaş Günü Armağanı* (Beta 2001) 313; Sayhan (n 34) 83-84; Mustafa Can Toplu, *İflasın Ertelenmesinin Türkiye'de Uygulama Süreçleri İyileştirme Projelerinde Mali Değerlendirme ve Analizin Önemi* (Kazancı Hukuk 2010) 52; Timuçin Muşul, *İflasın Ertelenmesi* (Gözden Geçirilmiş 2. Bs., On İki Levha 2010) 89; Karslı, 'İflasın Ertelenmesi' (n 11) 272; Şener (n 104) 385; Hasan Pulaşlı, *6102 Sayılı Türk Ticaret Kanununa Göre Şirketler Hukuku Şerhi Cilt 1* (Adalet 2011), N. 612; Talih Uyar, 'İİK.'nun 179. Maddesi Üzerine Bir İnceleme' *Prof. Dr. Ejder Yılmaz'a Armağan (2. Cilt)* (Yetkin 2014) 1979.

114 A decision of the Supreme Court in this direction is as follows: *"… Avoiding over-indebtedness does not mean the payment of all debts, but means that there are more assets than liabilities according to the current values. In this case, it is inappropriate to declare bankruptcy even though it is determined in the expert report that the petitioner company is not in over-indebtedness…"* (19. Civil Department, 23.12.2010, M. 5860, D. 14737 For the decision *see*: https://lib.kazanci.com.tr/kho3/ibb/anaindex.html, Last Online Accesses: 4.3.2021). Another decision of the Supreme Court regarding over-indebtedness is as follows: "… *In determining the indebtedness, not only the records of the plaintiff, but also the current values of their assets should be examined, and at this point, the opinions of experts in their respective fields should be consulted. The Court should declare in accordance with the Article 166/2 of EBL and determine the indebtedness with the current values of the assets pursuant to Article 376 of TCC and with the amount of the debts shown in the list of creditors and other debts that can be determined in real terms pursuant to the Article 178/1 of EBL. In order to do so, the decisions must be made after an expert examination is carried out on the balance sheet submitted by the debtor company to the court and on the project reported by the company in order to improve the financial situation, and the company balance sheet (over-indebtedness sheet) is reconstructed by the experts according to the current values and the realistic data obtained as a result of the research and examination. The purpose of postponing over-indebtedness is to improve the financial position of the over-indebtedness capital company and to avoid insolvency. Avoiding insolvency does not mean the payment of all debts, but means that there are more assets than liabilities*…" (Supreme Court. 23. CD, 12.3.2018, M. 2017/1911, D. 2018/2138, For the decision *see*: https://lib.kazanci.com.tr/kho3/ibb/anaindex.html, Last Online Accesses: 4.3.2021).

115 Atalay, *Borca Batıklık* (n 109) 20. At this point, an issue needs to be stated separately. Accordingly, under the usual conditions of life, there may be difficulties in paying the debts of the partnership. Because, partnerships may have difficulties to make payments in certain months. On the contrary, the company may have no trouble making its payments in the following months. In such cases, it cannot be said that there are more liabilities than the assets, in other words, the company is in insolvency (Gönen Eriş, *Uygulamalı İçtihatlı Anonim Şirketler Hukuku* (Seçkin 1995) 249).

116 Kaya, 'Borca Batık' (n 109) 290. Therefore, it is not possible to talk about insolvency if significant receivables are not collected or collected late, or the current production cannot be sold due to strikes or lockouts, or unjust lien foreclosures and other temporary reasons and does not occur due to the unbalance between the assets and liabilities of the company or the cooperative (Kaya, 'Borca Batık' (n 109) 290; In the same direction *see*: Nisim Franko, 'Sermaye Şirketlerinde-Özellikle Anonim Şirketlerde İflas ve Tehiri (TTK 324/3 ve İİK. 179. Maddeleri Hakkında Bir Tetkik)' *Prof. Dr. Haluk Tandoğan'a Armağan* (Banka ve Ticaret Hukuku Araştırma Enstitüsü 1990) 412-413; Hayri Domaniç, *Anonim Şirketler Hukuku ve Uygulaması TTK. Şerhi – II* (Temel 1988) 539).

117 Oğuz Atalay, 'İflas Hukukundaki Yenilikler' (2004) 1(2) Yeditepe Üniversitesi Hukuk Fakültesi Dergisi, 492. As a matter of fact, in order to be able to request a postponement of bankruptcy - *although it is not available at the moment* - it was stated as an obligation for capital companies and cooperatives to directly request bankruptcy by notifying the commercial court that they are in debt by the authorized persons or their creditors (Atalay, *Borca Batıklık* (n 109) 76). The judge is obliged to give a bankruptcy decision upon notification of insolvency (Ulrich Haas and Yael Strub, *Die Aktiengesellschaft, Generalversammlung und Verwaltungsrat, Mangel in der Organisation, Art. 698-726 und 731b OR, ZK – Zürcher Kommentar* (Lukas Handschin Herausgeber) (3., neu bearbeitete Auflage, Schulthess 2018) 1237-1273 N. 1, p. 1240).

Over-indebtedness is a direct cause of bankruptcy in accordance with article 179 of our Execution and Bankruptcy Law[118]. The legislator has enabled over-indebtedness companies and cooperatives to apply for concordat in order to avoid bankruptcy in accordance with the regulation stipulated in Article 377 of TCC[119]. In such a case, *the administrative board* of the over-indebtedness company or cooperative should take a board of directors' resolution confirming that the company is insolvent[120]. In addition, for the equity company or the cooperative to apply for concordat on the grounds of being deep in debt, the assets declared in the interim balance sheet to be issued should certify the status of insolvency both on the basis of the going concern principle and on the possible sales prices[121] (TCC Art. 376 para 3; OR Art. 725 para II).

B. The Documents to be Attached to the Concordat Application

1. General Rules

The debtor should attach some documents to the petition to be submitted to the Court while applying for a concordat[122]. The documents to be annexed to the

118 Uyar, *İİK'nun 179. Maddesi* (n 109) 1973. Atalay, *Borca Batıklık* (n 109) 40; Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 375; Kaya, 'Borca Batık' (n 109) 282; Şener (n 104) 385; Muşul, *C. II* (n 1) 1405; Güray Erdönmez, 'Muamele Merkezinin Değiştirilmesinin İflasın Ertelenmesi Talebini İnceleyen Mahkemenin Yetkisine Etkisi' *Prof. Dr. Ejder Yılmaz'a Armağan, Cilt 1* (Yetkin 2014) 867. In the event that a capital company is insolvent, a direct bankruptcy case can be filed against the company (Baki Kuru, 'İflasın Ertelenmesi Kararından Önce İcra Takiplerinin Durdurulması Hakkında İhtiyati Tedbir Kararı Verilebilir Mi?' in *Haluk Konuralp Anısına Armağan, Cilt: 2* (Yetkin 2009) 304). The reason why the law regulates the state of over-indebtedness for capital companies as a separate bankruptcy reason in the Art. 179 of EBL is that the liability in capital companies is based on the principle of limited liability with capital (Baki Kuru, 'Pasifi Aktifinden Fazla Olan Sermaye Şirketlerinin İflası' 1970 (10) Adalet Dergisi 622-623).

119 Thus, Article 377 of the Turkish Commercial Code numbered 6102 clearly states that *"The Board of Directors or any creditor shall be able to request a concordat with the bankruptcy request made pursuant to the third paragraph of Article 376 or can also request concordat during the bankruptcy proceedings made in this context, pursuant to the 285th and following articles of the Law No. 2004.* The mentioned Article 377 of TCC was amended on 28.02.2018 with Article 62 of the Law No. 7101. Before it was amended by Law No. 7101, the old version of the Art. 377 of TCC was as follows: *"b) Postponement of Bankruptcy Article 377 (1) The board of directors or any creditor may request a postponement of bankruptcy by submitting to the court an improvement project showing objective and real resources and measures, including the introduction of new cash capital. In this case, articles 179 to 179/b of the Enforcement and Bankruptcy Law are applied."* (Kaya, *Türk Ticaret Kanunu* (n 102) 131).

120 Pekcanıtez and Erdönmez (n 8) 10.

121 Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 645; Bilgili and Demirkapı (n 104) 285; Pulaşlı, *Şirketler Hukuku* (n 104) N. 269; Yıldırım and Deren-Yıldırım (n 6) 386-387; Schönenberger, *Art. 725a* (n 35) 11; Alihan Aydın, 'Türk Ticaret Kanunu'nun Anonim Ortaklıkta Sermaye Kaybı ve Borca Batıklığa İlişkin Düzenlemesine (TK M. 376) Eleştirel Bir Bakış' (2012) 70(2) İstanbul Üniversitesi Hukuk Fakültesi Mecmuası 109, 110; Abuzer Kendigelen, *Yeni Türk Ticaret Kanunu, Değişiklikler, Yenilikler ve İlk Tespitler* (Güncellenmiş 2. Basıdan 3. (Tıpkı) Bs, On İki Levha 2016) 268; Manavgat (Kırca and Şehirali Çelik) (n 104) 586. According to *Kendigelen*, in Turkish Law doctrine, the purpose of issuing an interim balance sheet on the basis of continuity of the business other than the interim balance sheet to be deducted from the possible sales prices of the assets is to obtain a preliminary opinion on whether the company has a hope to survive (Kendigelen (n 117) 268, fn. 98). (*Compare*: BaK-Wüstiner, Art. 725 (n 108) N. 35 ff.; Thomas Meister – OR, *Handkommentar zum Schweizerischen Obligationenrecht* (Hrsg. von Jolanta Kren Kostkiewicz, Urs Bertschinger, Peter Breitschmid, Ivo Schwander) (Orell Füssli 2002) N. 6; Peter Forstmoser, Arthur Meier-Hayoz and Peter Nobel, *Schweizerisches Aktienrecht* (Stämpfli 1996) N. 205, 208). It should be noted that the interim balance sheet to be prepared on the basis of going concern is also a product of the principle of *going concern* (Reha Poroy, Ünal Tekinalp, Ersin Çamoğlu, *Ortaklıklar Hukuku II [Anonim Ortaklık (Malvarlığı, Katılma, Aydınlanma Hakları, Menkul Kıymetler, Esas Sözleşme Değişiklikleri, Finansal Raporlama, Yedek Akçeler, Sona Erme ve Tasfiye), Sermayesi Paylara Bölünmüş Komandit Ortaklık, Limited Ortaklık, Kooperatif Ortaklık, Ortaklıklar Topluluğu]* (Güncellenmiş, Yeniden Yazılmış 14. Bs, Vedat 2019) N. 1464, s. 283-284).

122 Pekcanıtez and Erdönmez (n 8) 14; Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 484; Kale, 'Konkordato' (n 16) 218.

Concordat application are listed separately in Article 286 of the Execution and Bankruptcy Law and their contents are explained respectively to a certain extent[123]. The legislator has deemed it appropriate for the Court to order a temporary respite period in case the documents listed in Article 286 of the Execution and Bankruptcy Law are duly submitted[124]. Submitting the documents listed in Article 286 of the Law annexed to the application petition, as regulated in the provision, is a prerequisite for the Court to examine the concordat application[125]. For this reason, it is essential to clearly specify the documents to be annexed to the concordat petition to be submitted to the court and their content[126].

With the enactment of Law No. 7101, major changes have been made in the documents that should be submitted when applying for concordat[127]. As a matter of fact, the documents to be annexed to the concordat application were insufficiently expressed in Article 285 of the former Law in a single paragraph under the subheading of "*Requirements for the Acceptance of the Concordat Application"*[128]. The regulation stipulated in the former Art. 285 of EBL has been completely amended, including its title[129] (Law No. 7101 Art. 14). The following regulation was introduced as per

123 Özekes, 'Geçici Mühlet Kararı' (n 62) 61; Namlı, 'Değişiklikler' (n 1) 1497; Namlı, 'Concordat' (n 25) 444.

124 Pekcanıtez and Erdönmez (n 8) 14; Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 484; Altay and Eskiocak (n 1) N. 59, p. 51.

125 Özekes, 'Geçici Mühlet Kararı' (n 62) 61; Namlı, 'Concordat' (n 25) 445. *"The documents to be added to the concordat request are limited and insufficiently regulated in the current Law. Considering the practice and experience of the postponement of bankruptcy institution and the importance of addressing this issue in a more strict manner, it is requested that the documents and statements that clearly show the fiscal and financial status of the requesting debtor company should be submitted to the court with the request for concordat. Within this framework, an ordinary (non-merchant) debtor shall submit documents showing the status of their assets; the debtors subject to bankruptcy, on the other hand, shall submit the documents and tables listed as clauses in the first paragraph. These are the minimum documents and tables that must be submitted to the court together with the concordat request. In this regard, the explanations in the justification of Article 1 of the Law Regarding the Amendment of Certain Laws Aiming the Improvement of the Investment Environment dated 15/72016 and numbered 6728 are partially valid here."* (Law No. 7101, Government Justification Art. 13).

126 Pekcanıtez and Erdönmez (n 8) 14; Özekes, 'Geçici Mühlet Kararı' (n 62) 61.

127 Sarısözen, *7101 sayılı Kanun* (n 2) 50.

128 Sarısözen, *Konkordato* (n 1) 119. For more information about the abolished EBL Art. 285, *see*: Üstündağ (n 1) 231; Muşul, *C. II* (n 1) 1675; Arslan, Yılmaz and Taşpınar Ayvaz, *İcra* (n 1) 629; Kuru, El Kitabı (n 1) 1448-1449; Yıldırım and Deren-Yıldırım (n 6) 520. In the old version of Art. 285 of Enforcement and Bankruptcy Law, it was regulated that any debtor who wants to apply for concordat must submit a petition to the execution court together with the concordat project and add the income statement in the petition. In the doctrine after the amendment of the Law No. 4949, it was suggested by ***Tanrıver*** that it would be beneficial for the following documents to be added when requesting concordat *"foundation certificate, status, executive board and general assembly meeting minutes, activity reports and audit body reports, as well as share ledger and shareholder list in trading partnerships"* (Süha Tanrıver, *Konkordato Komiseri* (Yetkin 1993) 35).

129 Sarısözen, *7101 sayılı Kanun* (n 2) 50; Sarısözen, *Konkordato* (n 1) 119. Hence, Art. 14 of Law No. 7101 is exactly as follows:
"*Documents to be attached to the concordat request:*
Article 286- The debtor adds the following documents to the concordat request.
a) A preliminary project of concordat showing that at what rate or maturity the debtor will pay the debts, to what extent the creditors will give up their receivables in this context, whether the debtor will sell the existing assets to make payments, and whether the debtor find the necessary financial resources to continue the activities and make the payments to the creditors through capital increase or loan provision or any other method.
b) Documents showing the status of the assets of the debtor; the last balance sheet, income statement, cash flow statement prepared in accordance with the Turkish Commercial Code, interim balance sheets prepared on the basis of the going concern principle and the probable sales prices of the assets, opening and closing ratifications of commercial books and e-book certificate information, other information and documents explaining the financial situation of the debtor, lists of tangible and intangible fixed assets and including their book values, lists and documents displaying all receivables and payables together with their due dates.

the provisions of Article 285 of the Execution and Bankruptcy Law, as amended by the legislator: *"Any debtor wishing to be eligible for the concordat (composition) provisions will submit to the execution court a reasoned petition and a concordat project. A detailed balance sheet, income statement and a schedule of accounting books (if the applicant is liable to keep books) will be annexed to the concordat project. This schedule will indicate whether all of the books required to be kept pursuant to article 66 of the Turkish Commercial Code are duly kept or not"*[130]. Following the amendment introduced by Article 14 of Law No. 7101, new EBL Art. 286 provisions outline the documents that should be annexed to the concordat application petition as follows under the sub-heading *"Documents to be annexed to the Concordat Application Petition"*[131]:

(a) Preliminary concordat project (EBL Art. 286 para 1(a)),

(b) documents certifying the assets and financial status of the debtor; i.e. income statement, cash flow statement, finalized balance sheets and interim balance sheets (EBL Art. 286 para 1(b)),

(c) The schedule confirming the list of creditors, receivable amounts and the list of the receivable's privileged status (EBL Art. 286 para 1(c)),

(d) A comparative schedule displaying the amount to be received by creditors in case of concordat and the bankruptcy of the debtor (EBL Art. 286 para 1(d)),

(e) Financial analysis reports prepared by independent audit firms (EBL Art. 286 para 1(e)).

Following the amendment introduced by Law No. 7101, the documents to be annexed to the Concordat application of the debtor are listed separately in a different (EBL Art. 286) article[132]. With the new regulation, a new amendment was introduced in terms of whether the person applying for concordat is the debtor or the creditor. Furthermore; in the event that the applicant to the concordat is the *debtor*, the

c) The list of the creditors, their receivables and the privilege status of the creditors.
d) The table showing the amount foreseen to be received by the creditors according to the proposal in the preliminary concordat project and the probable amount that can be received by the creditors in case of bankruptcy of the debtor.
e) Financial analysis reports prepared by the Capital Markets Board or an independent auditing firm authorized by The Public Oversight, Accounting and Auditing Standards Authority and included in the concordat preliminary project, showing the possibility of realization of the proposal and its basis. However, this requirement does not apply to small businesses within the scope of Article 28 of the Decree Law on the Organization and Duties of the Ministry of Science, Industry and Technology dated 3/6/2011 and numbered 635.
The date of the financial statements submitted pursuant to this article may be at most forty-five days before the application date.
The debtor must also submit other documents and records that may be requested by the court or commissioner during the concordat process."

130 For more information about, *see*: Üstündağ (n 1) 231; Muşul, *C. II* (n 1) 1675; Arslan, Yılmaz and Taşpınar Ayvaz, *İcra* (n 1) 629; Kuru, El Kitabı (n 1) 1448-1449; Yıldırım and Deren-Yıldırım (n 6) 520.

131 For more information about *see:* Pekcanıtez and Erdönmez (n 8) 14-21; Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 484-485; Sarısözen, *7101 sayılı Kanun* (n 2) 50-51; Özekes, 'Geçici Mühlet Kararı' (n 62) 62-65; Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 648-649; Öztek, Budak, Tunç Yücel, Kale and Yeşilova, Madde 285 (n 1) N 1 ff.; Namlı, 'Concordat' (n 25) 445.

132 Sarısözen, *7101 sayılı Kanun* (n 2) 50.

documents to be annexed to the petition submitted to the court will differ depending on whether the debtor is a *"merchant"* or not and, if it is a merchant, whether it is a real person or a legal person[133]. In the event that the debtor or the creditor who will apply for concordat duly submit to the Court the documents stipulated in Article 286 of the Execution and Bankruptcy Law as amended by Law No. 7101, the Court will take a temporary respite decision without the parties having to assume any further burden of proof[134] (EBL Art. 287 para 1).

2. Explanation and Examination of the Documents to be annexed to the Concordat Application

The first document to be annexed to the concordat application petition of the debtor is the ***"preliminary concordat project"***[135]. In this context, the regulation stipulated in the provisions of Art. 286 para 1 (a) of Execution and Bankruptcy Law is as follows: *"a) The preliminary concordat project specifying at which rate or maturity the debtor will pay its debts, the rate of the remission of the creditors regarding their receivables, whether the debtor will sell its assets to make the payments due, whether the debtor will provide the necessary financial resources to continue its activities and make its payments to the creditors by means of capital increase, loan provision or another method"*. As is seen, the issues which should be included in the preliminary concordat project are stipulated in the provisions of Art. 286 para 1 (a) of the EBL; however, it is seen that the documents mentioned here are not limited in number *(numerus clauses)*[136]. For this reason, the documents specified as per EBL Art. 286 para 1 (a) are the compulsory documents that should be annexed to the preliminary concordat project; however the debtor will be able to submit additional documents[137]. In other words, Art. 286 para 1 (a) of the EBL regulates the "*least compulsory"* documents that should be annexed to the concordat application[138]. The preliminary concordat project is generally described as a project that regulates the implementation method of concordat procedures, the financial resources needed and the required method to liquidate the outstanding debt[139].

133 Pekcanıtez and Erdönmez (n 8) 14.

134 Özekes, 'Geçici Mühlet Kararı' (n 62) 61. Thus, it is clearly stated in the first paragraph of Article 287 of the Enforcement and Bankruptcy Law: *"Upon the request of concordat, the court decides upon a temporary respite after determining that the documents specified in Article 286 are presented in complete, and takes all measures deemed necessary to protect the assets of the debtor, including the situations in the second paragraph of Article 297."*

135 Kale, 'Konkordato' (n 16) 218; Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 484; Pekcanıtez and Erdönmez (n 8) 14; Altay and Eskiocak (n 1) N. 59, p. 51; Öztek, Budak, Tunç Yücel, Kale and Yeşilova, Madde 285 (n 1) N 1 ff.; Namlı, 'Değişiklikler' (n 1) 1499.

136 Kale, 'Konkordato' (n 16) 218.

137 Kale, 'Konkordato' (n 16) 218. *"Clause (a) of the first paragraph of the article includes the issues that the concordat project (proposal) should contain at a minimum. This is a preliminary project that can be changed and clarified within the temporary and peremptory respite, and thus a concordat project different from the initial preliminary project can be submitted to the creditors meeting…"* (Government Justification of Art. 13 of Law No. 7101).

138 Sarısözen, *7101 sayılı Kanun* (n 2) 52.

139 Özekes, 'Geçici Mühlet Kararı' (n 62) 62.

It should be noted that the concept of preliminary concordat project was introduced into Turkish Law by Law No. 7101[140]. The preliminary concordat project should have a clear and understandable content as it reveals the debtor's recovery plan[141]. The debtors applying for concordat should express without hesitation in the preliminary project to be submitted to the court which of the "*deferred*", "*acquitted*" or *"combined"* concordat types[142] it prefers[143].

The preliminary project is a *"temporary"* project submitted by the debtor at the beginning of the process while applying for the concordat[144]. For this reason, the preliminary project may be amended either automatically or upon the request of one of the creditors within the temporary or peremptory (definitive) respite period[145]. In the latter stages of the concordat, the debtor will be able to express the improvement efforts and detail the improvement project[146]. Thus, the preliminary project initially presented to the court may end up with a completely different one at the end of the process[147].

Functionally, the preliminary concordat project is of great importance in terms of allowing the debtor to be granted a temporary respite period[148]. For this reason, ***we are of the opinion*** **that** the content of the preliminary concordat project should be prepared in accordance with the regulation stipulated in Art. 286 para 1 (a) of the Execution and Bankruptcy Law. ***Kale*** has concluded in the doctrine that the debtor should put forward in the preliminary project how the repayment rate offered will be met through the existing assets[149]. ***Özekes*** states that *"the conditions of the repayment offer"* and *"from which sources and how the repayment will be covered"* is very important in this regard[150]. In this context **Swiss law** stipulates that the preliminary project should, at first glance, cover *"the concordat expenses"* as well as "*the collaterals/guarantees to cover the receivables of the privileged creditors"*[151].

140 Pekcanıtez and Erdönmez (n 8) 14.

141 Kale, 'Konkordato' (n 16) 218.

142 Concordat is subjected to examination by categorizing into types according to (1) the time it is concluded, (2) the way it is concluded, (3) the content (or the purpose) (Yıldırım and Deren-Yıldırım (n 6) 518; Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 621). Types of concordat in accordance with its content are; "*deferred concordat*", "*acquitted concordat*", "*combined concordat*" and "*concordat through asset abandonment*" (Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 621-622; Muşul, *C. II* (n 1) 1674). Types of concordat is divided into two in accordance with the time of execution of bankruptcy proceedings (Yıldırım and Deren-Yıldırım (n 6) 519). Accordingly, the types of concordat in terms of the time of execution are "*non-bankruptcy concordat*" and "*concordat after bankruptcy*" (Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 622). The types of concordat in terms of the means of execution are examined by dividing into two as "*judicial (official) concordat*" and "*private (special) concordat*" (Muşul, *C. II* (n 1) 1673; Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 622; Yıldırım and Deren-Yıldırım (n 6) 518; Kuru, El Kitabı (n 1) 1444). For our explanations about concordat types, also *see*: section II, B above.

143 Özekes, 'Geçici Mühlet Kararı' (n 62) 62; Kale, 'Konkordato' (n 16) 218.

144 Pekcanıtez and Erdönmez (n 8) 15; Sarısözen, *7101 sayılı Kanun* (n 2) 52.

145 Sarısözen, *7101 sayılı Kanun* (n 2) 52; Pekcanıtez and Erdönmez (n 8) 15.

146 Kale, 'Konkordato' (n 16) 218.

147 Sarısözen, *7101 sayılı Kanun* (n 2) 52.

148 Pekcanıtez and Erdönmez (n 8) 15.

149 Kale, 'Konkordato' (n 16) 219.

150 Özekes, 'Geçici Mühlet Kararı' (n 62) 62.

151 KUKO SchKG-Hunkeler, Art 293 (n 5) N 20.

In accordance with Law No. 7101; **"documents confirming the financial status"** of the debtor, in addition to the preliminary concordat project, should be submitted to the Court together with the concordat application petition[152]. Documents to be annexed to the concordat application petition and confirming the financial status of the debtor is explained in detail in the provisions of Article 286 para 1 (b) of EBL[153]. Accordingly, the documents stipulated by the legislator in Art. 286 para 1 (b) are as follows: *"b) In the event the debtor is obliged to keep accounting books; the recent balance sheet, income statement, cash flow statement prepared in accordance with the Turkish Commercial Code and the interim balance sheets prepared on the basis of the going concern principle and the probable sales prices of the assets, opening and closing ratifications of commercial books and e-book certificate information regarding the books kept electronically, other information and documents certifying the financial status of the debtor, lists displaying the values of tangible and intangible assets, lists and documents displaying all receivables and payables together with their due dates*"[154] [EBL Art. 286 para 1 (b)]. Documents enumerated in EBL Art. 286 para 1 (b) and obliged to be submitted to the Court during the concordat application can solely be requested by the related debtor[155]. As a novelty introduced by Law No. 7101 preparing a *"cash flow statement"* is not practically preferred in Turkey except for the companies listed on the stock exchange[156]. A debtor who is not a merchant and is not obliged to keep accounting books for this reason will not be asked to submit the opening and closing ratifications of commercial books[157]. In accordance with TCC Art. 376 para 3, interim balance sheets to be submitted to the Court by the debtor will be prepared both on the basis of going concern principle and over the probable sales prices of assets[158] (TCC Art. 376 para 3; OR Art. 725 para II). The interim balance sheet foreseen by the legislator as per EBL 286 para 1 (b) has the same features as stated in the Turkish Commercial Code No. 6102, which entered into force on 01.07.2012 as well as the article of bankruptcy postponement included by third paragraph of Article 376 and was further repealed[159].

152 Kale, 'Konkordato' (n 16) 219; Pekcanıtez and Erdönmez (n 8) 16; Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 484; Altay and Eskiocak (n 1) N. 59, p. 51; Namlı, 'Değişiklikler' (n 1) 1499.

153 Kale, 'Konkordato' (n 16) 219.

154 Özekes, 'Geçici Mühlet Kararı' (n 62) 63; Sarısözen, *7101 sayılı Kanun* (n 2) 51; Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 484.

155 Pekcanıtez and Erdönmez (n 8) 16.

156 *"As a change, cash flow statement is not included in the concordat. Although this statement is not often prepared in Turkish practice except for companies listed on the stock exchange, it is of great importance for the accurate identification of the fiscal and financial situation of the merchant…"* (Government Justification of Art. 13 of Law No. 7101).

157 Pekcanıtez and Erdönmez (n 8) 16.

158 Bilgili and Demirkapı (n 104) 285; Pulaşlı, *Şirketler Hukuku* (n 104) N. 269; Yıldırım and Deren-Yıldırım (n 6) 374-375; Schönenberger, *Art. 725a* (n 35) 11; Aydın (n 117) 109, 110; Kendigelen (n 117) 268; Manavgat (Kırca and Şehirali Çelik) (n 104) 586. *Compare*: BaK-Wüstiner, Art. 725 (n 108) N. 35 ff.; Handkomm-Meister, OR Art. 725 (n 117) N. 6; Forstmoser, Meier-Hayoz and Nobel (n 117) N. 205, 208. In terms of concordat, *see*: Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 645; Pekcanıtez and Erdönmez (n 8) 16; Özekes, 'Geçici Mühlet Kararı' (n 62) 63.

159 For the various explanations on the regulation stipulated for bankruptcy postponement in Art. 376 para 3 of TCC numbered 6102, *see*: Bilgili and Demirkapı (n 104) 285; Pulaşlı, *Şirketler Hukuku* (n 104) N. 269; Yıldırım and Deren-Yıldırım (n 6) 386-387; Schönenberger, *Art. 725a* (n 35) 11; Aydın (n 117) 109, 110; Kendigelen (n 117) 268. Compare: BaK-Wüstiner, Art. 725 (n 108) N. 35 ff.; Handkomm-Meister, OR Art. 725 (n 117) N. 6; Forstmoser, Meier-Hayoz and Nobel (n 117) N. 205, 208.

Documents enumerated in EBL Art. 286 para 1 (b) should be annexed to the petition to be submitted to the court during the concordat application[160]. The legislator obliges the applicant to submit the documents specified in EBL 286 para 1 (b) annexed to the concordat petition, however the documents listed in this article are not limited in number[161]. In this regard, the debtor will be able to annex other documents confirming its financial status to the concordat petition[162]. It should be noted that the financial documents and tables to be submitted to the court by the debtor should be prepared no more than *"forty five"* days ago[163] (EBL Art. 286 para 2).

Another document to be annexed to the concordat petition by the debtor in accordance with in EBL Art. 286 para 1 (c) ***"the schedule displaying the creditors, their amount of receivables and the privilege status of the creditors"***[164]. Documents displaying the creditors and their receivables as foreseen in EBL Art. 286 para 1 (c) is the result of concordat being a complete legal proceeding[165]. In accordance with the regulation stipulated in the Turkish Enforcement and Bankruptcy Law, the schedule specified in EBL Art. 286 para 1 (c) should clearly reveal the creditors as well as the privileged ones among the creditors[166]. It should be noted that the content of the schedule submitted by the debtor to the court may be amended during the concordat procedures[167]. In the doctrine, ***Pekcanıtez/Erdönmez*** states that the share table prepared at the end of the bankruptcy liquidation as per EBL Art. 247[168] and tables foreseen in EBL Art. 286 para 1 (c) are similar[169]. As per Art. 286 para 1 (c) of the Execution and Bankruptcy Law, the schedule to be submitted by the debtor to the commercial court of first instance while applying for concordat will indicate who the creditors are, the order of their receivables and how much will be paid to each creditor[170].

Another important document foreseen in EBL Art. 286 para 1 (d) and should be annexed to concordat petition is, ***"comparative table presenting the amount foreseen to be received by creditors in accordance with the recovery plan proposed in the preliminary concordat project and the possible amount that can be received by***

160 Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 484; Özekes, 'Geçici Mühlet Kararı' (n 62) 63; Pekcanıtez and Erdönmez (n 8) 16.

161 Özekes, 'Geçici Mühlet Kararı' (n 62) 63.

162 Özekes, 'Geçici Mühlet Kararı' (n 62) 63.

163 Kale, 'Konkordato' (n 16) 219; Sarısözen, *7101 sayılı Kanun* (n 2) 54.

164 Sarısözen, *7101 sayılı Kanun* (n 2) 51; Kale, 'Konkordato' (n 16) 219; Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 484; Pekcanıtez and Erdönmez (n 8) 16; Altay and Eskiocak (n 1) N. 59, p. 52; Namlı, 'Değişiklikler' (n 1) 1500.

165 Özekes, 'Geçici Mühlet Kararı' (n 62) 63-64.

166 Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 484; Pekcanıtez and Erdönmez (n 8) 17.

167 Pekcanıtez and Erdönmez (n 8) 17.

168 As a matter of fact, in Art. 247 of Enforcement and Bankruptcy Law, there is a statement under the heading of "*Share table and final account*" as follows: *"When the price of the goods sold is collected and the order table of the creditors is solidified, the bankruptcy administration issues the share table and calculates the money in the final account".*

169 Pekcanıtez and Erdönmez (n 8) 17.

170 Pekcanıtez and Erdönmez (n 8) 17.

the creditors in case of bankruptcy of the debtors"[171]. As is understood; the table stipulated in the provisions of EBL Art. 286 para 1 (d) shall only apply to debtors who are subject to bankruptcy and apply for concordat[172]. On the other hand, concordat can also be requested by debtors who are not subject to bankruptcy[173]. Accordingly, it will not be possible to ask a debtor who is not subject to bankruptcy to prepare the schedule stipulated in EBL Art. 286 para 1 (c)[174].

With the schedule foreseen in EBL Art. 286 para 1 (d) and certifying the success of the concordat plan, it is aimed to demonstrate that a concordat plan will be more beneficial for creditors than claiming bankruptcy[175]. In this context, it is important to ensure the creditors to understand that they may in fact collect a higher amount of their receivables at the beginning of the concordat process rather than they claim the bankruptcy of the debtor[176].

Another important document foreseen in the regulations of EBL Art. 286 para 1 (e) and should be annexed to concordat petition is, ***"financial analysis reports to be prepared by independent audit institutions"***[177]. The purpose of the aforementioned regulation is to prevent the debtor from requesting concordat as a result of subjective evaluations[178]. For this reason, financial analysis reports prepared by independent audit companies are very important[179]. However; it would not be appropriate for the debtor to ex-officio request this report stipulated in EBL Art. 286 para 1 (e) and to cover the expenses therein[180]. In the *doctrine*, ***Atalı/Ermenek/Erdoğan*** states that it would be appropriate if the Court requests the audit company to prepare a financial analysis report on behalf of the debtor in order to ensure objectivity in terms of Turkish law[181].

171 Kale, 'Konkordato' (n 16) 219; Özekes, 'Geçici Mühlet Kararı' (n 62) 64; Altay and Eskiocak (n 1) N. 59, p. 52; Namlı, 'Değişiklikler' (n 1) 1500.

172 Özekes, 'Geçici Mühlet Kararı' (n 62) 64.

173 Yıldırım and Deren-Yıldırım (n 6) 520. In this context, it is possible for all real or legal persons - *joint stock companies, limited companies, unlimited companies, limited partnerships, associations and foundations* - to apply for non-bankruptcy (ordinary) concordat, regardless of whether the applicant is subject to bankruptcy or not (Yıldırım and Deren-Yıldırım (n 6) 520). The same rule applies in Swiss Law, however, it is foreseen in the doctrine that the "*estate*" can take the advantage of concordat in the liquidation of the inheritance and the "*the board of property owners*" can take the advantage of concordat in the property ownership (KUKO SchKG-Hunkeler, Art 293 (n 5) N 10-11). On the other hand, it is stipulated that the ordinary partnership without legal personality cannot benefit from concordat, considering that it would not be subject to execution proceedings (KUKO SchKG-Hunkeler, Art 293 (n 5) N 10-11).

174 Özekes, 'Geçici Mühlet Kararı' (n 62) 64.

175 Kale, 'Konkordato' (n 16) 219.

176 Kale, 'Konkordato' (n 16) 219.

177 Özekes, 'Geçici Mühlet Kararı' (n 62) 65; Kale, 'Konkordato' (n 16) 219; Pekcanıtez and Erdönmez (n 8) 18; Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 484; Altay and Eskiocak (n 1) N. 59, p. 52; Namlı, 'Değişiklikler' (n 1) 1501. "*The article also requires the financial analysis reports prepared by the Capital Markets Board or the independent audit firm authorized by the Public Oversight, Accounting and Auditing Standards Authority and showing that the proposal included in the preliminary concordat project is highly likely to be submitted to the court together with the concordat request, thus preventing the unlikely concordat requests. However, small enterprises are excluded from the requirement to submit a financial analysis report."* (Government Justification of Art. 13 of Law No. 7101).

178 Pekcanıtez and Erdönmez (n 8) 19.

179 Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 649.

180 Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 649.

181 Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 649.

It should be noted that, small business enterprises are not obliged to submit to the Court the financial analysis reports prepared by independent audit institutions authorized by *the Capital Markets Board or The Public Oversight*, Accounting and Auditing Standards Authority and certifying that the recovery proposal included in the preliminary concordat project is highly likely to succeed along with the concordat petition[182]. In other words, medium scale and big enterprises are required to submit the documents to be annexed in accordance with EBL Art. 286 para 1 (e)[183].

As we have stated above, there are five basic documents that should be annexed to the concordat application petition; however pursuant to EBL Art. 286 para 3, the debtor shall be liable to present additional documents and records that may be requested by the Court or concordat commissioner (trustee) throughout the concordat process[184].

In the event that the applicant of the concordat is the creditor other than the debtor, the debtor will be granted an appropriate period to submit the documents stipulated as per EBL Art. 286 para 1 (a-e)[185] (EBL Art. 287 para 2 sentence 1). In such a case, the expenses required for preparing the documents foreseen for the concordat application will be borne by the creditor[186] (EBL Art. 287 para 2 sentence 2).

One should refer to the *"Regulation Governing the Documents to be Annexed to the Concordat Application"*[187] published in the Official Gazette dated January 30, 2019 within the context of the documents to be annexed to the concordat petition[188]. As a matter of fact, the documents to be annexed to the concordat petition should be prepared by taking into account the provisions of this regulation published by the Ministry of Justice[189].

C. Assessment of the Concordat Application

After the debtor or the creditor applies for the concordat together with the documents foreseen in EBL Art. 286 para 1 (a-e), the commercial court of first instance will assess whether it is possible to accept the request and give a temporary respite[190].

182 Özekes, 'Geçici Mühlet Kararı' (n 62) 65.

183 Kale, 'Konkordato' (n 16) 220; Pekcanıtez and Erdönmez (n 8) 19.

184 Özekes, 'Geçici Mühlet Kararı' (n 62) 66.

185 Kale, 'Konkordato' (n 16) 220; Özekes, 'Geçici Mühlet Kararı' (n 62) 66; Namlı, 'Değişiklikler' (n 1) 1501; Namlı, 'Concordat' (n 25) 445. As a matter of fact, it is stated in the first clause of second paragraph of Article 287 of the Enforcement and Bankruptcy Law that: *"A temporary respite is decided upon the request by one of the creditors to initiate concordat proceedings, and if the debtor submits the documents and records specified in Article 286 within a reasonable time and in full by the court"*.

186 Özekes, 'Geçici Mühlet Kararı' (n 62) 66. Hence, in the second clause of the second paragraph of Article 287 of the Enforcement and Bankruptcy Law, it is clearly stated that *"In this case, the necessary expenses for the preparation of the documents and records are covered by the creditor."*

187 Official Gazette 30.01.2019, Number 30671.

188 Sarısözen, *Konkordato* (n 1) 90; Altay and Eskiocak (n 1) N. 59, p. 52. For the text of the regulation, *see* also: https://app.e-uyar.com/makale/index/781b7b5b-f030-46ea-9efa-0c21d205ef3b

189 Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 484; Sarısözen, *Konkordato* (n 1) 90.

190 Pekcanıtez and Erdönmez (n 8) 21; Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 485.

Does the commercial court of first instance receiving the concordat application evaluate the request with or without a hearing? According to the *doctrine*, Swiss law states that the court, as a rule, should decide on the temporary respite without holding a hearing[191]. However, in some exceptional cases, it is possible to receive the brief opinions of the relevant parties in a short hearing[192]. According to the *doctrine*, ***Özekes*** emphasizes that Turkish law allows the court to decide on the temporary respite without holding a hearing[193]. ***In our opinion***, Turkish law should allow the Court to decide on the temporary respite without a hearing in order to save time.

Whether the commercial court of first instance can immediately give a temporary respite decision if as a result of the assessment on the concordat application it is understood that the submitted documents are whole and complete, is an issue that can be discussed in the doctrine[194]. Turkish law reveals that the Court shall not focus on the content but shall examine whether the documents stipulated as per EBL Art. 286 para 1 (a-e) are duly submitted in full[195]. Before the adoption of Law No. 7101, there was no distinction in Turkish law between temporary and a peremptory (definitive) respite[196]. Accordingly, the provisions of EBL Art. 287 para 2, and 6, as amended by the former Law No. 4949 stipulated that the enforcement court, which received the concordat application of the debtor would be able to decide on a three-month temporary respite and, if necessary, would be able to extend this period for two more months[197]. Following the amendments introduced to Turkish Law by Law No. 7101, the examination liability of the Court is limited to the documents stipulated in EBL Art. 286 provisions[198] (EBL Art. 287 para 2 sentence 1). Thus, there is currently no

191 SK SchKG-Umbach-Spahn/Kesselbach/Burkhalter Art. 293a (n 5) N 7.

192 SK SchKG-Umbach-Spahn/Kesselbach/Burkhalter Art. 293a (n 5) N. 7.

193 Özekes, 'Geçici Mühlet Kararı' (n 62) 71.

194 It should be noted that in Swiss Law, under the provision of Art. 293a para 1 of SchKG, it was accepted that the court would *"immediately give a temporary respite decision"*. In contrast, it is stated in the provision of Art. 293a para 3 of SchKG that *"In cases where there is no obvious hope of improvement or the possibility of approving the concordat, the concordat court decides to open the bankruptcy ex officio"*. As can be seen, as a result of evaluating the provisions of Art. 293a para 1 to Art. 293a para 3 of Swiss SchKG together, it can be concluded that the court in Switzerland receiving the concordat request does not immediately give a temporary respite decision if the hope of improvement is not clearly understood and can make an investigation in order to decide on a temporary respite (KUKO SchKG-Hunkeler, Art 293a (n 5) N. 3, 4).

195 Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 485.

196 Pekcanıtez and Erdönmez (n 8) 21. As a matter of fact, before the amendment of Law No. 7101, the issue of giving a concordat respite was regulated within the scope of the previous concordat provisions (See: Muşul, *C. II* (n 1) 1681). In the previous provision of Art. 286 of EBL regulating this issue, it was mentioned that a period of concordat was given without making a distinction between a peremptory and temporary period in terms of concordat. Moreover, two conditions were sought together in order to give a concordat deadline. The two conditions stated by the legislator in the regulation of Article 286 of the Enforcement and Bankruptcy Law No. 7101 were "*the possibility of success of concordat*" and "*the concordat project being free from the intention of damaging the creditors of the debtor*". Before the amendment of the Law No. 7101, for the explanations about the concordat period stipulated in the Art. 286 of Enforcement and Bankruptcy Law, *see* also: Yıldırım and Deren-Yıldırım (n 6) 523 et seq.

197 Yıldırım and Deren-Yıldırım (n 6) 525; Kuru, El Kitabı (n 1) 1454; Arslan, Yılmaz and Taşpınar Ayvaz, *İcra* (n 1) 631; Muşul, *C. II* (n 1) 1682; Üstündağ (n 1) 232. As a matter of fact, with the amendment of Law No. 4949 (Art. 69), as a result of the amendment made in Article 287 of the Enforcement and Bankruptcy Law, the limit of the period to be given to the debtor was increased from two months to three months. Thus, the upper limit of the concordat respite was increased to 5 months in total with an extension (Tanrıver, 'Adi Konkordato' (n 49) 73).

198 Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 485-486.

hesitation that the court may decide on a temporary respite if the conditions required by the Law exist[199].

In accordance with the Civil Procedure Law, deciding on the temporary respite within the context of concordat proceedings is subject to the non-contentious jurisdiction[200] [Code of Civil Procedure (=CCP) Art. 382 para 2, 6)]. Since it is an issue that should be evaluated within the scope of non-contentious judiciary, simple trial procedure (CCP Art. 316-322) shall apply[201] [CCP Art. 385 para 1; CCP Art. 316 para 1 (e)].

What happens in case of missing documents are identified while evaluating the concordat request? The problem of the possible consequences when missing documents are identified while evaluating the concordat application is not regulated in the Execution and Bankruptcy Law of Turkish Law[202]. ***Kale***[203] and ***Özekes***[204] stipulates that a short period of time can be granted to the debtor in such a case to complete the missing documents[205]. In the event that the party applying for concordat is the creditor; if the debtor fails to duly submit the relevant documents, the concordat application will be rejected[206]. As a matter of fact, *the decisions of the Supreme Court* also confirms that in case the documents foreseen in accordance with the provisions of EBL Art. 286 are missing, the court should grant a certain time to complete the missing documents[207].

199 In the *doctrine* of Turkish law, *Atalı* states that the debtor adds documents to his/her request while applying for temporary respite; that the court examines these attached documents formally and decide whether to give a temporary respite or to deny the request (Murat Atalı, 'Konkordatoda Kesin Mühlet ve Sonuçları' in Muhammet Özekes (eds), *7101 sayılı Kanunla Konkordato ve Elektronik Tebligat Konularında Getirilen Yenilikler* (On İki Levha 2018) 87).

200 Uyar, *Yeni Konkordato* (n 1) 41; Pekcanıtez and Erdönmez (n 8) 22; Özekes, 'Geçici Mühlet Kararı' (n 62) 68.

201 For how to apply simple trial procedure in terms of non-contentious jurisdiction, *see*: Baki Kuru and Burak Aydın, *İstinaf Sistemine Göre Yazılmış Medeni Usul Hukuku Ders Kitabı* (7251 sayılı Kanun Değişiklikleri İşlenmiş 4. Bs, Yetkin 2020) 687; Ramazan Arslan, Ejder Yılmaz, Sema Taşpınar Ayvaz and Emel Hanağası, *Medenî Usul Hukuku* (Güncellenmiş ve 7251 sayılı Kanun Değişiklikleri İşlenmiş 6. Bs, Yetkin 2020) 751; Şanal L Görgün, Levent Börü, Barış Toraman and Mehmet Kodakoğlu, *Medenî Usûl Hukuku* **(**28.7.2020 tarih ve 7251 sayılı Kanunla Değiştirilmiş, Güncellenmiş, 9. Bs., Yetkin 2020) 70; Ali Cem Budak and Varol Karaaslan, *Medenî Usul Hukuku* (Genişletilmiş ve Gözden Geçirilmiş 4. Bs., Adalet 2020) N. 30, p. 358; Murat Atalı, *Pekcanıtez Usul Medeni Usul Hukuku, C. III* (15. Bs., On İki Levha 2017) 2136; Murat Atalı, İbrahim Ermenek and Ersin Erdoğan, *Medenî Usul Hukuku Ders Kitabı* (3. Bs., Yetkin 2020) 594. Hence, this issue is regulated in the Art. 385 of Civil Procedure Law No. 6100 as *"In non-contentious judicial matters, the simple trial procedure is applied to the extent appropriate to the nature."* Furthermore, it is clearly stated in the (e) clause of Art. 316 para 1 of CCP that the simple trial procedure is applied in terms of *"the cases to be filed regarding concordat, restructuring of capital companies or cooperatives through reconciliation"*. For explanations about this regulation, *see:* Kuru and Aydın (n 197) 635; Arslan, Yılmaz, Taşpınar Ayvaz and Hanağası, *Usul* (n 197) 746; Abdurrahim Karslı, *Medeni Muhakeme Hukuku* (Yenilenmiş ve Gözden Geçirilmiş 5. Bs., Alternatif 2020) 710.

202 Özekes, 'Geçici Mühlet Kararı' (n 62) 66.

203 Kale, 'Konkordato' (n 16) 220.

204 Özekes, 'Geçici Mühlet Kararı' (n 62) 67.

205 Kale, 'Konkordato' (n 16) 220; Özekes, 'Geçici Mühlet Kararı' (n 62) 67.

206 Özekes, 'Geçici Mühlet Kararı' (n 62) 67.

207 *"... It is understood that the documents submitted by the plaintiffs were not whole and complete. Since the submission of the documents listed in Article 286 of the EBL is considered as a case condition, the process was supposed to be carried out by giving additional time to the plaintiffs pursuant to the Article 115/2 of CCP, instead, a written decision was inappropriately made on the grounds that the concordat project is abstract and not based on concrete data. As a result, in the light of the explanations above; it was decided to the partial acceptance of the appeal requests of the plaintiffs and the attorney of the plaintiff company and the annulment of the first instance court decision..."* (Istanbul Regional Court of Justice 17 CD, 13.12.2918, M. 2018/2680, D. 2018/2187. For the decision *see:* Muşul, *İflas ve Konkordato* (n 1) 413, fn. 385).

According to Turkish Law, in case the documents enlisted in Art. 286 para 1 (a-e) of the Execution and Bankruptcy Law are duly and fully submitted to the court, the court shall *"immediately"* give a temporary respite[208].

V. Temporary Respite (Relief)

A. General Rules for Temporary Respite (Relief)

Article 287 of the Execution and Bankruptcy Law has been amended with the amendments introduced by Law No. 7101 and the concept of *"temporary respite"* has been included in our Execution and Bankruptcy Law[209]. The temporary respite decision introduced to the Turkish Law within the framework of the amendments to the Law No. 7101 has been regulated in Article 287 para 1 of the Execution and Bankruptcy Law as follows:

> *"The court, receiving the petition for the application for concordat proceedings, shall immediately decide on a temporary respite in case it determines that the documents specified in article 286 have been submitted in full and thereupon shall take all the measures it deems necessary for the protection and safeguarding of the debtor's assets, including the cases stipulated in the second paragraph of article 297."*

With the temporary respite decision, it is aimed to provide legal protection to the debtor suffering payment difficulties for a temporary period[210]. In this regard, the court receiving the petition for the application for concordat proceedings, shall immediately decide on a temporary respite in case it determines that the documents specified in EBL Article 286 have been submitted in full and thereupon shall take all the measures it deems necessary for the protection and safeguarding of the debtor's assets[211] (EBL Art. 287 para 1). The temporary respite decision is important as it will serve not only to protect the interests of the creditor but also to protect the debtor's assets[212].

The temporary respite decision -*as we have stated above*- is discussed within the framework of *"non-contentious jurisdiction"* due to its legal nature[213]. Although

208 Pekcanıtez and Erdönmez (n 8) 23; Sarısözen, *Konkordato* (n 1) 167; Muşul, *İflas ve Konkordato* (n 1) 423; Öztek, Budak, Tunç Yücel, Kale and Yeşilova, Madde 287 (n 1) N 4; Namlı, 'Değişiklikler' (n 1) 1504; Namlı, 'Concordat' (n 25) 446.

209 Sarısözen, *7101 sayılı Kanun* (n 2) 54; Sarısözen, *Konkordato* (n 1) 156; Altay and Eskiocak (n 1) N. 57, p. 50. In Swiss law, the temporary respite decision was implemented with the Art. 293a-293d of SchKG as a result of the Swiss Enforcement and Bankruptcy Law amendment. (https://fedlex.data.admin.ch/filestore/fedlex.data.admin.ch/eli/cc/11/529_488_529/20190101/de/pdf-a/fedlex-data-admin-ch-eli-cc-11-529_488_529-20190101-de-pdf-a.pdf) (Last Online Access: 01.02.2020); KUKO SchKG-Hunkeler, Art 293a-293d (n 5) 1317-1375; SK SchKG-Umbach-Spahn/Kesselbach/Burkhalter Art. 293a-293d (n 5) 1650-1671. Compare with the previous version of the regulation stipulated in Swiss Law: BSK-SchKG II-Vollmar (n 5) Art. 293, p. 2555-2568; Jaeger, Walder, Kull and Kottmann, Art. 293 (n 5) 1-20.

210 Sarısözen, *7101 sayılı Kanun* (n 2) 54.

211 Kale, 'Konkordato' (n 16) 220; Sarısözen, *Konkordato* (n 1) 167; Altay and Eskiocak (n 1) N. 49, p. 44.

212 Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 651.

213 Özekes, 'Geçici Mühlet Kararı' (n 62) 68; Kale, 'Konkordato' (n 16) 223; Sarısözen, *Konkordato* (n 1) 158.

the temporary respite is generally the subject of non-contentious jurisdiction, it can also be referred to as a *"temporary legal protection"*[214]. For this reason *"ex-officio examination principle"* shall apply when deciding on temporary respite, which is the subject of non-contentious jurisdiction[215].

Within the framework of the amendments to the Law No. 7101, the legislator has regulated to appoint a temporary concordat commissioner (trustee) together with the temporary relief decision[216]. The concordat commissioner (trustee) committee may consist of one or three persons, taking into account the scope of the concordat request[217]. As is seen, although the regulation includes a statement stipulating that only one temporary concordat commissioner (trustee) will be appointed, it is possible to assign up to three people in accordance with the amount of the receivables due[218]. The concordat commissioner (trustee) appointed together with the temporary respite decision may prepare a preliminary report on whether the preliminary project has a chance to succeed[219].

B. Additional Measures to be taken Together with the Temporary Respite Decision

The court may take additional measures it deems necessary together with the temporary respite decision[220] (EBL Art. 287 para 1). As per EBL Art. 288 para 1, "*The temporary respite will have the consequences of the peremptory (definitive) respite*"[221]. For this reason, enforcement proceedings will not be initiated against the debtor following the temporary respite and the pending proceedings will also be suspended[222] (EBL Art. 294 para 1).

214 Özekes, 'Geçici Mühlet Kararı' (n 62) 69; Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 651.

215 Kale, 'Konkordato' (n 16) 223; Sarısözen, *Konkordato* (n 1) 158. For the validity of the ex-officio investigation principle in terms of non-contentious judicial matters, *see:* Arslan, Yılmaz, Taşpınar Ayvaz and Hanağası, *Usul* (n 197) 751; Görgün, Börü, Toraman and Kodakoğlu (n 197) 70; Budak, Karaaslan (n 197) N 37, p. 359. As a matter of fact, it is explicitly stated in the Art. 385 para 2 of the Civil Procedure Law No. 6100 that *"The principle of ex-officio investigation is valid in non-contentious judicial matters, unless there is a contrary provision."*

216 Sarısözen, *7101 sayılı Kanun* (n 2) 56.

217 Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 651; Sarısözen, *7101 sayılı Kanun* (n 2) 57.

218 Sarısözen, *7101 sayılı Kanun* (n 2) 57.

219 Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 486. In the event that the concordat agreement is not likely to be successful, the temporary respite decision will not be issued (Dominik Vock and Danièle Meister-Müller, *SchKG-Klagen nach der Schweizerischen ZPO* (2., überarbeitete Auflage, Schulthess 2018) 379).

220 Kale, 'Konkordato' (n 16) 223; Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 652; Altay and Eskiocak (n 1) N. 114, p. 148.

221 Tunç Yücel, § 1, s. 6; Öztek, Budak, Tunç Yücel, Kale and Yeşilova, Madde 288 (n 1) N 1; Altay and Eskiocak (n 1) N. 115, p. 149; Uyar, *Yeni Konkordato* (n 1) 42. Also, *see*: EBL Art. 288 para 1.

222 Kale, 'Konkordato' (n 16) 222; Özekes, 'Geçici Mühlet Kararı' (n 62) 79. As a matter of fact, the first paragraph of Article 294 of the Enforcement and Bankruptcy Law contains a regulation exactly as follows: *"No follow-up can be carried out against the debtor within the respite period, including the follow-ups made in accordance with the Law No. 6183 dated 21/7/1953 on the Procedure for the Collection of Public Creditors, and previously initiated proceedings are suspended, provisional injunction and attachment decisions are not implemented, a statute of limitations and the periods that cause the foreclosure of rights that can be interrupted by a follow-up procedure are not valid."*

The court will determine the scope and nature of the measures that can be taken during the temporary respite[223]. In this direction, the deptor's power of disposition may be restricted by the Court in accordance with the temporary respite decision and the deptor may be urged to perform transactions above a certain amount upon the approval of the temporary concordat commissioner (trustee)[224]. On the other hand, the temporary respite will not prevent the privileged creditors listed in the first rank in article 206 of the Execution and Bankruptcy Law hereof[225] to carry out legal proceedings for the realization of pledge[226].

The creditors meeting cannot be held within the temporary respite[227]. Because as per EBL Art. 289 para 4, the creditors meeting will be held earliest upon peremptory (definitive) respite[228]. It is possible to expand or amend the measures taken by the Court to protect the assets during the temporary respite[229].

C. Announcement of Temporary Respite Decision, Notification to Related Institutions and Objection

When the authorized and commissioned commercial court of first instance gives a temporary respite, the decree will be announced in the trade registry gazette as well as on the official portal of "*Press Advertising Institution*"[230] (EBL Art. 288 para 2). With this announcement, the legislator enables the creditors to be aware of the concordat application[231]. In addition, it is stipulated in the law that the temporary respite will be notified to the relevant institutions and organizations[232]. As can be seen, it is not sufficient to solely announce the decisions regarding concordat; it is further foreseen

223 Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 652.

224 Kale, 'Konkordato' (n 16) 222.

225 The privileged creditors, which are stipulated in Article 206 of the Enforcement and Bankruptcy Law, are as follows: *"A) Receivables of the workers, including notice and severance payments based on the business relationship and accrued within one year prior to the opening of bankruptcy, and the notice and severance payments that they deserve due to the termination of the business relationship due to bankruptcy, B) Debts of the employers to the facilities or associations that have occurred for the purpose of establishing or maintaining aid funds or other aid organizations for workers, C) All kinds of alimony arising from the family law, which must be paid in cash, and accrued within the last year before the opening of the bankruptcy."*

226 Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 652.

227 Kale, 'Konkordato' (n 16) 223.

228 Kale, 'Konkordato' (n 16) 223.

229 Özekes, 'Geçici Mühlet Kararı' (n 62) 79.

230 Öztek, Budak, Tunç Yücel, Kale and Yeşilova, Madde 288 (n 1) N 3; Özekes, 'Geçici Mühlet Kararı' (n 62) 75; Sarısözen, *7101 sayılı Kanun* (n 2) 58; Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 486; Pekcanıtez and Erdönmez (n 8) 29; Kale, 'Konkordato' (n 16) 223-224. As a matter of fact, it is stated in the first clause of the second paragraph of Art. 288 of the Enforcement and Bankruptcy Law that: *"The temporary respite decision by the court is announced in the trade registry gazette and the official announcement portal of the Press Advertisement Agency and it is immediately announced to the postal administrations, the Banks Association of Turkey, the Participation Banks Association of Turkey, local chambers of commerce, chambers of industry, movable exchanges, Capital Markets Board and the other related places."*

231 Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 486; Pekcanıtez and Erdönmez (n 8) 29; Kale, 'Konkordato' (n 16) 223.

232 Sarısözen, *7101 sayılı Kanun* (n 2) 58; Pekcanıtez and Erdönmez (n 8) 29; Kale, 'Konkordato' (n 16) 223.

to notify these decisions to significant institutions and organizations within the business life[233]. For this reason, the temporary respite decision will further have to be notified to relevant institutions such as "*The Registry of Commerce*", "*Land Registry Offices*", "*Customs and Postal Administrations*", "*The Banks Association of Turkey*", "*Chambers of Commerce and Industry*" immediately after it has been announced as per EBL Art. 288 para 2[234].

The legislator did not only regulate the announcement and notification of the temporary respite decision regarding the concordat; in addition, it has foreseen that the decisions regarding abolishing the temporary respite decision and refusal of concordat and extending the temporary respite period will be duly announced[235] (EBL Art. 288 para 3). However, the law did not require to announce the stages before the temporary respite is decided[236]. To sum up; announcement and notification are obligatory in case temporary respite decision is taken, extension of the temporary respite for two months and rejection of the request for temporary respite while the announcement is not required if a request is submitted for the temporary respite[237].

The legislator has stipulated that the creditors may place an objection within a period of seven days following the announcement, claiming that there is no grounds for applying to concordat together with their reasons and that they may request the rejection of the concordat application[238] (EBL Art. 288 para 2 sentence 2). With the right of objection introduced as per EBL Art. 288 para 2 sentence 2 the preconceived practice of bankruptcy, concordat and postponement of bankruptcy in Turkish law has been maintained[239]. In the event that the creditor(s) fail to place an objection within the seven-day objection period stipulated by the law, the subsequent objections will not be accepted[240]. In addition, the examination to be carried out upon the objection of the creditors should be performed and resolved within the temporary respite period[241].

233 Öztek, Budak, Tunç Yücel, Kale and Yeşilova, Madde 288 (n 1) N 5; Kale, 'Konkordato' (n 16) 223.

234 Kale, 'Konkordato' (n 16) 223; Uyar, *Yeni Konkordato* (n 1) 47.

235 Özekes, 'Geçici Mühlet Kararı' (n 62) 75. As a matter of fact, according to the third paragraph of Article 288 of the Enforcement and Bankruptcy Law, *"The decisions regarding the extension of the temporary respite and the rejection of the concordat request are also announced in accordance with the second paragraph and the relevant authorities are notified"*.

236 Kale, 'Konkordato' (n 16) 222.

237 Kale, 'Konkordato' (n 16) 223.

238 Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 486; Özekes, 'Geçici Mühlet Kararı' (n 62) 75; Kale, 'Konkordato' (n 16) 223; Sarısözen, *7101 sayılı Kanun* (n 2) 58.

239 Sarısözen, *7101 sayılı Kanun* (n 2) 58. A decision of the Supreme Court about the possibility of objecting a decision from the past to the present is as follows: *"... According to the provision of Article 288 of the EBL, every creditor can object to the respite decision to be given upon the request for concordat within 7 days from the date of the announcement. The creditors may request the removal of the respite, claiming that the conditions required for the acceptance of the concordat request do not exist. In this respect, if an objection is made to the inspection authority, the creditor and the debtor must be heard by the court by a simple trial procedure, and a negative decision about the objection must be made after hearing the both the creditor and the debtor and making other investigations deemed necessary ..."* (Supreme Court 12th Civil Department, Main 1988/4765, Decision 1988/6165. For the decision *see:* https://lib.kazanci.com.tr/kho3/ibb/anaindex.html, Last Online Access: 4.3.2021).

240 Özekes, 'Geçici Mühlet Kararı' (n 62) 75.

241 Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 487.

D. Is It Possible to Appeal to the Court Against any Temporary Respite Decision?

In accordance with the provisions of concordat stipulated by Law No. 7101, it should be explicitly determined whether it is possible to appeal to the court against any temporary respite decision. It should be noted right away that the way to appeal to the court against any temporary respite decision to be ruled by the court is prohibited[242]. As a matter of fact, this issue is clearly regulated in the 6th paragraph of Article 287 of the Execution and Bankruptcy Law[243]. The legislator stipulates in EBL Art. 287 para 6 that the opportunity to appeal to the court is not allowed against the acceptance of the temporary respite request, the appointment of a temporary commissioner (trustee), the extension of the temporary respite and the decision to impose cautionary measures[244]. The purpose to prevent the creditors to appeal to the court against any temporary respite is to restraint the debtor's efforts to improve its financial situation from being interrupted as a result of the creditor's objection[245].

The provisions of EBL Art. 287 para 6 only restraints the opportunity to appeal to the court against the acceptance of the temporary respite request, the appointment of a temporary commissioner (trustee), the extension of the temporary respite and the decision to impose cautionary measures and has not governed whether it is possible for the creditor to appeal against the rejection of any temporary respite request[246]. **The predominant view that we also agree with in the doctrine is that**, legal action may be taken against the decisions regarding the rejection of any temporary respite request as the law does not explicitly regulate otherwise[247]. This is based on the rule that an appeal can be lodged against the court's finalized decisions, unless explicitly prohibited[248]. Accordingly, the debtor whose temporary respite request has been rejected will be able to apply to the Court of Appeals within seven days[249]. On the other hand, the decisions of the Court of Appeals cannot be further appealed[250] (EBL Art. 293 para 2).

242 Pekcanıtez and Erdönmez (n 8) 29; Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 651; Sarısözen, *Konkordato* (n 1) 192; Altay and Eskiocak (n 1) N. 113, p. 148.

243 In the sixth paragraph of Article 287 of the Enforcement and Bankruptcy Law, it is clearly stated that, *"It is not possible to apply for legal action against the acceptance of the request for temporary respite, appointment of a temporary commissioner, extension of the temporary respite and the decision regarding the measures".*

244 Kale, 'Konkordato' (n 16) 223; Özekes, 'Geçici Mühlet Kararı' (n 62) 75; Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 651.

245 Pekcanıtez and Erdönmez (n 8) 29.

246 Kale, 'Konkordato' (n 16) 223; Özekes, 'Geçici Mühlet Kararı' (n 62) 74; Sarısözen, *Konkordato* (n 1) 192; Altay and Eskiocak (n 1) N. 113, p. 148.

247 Kale, 'Konkordato' (n 16) 223; Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 651; Pekcanıtez and Erdönmez (n 8) 29; Özekes, 'Geçici Mühlet Kararı' (n 62) 74; Altay and Eskiocak (n 1) N. 113, p. 148.

248 Özekes, 'Geçici Mühlet Kararı' (n 62) 74; Pekcanıtez and Erdönmez (n 8) 29.

249 Kale, 'Konkordato' (n 16) 223.

250 Hence, according to the second paragraph of Article 293 of the Enforcement and Bankruptcy Law *"As a result of the evaluation of the peremptory respite request, if it is decided to reject the concordat request of the debtor for whom a bankruptcy decision has not been issued, the debtor or the creditor, if any, requesting concordat within ten days from the notification of this decision may apply for an appeal. The decision of the regional court of appeal is final. In cases where the decision of the first instance court is abolished and the respite decision is given by the regional court of appeal, the file is sent to the court of first instance for subsequent proceedings, including the commissioning of the commissioner".*

E. Duration and Extension of the Temporary Respite

The temporary respite to be granted by the Court within the framework of the concordat provisions is stipulated as "*three months*" in Turkish Law[251]. The three-month period stipulated by the law cannot be extended beyond "*two months*"[252] (EBL Art. 287 para 4). As is seen, the total duration of the temporary respite can be at most "*five months*"[253]. In order for the three-month period granted by the court for the temporary respite to be extended for another two months, extension should be requested by the parties[254]. In other words, the court does not ex officio decide to extend the temporary respite[255]. An issue that can be further discussed in the doctrine at this point is whether it is possible to directly claim a temporary respite of four months, instead of three months, considering that the maximum period allowed for temporary respite is five months[256]. ***Doctrine*** claims that this issue is not possible in Turkish law[257]. We, too, are of the opinion that it is not possible to make a decision in a different direction, while the duration is clearly stipulated in the Execution and Bankruptcy Law.

Our Execution and Bankruptcy Law has regulated that the request for an extension of the temporary respite is only possible within three months[258]. Accordingly, it is not possible to accept a further request for the extension of temporary respite that has not been submitted within three months[259]. The beginning of the validity period for the extension request is clearly regulated by the legislator[260].

An issue that can be further discussed in the doctrine at this point is whether it would be legal if the decision to be given by the court exceeds this period although the request for the extension of the temporary respite is submitted within three months. According to the view ***in the doctrine and to which we, too, agree***; if it has not been possible to extend the temporary respite due to court reasons despite the

251 Özekes, 'Geçici Mühlet Kararı' (n 62) 76; Öztek, Budak, Tunç Yücel, Kale and Yeşilova, Madde 287 (n 1) N 21; Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 486; Pekcanıtez and Erdönmez (n 8) 27; Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 652; Altay and Eskiocak (n 1) N. 57, p. 50; Uyar, *Yeni Konkordato* (n 1) 44.

252 Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 486; Özekes, 'Geçici Mühlet Kararı' (n 62) 76; Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 653; Pekcanıtez and Erdönmez (n 8) 27; Altay and Eskiocak (n 1) N. 57, p. 50; Uyar, *Yeni Konkordato* (n 1) 44. As a matter of fact, according to the Enforcement and Bankruptcy Law, *"The temporary respite is three months. The court may extend the temporary respite for a maximum of two months upon the request of the debtor or the temporary commissioner before the expiry of this three-month period. If the debtor has requested the extension, the opinion of the temporary commissioner is also taken. The total duration of the temporary respite cannot exceed five months".*

253 Özekes, 'Geçici Mühlet Kararı' (n 62) 76; Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 486; Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 653; Uyar, *Yeni Konkordato* (n 1) 44.

254 Pekcanıtez and Erdönmez (n 8) 28; Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 653.

255 Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 653.

256 Pekcanıtez and Erdönmez (n 8) 28.

257 Pekcanıtez and Erdönmez (n 8) 28.

258 Özekes, 'Geçici Mühlet Kararı' (n 62) 77; Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 653.

259 Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 653.

260 Özekes, 'Geçici Mühlet Kararı' (n 62) 77.

request for an extension is submitted within the legal period, the debtor should not be aggrieved[261]. In this case, the extension should be implemented and it should be possible to maintain the cautionary measures imposed by the court as well as other consequences of the temporary respite[262].

The decision regarding the grant of the temporary respite is binding and cannot be appealed[263] (EBL Art. 287 para 6). The main reason for to restraint the objection against any decision to extend the temporary respite is to provide relief and legal security to the debtor[264].

F. Legal Consequences of the Temporary Respite

Certain consequences were aimed by the legislator within the context of the temporary respite. One of the consequences linked to the decision of temporary respite in the Execution and Bankruptcy Law is that the temporary respite is subject to the results of the peremptory (definitive) respite[265] (EBL Art. 288 para 1). It should be noted in this context that, the legal consequences arising from the peremptory (definitive) respite in the Execution and Bankruptcy Law in terms of creditors (EBL Art. 294), contracts (EBL Art. 296) and debtors (EBL Art. 297) shall also apply to the temporary respite[266]. However, the fact that the temporary respite will have the same consequences as the peremptory (definitive) respite as per EBL Art. 288 para 1 shall not be interpreted as there is no difference between these two means of relief[267]. The results that are specific to the peremptory (definitive) respite do not occur during the temporary respite[268]. To give an example to this situation, a creditors council cannot be established and a meeting of creditors cannot be held within a temporary respite[269] (EBL Art. 289 para 2). While expressing the difference between a temporary and a definitive respite in the doctrine of Swiss law, it has been concluded that the creditors

261 For the authors who defend this view in the doctrine, *see*: Özekes, 'Geçici Mühlet Kararı' (n 62) 77; Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 653.

262 Özekes, 'Geçici Mühlet Kararı' (n 62) 77; Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 653.

263 Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 653; Pekcanıtez and Erdönmez (n 8) 29. Thus, in accordance with the last paragraph of Article 287 of the Enforcement and Bankruptcy Law*, "It is not possible to apply for legal action against the acceptance of the request for temporary respite, appointment of a temporary commissioner, extension of the temporary respite and the decision regarding the measures."*

264 Pekcanıtez and Erdönmez (n 8) 29.

265 Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 655; Özekes, 'Geçici Mühlet Kararı' (n 62) 81; Pekcanıtez and Erdönmez (n 8) 30; Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 487.

266 Özekes, 'Geçici Mühlet Kararı' (n 62) 81; Pekcanıtez and Erdönmez (n 8) 30; SK SchKG-Umbach-Spahn/Kesselbach/Burkhalter Art. 293c (n 5) N. 3.

267 Pekcanıtez and Erdönmez (n 8) 30.

268 Özekes, 'Geçici Mühlet Kararı' (n 62) 81.

269 Özekes, 'Geçici Mühlet Kararı' (n 62) 81; Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 487. As a matter of fact, according to the second paragraph of the Enforcement and Bankruptcy Law, *"In order to make a decision on the peremptory respite, the court invites the debtor and the creditor, if any, demanding concordat to the trial. The temporary commissioner submits his written report before the hearing and, if the court deems it necessary, participates at the hearing for his/her statement to be taken. In its evaluation, the court also evaluates the reasons of objection put forward by the objecting creditor in their petition".*

council cannot be established and a meeting of creditors cannot be held during the temporary respite[270].

One other major consequence of the temporary respite decision ruled during the concordat procedure is about the suspension of the legal proceedings initiated by the creditors against the debtor[271] (EBL Art. 288 para; EBL Art. 294 para 1). In addition, the creditors will not be able to initiate new legal proceedings against the debtor for whom a temporary respite decision has been given[272]. As can be seen, the main consequence of the temporary respite in the legislation within the context of enforcement proceedings is the "*suspension of legal proceedings*" rather than the "*cancellation of legal proceedings*"[273]. There are some exceptions in the legislation regarding the regulation that stipulates the suspension of legal proceeding during the temporary respite[274]. Accordingly, unless permitted by the court, the debtor will not be able to engage in transactions defined in EBL Art. 297 para 2 as the prohibited transactions such as "*to establish a pledge on its properties*", "*to stand surety for third parties*", *"to partially or completely transfer the real estate and the permanent installation of the enterprise, to establish limited real rights and gratuitous legal transactions on them*"[275]. In addition, personnel wages and alimony receivables will not be subject to legal proceedings[276] (EBL Art. 294 para 2; EBL Art. 206 para 1).

Another consequence of the temporary respite decision is the "*appointment of a temporary concordat commissioner (trustee)*"[277]. As the debtor's power of disposition over the assets will pursue throughout the temporary respite (EBL Art. 297 para 1 sentence 1), the control over the activities by an appointed commissioner (trustee) is important in terms of protecting the interests of the creditors[278]. The qualifications of the temporary concordat commissioner (trustee) to be appointed by the court will be set forth by the *Regulation Governing the Concordat Commissioner (Trustee) and the*

270 SK SchKG-Umbach-Spahn/Kesselbach/Burkhalter Art. 293c (n 5) N. 4.

271 Altay and Eskiocak (n 1) N. 125, p. 153 et seq.

272 Pekcanıtez and Erdönmez (n 8) 32; Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 487.

273 Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 487.

274 Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 488.

275 Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 652. As a matter of fact, pursuant to the second paragraph of Article 297 of the Enforcement and Bankruptcy Law, *"The debtor cannot establish a pledge on its properties, stand surety, partially or completely transfer, and establish limited rights or gratuitous legal transactions on the real estate and the permanent installation of the enterprise. Otherwise, the transactions made are null and void. The court must take the opinion of the commissioner and the creditors board before making a decision on these transactions"*.

276 Pekcanıtez and Erdönmez (n 8) 34. As a matter of fact, according to the second paragraph of Article 294 of the Enforcement and Bankruptcy Law; *"For the privileged receivables written in the first row of the article 206, follow-up can be performed through foreclosure"*. For the privileged creditors stated in the first paragraph of Article 206 of the Enforcement and Bankruptcy Law, *see* also: section V, A, fn. 213 above

277 After the temporary respite is provided to the debtor, a concordat commissioner will be appointed in order to evaluate whether the concordat will be successful or not (Altay and Eskiocak (n 1) N. 108, p. 146).

278 Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 488. As a matter of fact, it is explicitly stated in the first paragraph of Article 297 of the Enforcement and Bankruptcy Law that *"the debtor can continue his/her business under the supervision of the commissioner"*.

Creditors Council[279] (CC Reg.) (EBL Art. 290 para 6)[280]. Execution and Bankruptcy Law stipulates the assignment of 1 (one) - or up to three in certain cases - commissioner (trustee)[281] (EBL Art. 287 para 3). The Regulation issued in 2019 governed that should three persons are to be appointed as concordat commissioners (trustees), one of them should be a "*lawyer*" and the other an "*independent auditor*"[282] (CC Reg. Art. 5 para 2). In case three concordat commissioners (trustees) are assigned, the independent auditor member should be someone appointed by the *"Public Oversight, Accounting and Auditing Standards Authority"*[283] (EBL Art. 287 para 4). This issue has been added to the Execution and Bankruptcy Law (Art. 287 para 4) by virtue of Law No. 7155[284] on the *"Commencement of the Proceedings Relating to Pecuniary Claims Originating from Subscription Contract"*[285] which entered into force on 19.12.2018[286].

According to Turkish law, it is obligatory to appoint a temporary concordat commissioner (trustee) together with the temporary respite decision[287]. However, it is stipulated in Swiss law in accordance with SchKG Art. 293b para 2 that in exceptional cases, a concordat commissioner may not be appointed[288].

VI. Current Developments and Recent Practice in Turkey on Concordat

The provisions of Law No. 7101, which abolished the postponement of bankruptcy and introduced some amendments to the concordat provisions, were published in the

279 Official Gazette 30.01.2019 Number 30671.

280 Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 652. Hence, it is clearly stated in the sixth paragraph of Article 290 of the Enforcement and Bankruptcy Law that *"The qualifications of the concordat commissioner, the training, the institutions that will provide the training and the ones who will be exempted from the training and the other issues related to the commissioner are determined by the regulation implemented by the Ministry of Justice."* For the Regulation on the Concordat Commissioner and the Board of Creditors, *see* also: https://app.e-uyar.com/makale/index/68923b17-5275-4669-945c-a6ca65c2220e (Last Online Access: 4.3.2021).

281 Pekcanıtez, Atalay, Sungurtekin Özkan and Özekes (n 1) 488; Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 651; Kale, 'Konkordato' (n 16) 221; Sarısözen, *7101 sayılı Kanun* (n 2) 57; Uyar, *Yeni Konkordato* (n 1) 43. As a matter of fact, it is stated in the third paragraph of Article 287 of the Enforcement and Bankruptcy Law that *"The court appoints a temporary concordat commissioner to examine closely whether the concordat is possible to succeed with the temporary respite decision. Three commissioners may be appointed when necessary after considering the number of creditors and the amount of receivables."*

282 As a matter of fact, *in the Regulation on the Concordat Commissioner and the Board of Creditors* (CC Reg.), this issue is clearly explained in the second paragraph of Article 5 that *"In case three commissioners are appointed; one of the commissioners is elected from among the independent auditors, provided that they work in the province where the court is located. It is preferred that another commissioner to be elected is a legal expert."*

283 Altay and Eskiocak (n 1) N. 108, p. 146.

284 Official Gazette 19.12.2018, Number 30630.

285 *See:* https://www.resmigazete.gov.tr/eskiler/2018/12/20181219-1.htm (Last Online Access: 4.3.2021).

286 In the Government justification (Article 14) of the Law numbered 7155, it is explicitly stated that: *"With this article, in the event that the three commissioners are appointed, one of them is obliged to be selected from among the independent auditors authorized by the Public Oversight, Accounting and Auditing Standards Authority and approved as a cap auditor. Provided that there is no such independent auditor operating within the provincial administrative boundaries where the court is located, this obligation will not be valid."*

287 Pekcanıtez and Erdönmez (n 8) 35.

288 SK SchKG-Umbach-Spahn/Kesselbach/Burkhalter Art. 293b (n 5) N. 1.

Official Gazette dated 15.03.2018[289]. We should certainly take a look at the current developments and recent practice in Turkey on Concordat in order to evaluate whether the amendments introduced by Law No. 7101 on this issue are beneficial.

Until the Law Amendment No. 7101 introduced in March 2018, the number of companies declaring concordat in Turkey was almost at a minimum[290]. However, the Concordat procedure has been functionalized with the effect of Law Amendment No. 7101 introduced in April 2018 and there has been a significant increase in the number of companies requesting concordat[291].

While we had an increasing number of debtors applying to the Concordat regime in Turkey, the legislator was not content with the amendments introduced by Law No. 7101 and adopted other legal amendments and regulations. In this context, Law No. 7155 on the *"Commencement of the Proceedings Relating to Pecuniary Claims Originating from Subscription Contract"* was published in the Official Gazette on 19 December 2018 and entered into force. It has introduced several amendments to the provisions of the Execution and Bankruptcy Law relating to the Concordat[292]. Apart from the amendments foreseen by the Execution and Bankruptcy Law and introduced by Law No. 7101, we see that the provisions of various regulations have been adopted as a current development. Accordingly, the *"Regulation Governing the Documents to be Annexed to the Concordat Application"* published in the Official Gazette dated January 30, 2019 within the context of the documents to be annexed to the concordat petition is important[293]. Also noteworthy is the "*Regulation Governing the Concordat Commissariat (Trustee) and the Creditors Council*", which is another regulation adopted by the legislator and published in the Official Gazette dated 30.01.2019. The qualifications of the temporary concordat commissioner (trustee) to be appointed by the court will be set forth by the "*Regulation Governing the Concordat Commissariat (Trustee) and the Creditors Council* "[294] (EBL Art. 209 para 6). In addition, the amendment published in the Official Gazette dated 26 December 2020[295] regarding

289 Kale, 'Konkordato' (n 16) 213; Sarısözen, *7101 sayılı Kanun* (n 2) 21.

290 Thus, the number of concordat in January 2018 was only one. Three concordat announcements were made in February. In March, when Law No. 7101 was amended, no concordat request was made. Due to the impact of the economic difficulties experienced by the companies in Turkey, 28 debtors in May 2018, 34 in June, 35 in July, 46 in August, 73 in September, applied to the concordat proceedings. The number of debtors who applied to concordat was determined as 252 in October, 336 in November and 279 in December. As can be seen, the interest in concordat has steadily increased, and the number of concordat, which reached 899 in 2019, has increased to 2000 in the last two years. For more detailed information, *see*: https://www.dw.com/tr/analiz-t%C3%BCrkiyede-konkordato-say%C4%B1s%C4%B1-2019-sonunda-iki-bine-dayand%C4%B1/a-52071822#:~:text=2019'un%20son%20%C3%BC%C3%A7%20ay%C4%B1nda,da%20bin%20993'e%20ula%C5%9Ft%C4%B1.&text=Konkordato%20ilan%20eden%20toplam%20bin,622'si%20Anonim%20%C5%9Firket%20stat%C3%BCs%C3%BCnde (Last Online Access: 10.02.2021).

291 Ibid.

292 The amendments introduced by Law No. 7155 are as follows: In (e) clause of first paragraph of Article 286 of the EBL (In the Art. 13 of Law No 7155); in second clause of the third paragraph of the Article 287 of the EBL (Art. 14 of the Law No. 7155)) and in the fifth and sixth paragraphs of Article 290 of the EBL (Art. 15 of the Law No. 7155).

293 *See:* section IV, B, 2 above.

294 Atalı, Ermenek and Erdoğan, *İcra ve İflas* (n 1) 652.

295 Official Gazette 26.12.2020, Number 31346.

the insolvency, which is one of the reasons on the grounds of which Concordat can be requested introduced significant amendments to the Provisional Article 1[296] of "*Communique on Procedures and Principles for the Execution of Article 376 of the Turkish Commercial Code No. 6102*"[297].

VII. Conclusion

The bankruptcy postponement mechanism, introduced in Turkish Law for to prevent equity companies and cooperatives from going bankrupt due to their insolvency and which allows them to recover, did not give the expected results when it was first implemented in 2003. As postponement of the bankruptcy mechanism could not respond to practical requirements, did not yield the expected results in terms of improving, restructuring the companies and allowing them to continue their commercial life, the legislator aimed to make the "*concordat*" provisions functional this time in 2018. With the entry into force of Law No. 7101 on 15.03.2018 for this purpose, a number of amendments have been introduced to the concordat provisions referred to in the Execution and Bankruptcy Law.

With the amendment to the Law No. 7101; significant legal amendments were introduced to the concordat institution which is regulated within the framework of the provisions 285 to 309 of the Execution and Bankruptcy Law and the regime has acquired a completely different scheme. The revision of the Swiss Federal Execution and Bankruptcy Law, which entered into force on January 1, 2014 in Switzerland, significantly expanded the function of the concordat moratorium. The amendments to the provisions of concordat on the grounds of Law No. 7101 were affected by the Swiss Execution and Bankruptcy Law (SchKG Art. 293-336). Based on these amendments, many provisions that previously caused the disruption of concordat were either revised or abolished. We, too, are of the opinion that the amendments of Law No. 7101, which was affected by the revisions of the Swiss Law in 2014, have paved the way for the provisions of the concordat mechanism in Turkish law to be functional. The opportunity to apply to the abolished bankruptcy postponement mechanism was only available to equity companies and cooperatives. This situation did not allow real person traders on the verge of bankruptcy to recover. After updating various provisions of the concordat with the amendments introduced by Law No.

296 The provisional article 1 after the amendment is as follows:
(1) In the calculations made for loss of capital or insolvency up until 1/1/2023 within the scope of Article 376 of the Law, half of the total sum of all foreign exchange losses arising from foreign currency liabilities that have not yet been executed and expenses, depreciation and personnel expenses arising from leases accrued in 2020 and 2021 may not be taken into account. In determining these amounts, calculation is made in order not to cause repetition. Regarding the calculations to be made within the scope of this paragraph, no records are included in the financial statements prepared pursuant to Article 13, this is shown in footnotes for informational purposes. See:
https://www.resmigazete.gov.tr/eskiler/2020/12/20201226-6.htm (Last Online Access: 10.02.2021).

297 *See:* https://lexist.com.tr/blog/2020/12/29/turk-ticaret-kanununun-376-maddesinin-uygulanmasina-dair-usul-ve-esaslar-hakkinda-tebligde-degisiklik-yapilmistir/https://lexist.com.tr/blog/2020/12/29/turk-ticaret-kanununun-376-maddesinin-uygulanmasina-dair-usul-ve-esaslar-hakkinda-tebligde-degisiklik-yapilmistir/ (Last Online Access: 10.02.2021).

7101, real person traders apart from equity companies and cooperatives are granted the opportunity to apply to the Concordat so that they can get rid of the risk of going bankrupt. The legislator made the right choice by revising the provisions of the Concordat to ensure equality between debtors who want to survive bankruptcy and continue their business activities.

Many provisions that previously caused the disruption of concordat were either revised or abolished based on these amendments introduced by Law No. 7101. Although the general understanding regarding the concordat procedure has been preserved in Turkish law following the amendments introduced by Law No. 7101, various significant amendments have occurred in the functioning and proceedings of the concordat procedure. The novelties brought by the legislator with the amendment of Law No. 7101 can be listed as follows:

1) One of the major changes introduced by Law No. 7101 for the regulations regarding concordat in Turkish law is related to the Court where the concordat application will be submitted. The old regulation stipulating that enforcement courts are in charge in the first place when applying for concordat has been repealed. Instead, with the amendments of Law No. 7101, it was stipulated that the court responsible for receiving the concordat application would be the *"commercial court of first instance"*. The fact that the Court solely assigned for Concordat procedures has been designated as the "*commercial court of first instance*" with Law No. 7101 will prevent making contradictory decisions, so it has become an appropriate arrangement for procedural economy. In addition, the fact that only a *"commercial court of first instance"* is appointed to deal with Concordat proceedings instead of different courts with this amendment and that the procedures will be carried out by a single court commissioned for the concordat procedure has become an appropriate arrangement as it will ensure that the procedure to be carried out faster and healthier.

2) After the new regulations introduced by Law No. 7101, the concordat proceedings will be initiated by the application of either the debtor or creditors to the commercial court of first instance with a preliminary concordat project. The amendment introduced a new regulation stipulating that not only the debtor but also each creditor who can claim bankruptcy can also apply for concordat proceedings (EBL Art. 285 para 2).

3) With the enactment of Law No. 7101, major changes have been made in the documents that should be submitted when applying for concordat. As a matter of fact, the documents to be annexed to the concordat application were insufficiently expressed in Art. 285 of the former Law in a single paragraph under the subheading of *"Requirements for the Acceptance of the Concordat Application"*. The regulation stipulated in the former Art. 285 of EBL has been completely amended, including its title. Following the amendment introduced by Law No. 7101, the documents to be annexed to the Concordat application of the debtor are listed separately in a different (EBL Art. 286) article.

4) Following the amendment to Law No. 7101, the concept of "preliminary concordat project" was accepted in Turkish Law (EBL Art. 286 para 1(a)).

5) With the new regulation, a new amendment was introduced in terms of whether the person applying for concordat is the debtor or the creditor. Furthermore; in the event that the applicant to the concordat is the *debtor*, the documents to be annexed to the petition submitted to the court will differ depending on whether the debtor is a *"merchant"* or not and, if it is a merchant, whether it is a real person or a legal person. In the event that the debtor or the creditor who will apply for concordat duly submit to the Court the documents stipulated in Article 286 of the Execution and Bankruptcy Law as amended by Law No. 7101, the Court will take a temporary respite decision without the parties having to assume any further burden of proof (EBL Art. 287 para 1).

6) The provisions of the bankruptcy postponement to the benefit of the debtor are included in the concordat regime and in this context, the decision regarding temporary relief was accepted. Thus, the opportunity to take a temporary relief decision has been included within the concordat provisions through which legal proceedings initiated by creditors against the debtor within the temporary relief will be suspended and new proceedings will be prevented (EBL Art. 288 para 1; EBL Art. 294 para 1).

7) In fact, an important novelty introduced by Law No. 7101 regarding the concordat proceedings is the opportunity to compose a "*creditors council*" upon the peremptory (definitive) respite or within the peremptory (definitive) respite period.

8) The commissioner (trustee) appointed by the Court during the concordat proceedings invites the creditors to declare their receivables. Based upon the amendments introduced by Law No. 7101, the commissioner (trustee) will give the creditors a period of "*fifteen days*" to determine who the creditors are and invite them to declare their receivables. As can be seen, the legislator shortened the "*twenty day*" period stipulated in the former law and decreased it to "*fifteen days*".

In brief; with the amendment to the Law No. 7101 significant legal amendments were introduced to the concordat institution which is regulated within the framework of Execution and Bankruptcy Law and the regime has acquired a completely different scheme. Thus, a positive development was experienced with the introduction of the Concordat to legal practice. After the amendments introduced to the Law No. 7101 in 2018, there has been a significant increase in Turkey in the number of debtors who want to get rid of bankruptcy by applying to the Concordat Regime. As a result of the developments experienced, the legislator was not satisfied only with the revision of Law No. 7101, but also realized many new legislative changes in order for the Concordat mechanism to gain function. In this context, various regulations have also been put into effect. We can conclude that it will be possible to ensure the recovery of debtors in economic difficulties on the grounds of the current developments in Turkey regarding Concordat.

Peer-review: Externally peer-reviewed.
Conflict of Interest: The author has no conflict of interest to declare.
Financial Disclosure: The author declared that this study has received no financial support.

Bibliography

Akil C, 'Konkordato Prosedürü Çerçevesinde Sürekli Borç İlişkisinin Feshi (İİK m. 296, II)' (2019) 143 Türkiye Barolar Birliği Dergisi 221-233 (*Konkordato Prosedürü*).

Akil C, 'Konkordato Mühletinin Alacaklılar Bakımından Sonuçları (28.02.2018 Tarih ve 7101 Sayılı Kanunla Yapılan Değişikliklere Göre)' (2019) 141 Türkiye Barolar Birliği Dergisi 227-252 (*Konkordato Mühleti*).

Albayrak H, *İflas Dışı Adi Konkordatoda Konkordato Mühletinin Sözleşmeler Bakımından Sonuçları* (Yetkin 2020).

Altaş S, *Türk Ticaret Kanununa Göre Anonim Şirketler* (Güncellenmiş ve Genişletilmiş 8. Bs, Seçkin 2017).

Altay S, 'İflasın Ertelenmesi Hakkındaki Yeni Hükümlerin Yeniden Yapılandırma Kurumları Üzerindeki Olumsuz Etkisi ve Çözüm Yolları' in *Prof. Dr. Ergun Özsunay'a Armağan* (Vedat 2004) 625-658. (*İflasın Ertelenmesi*).

Altay S, *Türk İflâs Hukuku, 1. Cilt* (Vedat 2004) (*İflâs Hukuku*).

Altay S and Eskiocak A, *Konkordato ve Yeniden Yapılandırma Hukuku* (5. Bs Vedat 2019).

Amonn K and Walter F, *Grundriss des Schuldbetreibungs- und Konkursrechts* (9. vollständig aktualisierte Auflage, Stämpfli Verlag AG Bern 2013).

Arslan R, Yılmaz E, Taşpınar Ayvaz S and Hanağası E, *Medenî Usul Hukuku* (Güncellenmiş ve 7251 sayılı Kanun Değişiklikleri İşlenmiş 6. Bs, Yetkin 2020) (*Usul*).

Atalay O, *Borca Batıklık ve İflasın Ertelenmesi* (Gözden Geçirilmiş ve Yenilenmiş 2. Bs., Güncel Yayınevi 2007) (*Borca Batıklık*).

Atalay O, 'Konkordato Reformu Hakkında Değerlendirmeler' in Muhammet Özekes (eds), *7101 sayılı Kanunla Konkordato ve Elektronik Tebligat Konularında Getirilen Yenilikler* (On İki Levha 2018) 111-134 (*Konkordato*).

Atalay O, 'İflas Hukukundaki Yenilikler' (2004) 1(2) Yeditepe Üniversitesi Hukuk Fakültesi Dergisi 485-502 (*İflas Hukukundaki Yenilikler*).

Atalı M, Ermenek İ and Erdoğan E, *İcra ve İflas Hukuku* (3. Bs, Yetkin 2020) (*İcra ve İflas*).

Atalı M, İbrahim Ermenek and Ersin Erdoğan, *Medenî Usul Hukuku Ders Kitabı* (3. Bs., Yetkin 2020) (*Medeni Usul*).

Atalı M, *Pekcanıtez Usul Medeni Usul Hukuku, C. III* (15. Bs., On İki Levha 2017) (*Pekcanıtez Usul*).

Atalı M, 'Konkordatoda Kesin Mühlet ve Sonuçları' in Muhammet Özekes (eds), *7101 sayılı Kanunla Konkordato ve Elektronik Tebligat Konularında Getirilen Yenilikler* (On İki Levha 2018) 85-109 (*Konkordato*).

Aydın A, 'Türk Ticaret Kanunu'nun Anonim Ortaklıkta Sermaye Kaybı ve Borca Batıklığa İlişkin Düzenlemesine (TK M. 376) Eleştirel Bir Bakış' (2012) 70(2) İstanbul Üniversitesi Hukuk Fakültesi Mecmuası 101-113.

Balcı Ş, *İflasın Ertelenmesi Usul ve Esaslar* (Gözden Geçirilmiş Yenilenmiş 3. Bs., Seçkin 2010) (*İflasın Ertelenmesi*).

Balcı Ş, *Türk Hukukunda Konkordato* (Güncel 2007) (*Konkordato*).

Basler Kommentar-Wüstiner H, *Obligationenrecht II, Art. 530-1186 OR*, *3. Abschnitt: Organistaion der Aktiengesellschaft* (3. Aufl., Helbing Lichtenhahn 2008) (*BaK-Wüstiner, Art. 725*).

Basler Kommentar-Staehelin A and Vollmar A, *Bundesgesetz über Schuldbetreibung und Konkurs II, Art. 159-352 SchKG Art. 1-47 GSchG, Art. 51-58 AVIG* (Basler Kommentar) in Adrian Staehelin, Thomas Bauer, Daniel Staehelin (Hersgeber) (2. Auflage, Helbing Lichtenhahn 2010) (*BSK-SchKG II-Staehelin/Vollmar*).

Bilgili F and Demirkapı E, *Şirketler Hukuku Dersleri* (7. Bs., Dora 2020).

Börü L 'Adi konkordatoda Alacaklıların Alacaklarını Bildirmesi" (2019) 10 (1) İnönü Üniversitesi Hukuk Fakültesi Dergisi 173-186.

Börü L and Parlak Börü Ş, 'Konkordatonun Kefalet Sözleşmesine Etkileri' (2020) 78(3) İstanbul Hukuk Mecmuası 1239-1277.

Budak AC and Karaaslan V, *Medenî Usul Hukuku* (Genişletilmiş ve Gözden Geçirilmiş 4. Bs., Adalet 2020).

Budak AC and Kale S, *Konkordato Komiserinin Kontrol Listesi* (Adalet 2019).

Domaniç H, *Anonim Şirketler Hukuku ve Uygulaması TTK. Şerhi – II* (Temel 1988).

Dubach A, 'Der Konkursaufschub nach Art. 725a OR: Zweck, Voraussetzungen und Inhalt' (1998) 94 Schweizerishe Juristen-Zeitung 149-160.

Erdönmez G, 'Muamele Merkezinin Değiştirilmesinin İflasın Ertelenmesi Talebini İnceleyen Mahkemenin Yetkisine Etkisi' *Prof. Dr. Ejder Yılmaz'a Armağan, Cilt 1* (Yetkin 2014) 867-887.

Eriş G, *Uygulamalı İçtihatlı Anonim Şirketler Hukuku* (Seçkin 1995).

Forstmoser P, Meier-Hayoz A and Nobel P, *Schweizerisches Aktienrecht* (Stämpfli 1996).

Franko N, 'Sermaye Şirketlerinde-Özellikle Anonim Şirketlerde İflas ve Tehiri (TTK 324/3 ve İİK. 179. Maddeleri Hakkında Bir Tetkik)' *Prof. Dr. Haluk Tandoğan'a Armağan* (Banka ve Ticaret Hukuku Araştırma Enstitüsü 1990) 409-433.

Giroud R, *Die Konkurseröffnung und ihr Aufschub bei der Aktiengesellschaft* (2. Aufl., Schultess 1986).

Göksu M, 'Concordat and Restructuring in Turkish Insolvency Law (Areview from ADR Perspective)' (2020) 24(4) Ankara Hacı Bayram Veli Üniversitesi Hukuk Fakültesi Dergisi 119-153.

Görgün ŞL, Börü L, Toraman B and Kodakoğlu M, *Medenî Usûl Hukuku* **(**28.7.2020 tarih ve 7251 sayılı Kanunla Değiştirilmiş, Güncellenmiş, 9. Bs., Yetkin 2020).

Haas U and Strub Y, *Die Aktiengesellschaft, Generalversammlung und Verwaltungsrat, Mangel in der Organisation, Art. 698-726 und 731b OR, ZK – Zürcher Kommentar* (Lukas Handschin Herausgeber) (3., neu bearbeitete Auflage, Schulthess 2018) 1237-1273 (*Swisslex*).

Hunkeler D, *Kurzkommentar, SchKG Schuldbetreibungs- und Konkursgesetz,* (2. Aufl., Helbing Lichtenhahn 2014) (*KUKO SchKG-Hunkeler*).

Hunkeler D and Schönmann Z, 'Grundriss des prepacks' (Thomas Sprecher Herausgeber) *Sanierung und Insolvenz von Unternehmen IX Neue Entwicklungen*, (EIZ – Europa Institut Zürich Band/ Nr. 192), (Schulthess 2019) 45-50 (*Swisslex*).

Işık S, 'Sermaye Şirketleri ile Kooperatiflerin Borca Batık Olmaları Sebebiyle Doğrudan İflaslarının Söz konusu Olması Durumunda İflasın Ertelemesi Kurumuna Başvuru Şartlarının Kanuni Değişiklikler Çerçevesinde Değerlendirilmesi' (2016) İstanbul Üniversitesi Hukuk Fakültesi Mecmuası (*Prof. Dr. Fevzi Şahlanan'a Armağan Özel Sayı, Cilt: II*) 1295-1350.

Jaeger C, Walder HU, Kull MT and Kottmann M, *Das Bundesgesetz über Schuldbetreibung und Konkurs (SchKG): Erläutert für den praktischen Gebrauch, Band III Art. 293-352 Schlussbestimmungen Anhange Sachregister* (4. Auflage, Schulthess 1997/2001).

Kale S, 'İsviçre İcra İflas Kanununun Adi Konkordato Hükümlerine Genel Bir Bakış' (Güz 2017) 4(2) İstanbul Medipol Üniversitesi Hukuk Fakültesi Dergisi 153-169 (*İsviçre*).

Kale S, '7101 Sayılı İcra ve İflas Kanununda Değişiklik Yapılmasına Dair Kanun Çerçevesinde İflas Dışı Konkordato' **(**Bahar 2018) 5(1) İstanbul Medipol Üniversitesi Hukuk Fakültesi Dergisi 213-269 (*Konkordato*).

Kaplan İ, 'İsviçre İcra ve İflas Hukukunun Borçların Ertelenmesine (Konkordatoya) İlişkin Malvarlığı Yönetimi Sözleşmesi Hükümleriyle Mukayeseli Olarak Yeni Türk Konkordato Hukuku' (Yetkin 2019).

Karayalçın Y, 'İsviçre Borçlar Kanununda Anonim Şirketler Hukuku Alanında Yapılan Değişiklikler' (1993) 17(1) Banka ve Ticaret Hukuku Araştırma Dergisi 5-48.

Karslı A, *İcra ve İflas Hukuku* (Yenilenmiş ve Gözden Geçirilmiş 3. Bs., Alternatif 2014) (*İcra ve İflas Hukuku*).

Karslı A, *Medeni Muhakeme Hukuku* (Yenilenmiş ve Gözden Geçirilmiş 5. Bs., Alternatif 2020) (*Medeni Muhakeme*).

Karslı A, 'İflasın Ertelenmesinde Bazı Problemler' *Haluk Konuralp Anısına Armağan C. 2* (Yetkin 2009) 263-280 (*İflasın Ertelenmesi*).

Kaya A, 'Borca Batık Anonim Şirketlerin İflasının Ertelenmesi' *Prof. Dr. Erdoğan Moroğlu'na 65. Yaş Günü Armağanı* (Beta 2001) 279-303 (*Borca Batıklık*).

Kaya A, *Notlu Türk Ticaret Kanunu* (Güncellenmiş 8. Bs, Beta Basım 2020) (*Türk Ticaret Kanunu*).

Kayar İ, 'Limited Ortaklıkta Mali Durumun Bozulması ve Alınacak Tedbirler' *Prof. Dr. Erdoğan Moroğlu'na 65. Yaş Günü Armağanı* (Beta 2001) 305-338 (*Mali Durum*).

Kayıhan Ş, *Şirketler Hukuku* (Gözden Geçirilmiş 4. Bs., Seçkin 2020).

Kähr M, 'Ein Sanierungsrecht für Versicherungen' (Thomas Sprecher Herausgeber) *Sanierungd und Insolvenz von Unternehmen IX Neue Entwicklıngen* (EIZ – Europa Institut Zürich Band/Nr. 192, 2019) 75-97(*Swisslex*).

Kälin O, 'Chancen und Risiken der aktienrechtlichen Sanierung – ein Überblick' (Thomas Sprecher Herausgeber) *Sanierung und Insolvenz Unternehmen X* (EIZ – Europa Institut Zürich Band/Nr. 198, 2020) 7-25 (*Chancen und Risiken*) (*Swisslex*).

Kälin O, 'Die Sanierung der Aktiengesellschaft Ein Rechtshandbuch für Verwaltungsräte' (Schulthess 2016) (*Die Sanierung*) (*Swisslex*).

Kendigelen A, *Yeni Türk Ticaret Kanunu, Değişiklikler, Yenilikler ve İlk Tespitler* (Güncellenmiş 2. Basıdan 3. (Tıpkı) Bs, On İki Levha 2016).

Kılıçoğlu E, 'İflasın Ertelenmesinin Konkordato ve Uzlaşma Yoluyla Yeniden Yapılandırma Kurumuyla Karşılaştırılması' *Prof. Dr. Yavuz Alangoya İçin Armağan* (Beta 2007) 451-468.

Kırca İ, Şehirali Çelik FH and Manavgat Ç, *Anonim Şirketler Hukuku, C. 1, Temel Kavram ve İlkeler, Kuruluş, Yönetim Kurulu* (Banka ve Ticaret Hukuku Araştırma Enstitüsü Türkiye İş Bankası A.Ş. Vakfı, Sözkesen 2013).

Kopta-Stutz B, 'Gerichtliche Sanierungsverfahren für Schweizer Aktiengesellschaften Unter Berücksichtigung des aktienrechtlichen Konzepts zur Auslösung von Sanierungsmassnahmen' in *ZStP -Zürcher Studien zum Privatrecht Band/Nr. 295* (Schulthess 2019) 31-46 (*Swisslex*).

Kostkiewicz JK and Vock D, *Kommentar zum Bundesgesetz über Schuldbetreibung und Konkurs SchKG* (4. Auflage, basierend auf der 1911 erschienenen 3. Auflage von Carl Jaeger, Schulthess Kommentar, Schulthess Verlag 2017) (Anılış: SK SchKG-Umbach-Spahn/Kesselbach/Burkhalter).

Kuru B, 'Pasifi Aktifinden Fazla Olan Sermaye Şirketlerinin İflası' 1970 (10) Adalet Dergisi 621-624.

Kuru B, 'İflasın Ertelenmesi Kararından Önce İcra Takiplerinin Durdurulması Hakkında İhtiyati Tedbir Kararı Verilebilir Mi?' in *Haluk Konuralp Anısına Armağan, Cilt: 2* (Yetkin 2009) 303-317 (*İflasın Ertelenmesi*).

Kuru B, *İcra ve İflas Hukuku El Kitabı* (Tamamen Yeniden Yazılmış ve Genişletilmiş İkinci Baskı Adalet 2013) (*El Kitabı*).

Kuru B and Aydın B, *İstinaf Sistemine Göre Yazılmış Medeni Usul Hukuku Ders Kitabı* (7251 sayılı Kanun Değişiklikleri İşlenmiş 4. Bs, Yetkin 2020).

Kuru B, Arslan R and Yılmaz E, *İcra ve İflas Hukuku Ders Kitabı* (Gözden Geçirilmiş, 6352 sayılı Kanunla Getirilen Yenilikler ve Yapılan Değişiklikler İşlenip Değerlendirilmiş 28. Bs, Yetkin 2014).

Meister T – OR, *Handkommentar zum Schweizerischen Obligationenrecht* (Hrsg. von Jolanta Kren Kostkiewicz, Urs Bertschinger, Peter Breitschmid, Ivo Schwander) (Orell Füssli 2002) (*Handkomm-Meister, OR Art. 725*).

Muşul T, *İflasın Ertelenmesi* (Gözden Geçirilmiş 2. Bs., On İki Levha 2010) (*İflasın Ertelenmesi*).

Muşul T, *İcra ve İflas Hukuku* C II (Gözden Geçirilmiş ve Genişletilmiş 6. Bs, Adalet 2013) (*C. II*).

Muşul T, *İflas ve Konkordato Hukuku Uzlaşma Yoluyla Yeniden Yapılandırma* (Güncellenmiş ve Gözden Geçirilmiş 2. Bs., Adalet 2019) (*İflas ve Konkordato*).

Müller L and Lind R, 'Fünf Jahre neues Sanierungsrecht: Erfahrungen, Befunde und Entwicklungen – Die Schweiz auf dem Weg zum "Swiss Chapter 11"?' (2019) Expert Focus, EXPERTsuisse 637-643 (*Swisslex*).

Namlı M, 'Concordat as a Way of Restructiıng in Turkish Insolvency Law after the 2018 Reform' (2019) 30 (8) International Company and Commercial Law Review 441- 453 (*Concordat*).

Namlı M, 'Türk ve İsviçre Hukuku'nda Gerçekleştirilen Reformların Konkordato Hukuku Bakımından Getirdiği Değişiklikler' (2018) 44 (4) Yargıtay Dergisi 1479-1552 (*Değişiklikler*).

Oehri D, **'**Der Sachwalter im Nachlassverfahren: Ein Diener zweier Herren' (Herausgeber: Peter Gauch) in *AISUF – Arbeiten aus dem Iuristischen Seminar der Universitat Freiburg Schweiz Band/Nr 380* (Schulthess 2018) (*Swisslex*).

Özekes M, 'Konkordatoya Başvuru ve Geçici Mühlet Kararı' in Muhammet Özekes (eds), *7101 sayılı Kanunla Konkordato ve Elektronik Tebligat Konularında Getirilen Yenilikler* (On İki Levha 2018) 43-83 (*Geçici Mühlet Kararı*).

Özekes M, 'İflasın Ertelenmesi (İİK m. 179-179b; TTK m. 324)' (2005) Legal Hukuk Dergisi 3249-3283 (*İflasın Ertelenmesi*).

Öztek S, Budak AC, Tunç Yücel, M, Kale S and Yeşilova, B, *Yeni Konkordato Hukuku, 7101 sayılı Kanunla Değişik İcra ve İflas Kanunu m. 285-309 Şerhi* (Selçuk Öztek eds) (1. Bs, Adalet 2018).

Öztek S, *İflasın Ertelenmesi* (Arıkan 2007).

Pekcanıtez H, 'İflasın Ertelenmesi' İstanbul Barosu Dergisi (2005) 79(2) 323-358 (*İflasın Ertelenmesi*).

Pekcanıtez H, '4949 Sayılı Kanun'la, İcra Hukukunda Yapılan Değişikliklerin Değerlendirilmesi' (2003) 49 Türkiye Barolar Birliği Dergisi 137-158 (*Değişikliklerin Değerlendirilmesi*).

Pekcanıtez H and Erdönmez G, *7101 sayılı Kanun Çerçevesinde Konkordato* (Vedat 2018).

Pekcanıtez H, Atalay O, Sungurtekin Özkan M and Özekes M, *İcra ve İflâs Hukuku Ders Kitabı* (7. Bs, On İki Levha 2020).

Poroy R, Tekinalp Ü, Çamoğlu E, *Ortaklıklar Hukuku I [Giriş, Adi Ortaklık, Ticaret Ortaklıklarına İlişkin Genel Hükümler, (Perdenin Kaldırılması, Birleşme, Bölünme, Tür Değiştirme) Kollektif, Komandit, Anonim, Halka Açık Anonim Ortaklıklar, Sermaye Piyasası Hukukunun Esasları]* (Güncellenmiş, Yeniden Yazılmış 14. Bası, Vedat 2019).

Poroy R, Tekinalp Ü, Çamoğlu E, *Ortaklıklar Hukuku II [Anonim Ortaklık (Malvarlığı, Katılma, Aydınlanma Hakları, Menkul Kıymetler, Esas Sözleşme Değişiklikleri, Finansal Raporlama, Yedek Akçeler, Sona Erme ve Tasfiye), Sermayesi Paylara Bölünmüş Komandit Ortaklık, Limited Ortaklık, Kooperatif Ortaklık, Ortaklıklar Topluluğu]* (Güncellenmiş, Yeniden Yazılmış 14. Bs, Vedat 2019).

Postacıoğlu İE, *Konkordato (538 Sayılı Kanun Hükümleri Göz Önünde Tutularak Yazılmıştır)*, (Banka ve Ticaret Hukuku Araştırma Enstitüsü, Fakülteler Matbaası 1965).

Pulaşlı H*, Şirketler Hukuku Genel Esaslar* (Güncellenmiş ve Genişletilmiş 4. Bs, Adalet 2016) (*Şirketler Hukuku*).

Pulaşlı H, *6102 Sayılı Türk Ticaret Kanununa Göre Şirketler Hukuku Şerhi Cilt 1* (Adalet 2011) (*Şerh*).

Sarısözen MS, *7101 sayılı Kanun Kapsamında İcra, İflas ve Konkordato Hukukundaki Yenilikler* (Yetkin 2018) (*7101 sayılı Kanun*).

Sarısözen MS, *Konkordato* (Yetkin 2020) (*Konkordato*).

Sayhan İ, 'Anonim Şirketlerde Aktiflerin Pasifleri Karşılayamamasının Sonucu Olarak İflas ve İflasın Ertelenmesi' (2005) XXIII (1) Banka ve Ticaret Hukuku Araştırma Dergisi 77-121.

Schönenberger. v B, 'Der Konkursaufshub nach Art. 725a OR' (BlSchk, 2002-Heft 5, s. 161-189). (Çev Üstündağ, S), "İsviçre Borçlar Kanunu (OR) madde 725a'ya göre İflasın Ertelenmesi' (Mart 2005) 111 Yargı Dünyası 9-27 (*Schönenberger, Art. 725a*).

Schwizer M, 'Arbeitsrechtliche Fragen bei der Sanierung des Arbeitgebers' in *SGRW – St Galler Schriften zur Rechtswissenschaft Band/Nr. 40* (Dike 2020) 1-29 (*Swisslex*).

Şener OH, *Teorik ve Uygulamalı Ortaklıklar Hukuku Ders Kitabı* (Gözden Geçirilmiş 4. Bs, Seçkin 2019).

Soykan, İC, *Türk Ticaret Kanununa Göre Anonim Ortaklıklarda Sermaye Taahhüdü Yoluyla Sermaye Arttırımı* (On İki Levha 2019).

Tanrıver S, '4949 sayılı İcra ve İflas Kanunu'nda Değişiklik Yapılmasına Dair Kanun'un Adi Konkordato ile İlgili Hükümlerde Getirmiş Olduğu Değişikliklerin Tespiti ve Değerlendirilmesi' (2004) 51 Türkiye Barolar Birliği Dergisi 67-90 (*Adi Konkordato*).

Tanrıver S, *Konkordato Komiseri* (Yetkin 1993) (*Konkordato Komiseri*).

Tanrıver S and Deynekli A, *Konkordatonun Tasdiki* (Yetkin 1996).

Taşpınar S, 'Adi Konkordato Hakkında İcra ve İflas Kanunu'nda Yapılan Değişiklikler' (2003) 22(2) Banka ve Ticaret Hukuku Dergisi 49-92.

Tekinalp Ü, *Sermaye Ortaklıklarının Yeni Hukuku* (Değişiklikler ve İkincil Düzenlemelerle Güncelleştirilmiş 5. Bs Vedat 2020).

Toplu MC, *İflasın Ertelenmesinin Türkiye'de Uygulama Süreçleri İyileştirme Projelerinde Mali Değerlendirme ve Analizin Önemi* (Kazancı Hukuk 2010).

Tunç Yücel M, *Konkordato Mühletinin Alacaklılar Bakımından Sonuçları* (On İki Levha 2020).

Türk A, 'Sermaye Şirketleri ile Kooperatiflerin Barca Batık Olmaları Nedeniyle İflası ve iflasın Ertelenmesi Konusunda İcra ve İflas Kanunu'nda Yapılan Son Değişikliklerin Değerlendirilmesi ve Öneriler' 2004 6 (1) Dokuz Eylül Üniversitesi Hukuk Fakültesi Dergisi 295-334.

Uyar T, *Yeni Konkordato Hukukumuzun Temel İlkeleri* (Güncellenmiş 2. Bs, Bilge 2019) (*Yeni Konkordato*).

Uyar T, 'İİK.'nun 179. Maddesi Üzerine Bir İnceleme' *Prof. Dr. Ejder Yılmaz'a Armağan (2. Cilt)* (Yetkin 2014) 1973-1995 (*İİK'nun 179. Maddesi*).

Üstündağ S, *İflas Hukuku (İflas-Konkordato-İptal Davaları)* (8. Bs., Fakülteler Matbaası 2002).

Vock D and Meister-Müller D, *SchKG-Klagen nach der Schweizerischen ZPO* (2., überarbeitete Auflage, Schulthess 2018).

Yıldırım MK and Deren-Yıldırım N, *İcra ve İflas Hukuku* (Genişletilmiş ve Gözden Geçirilmiş 7. Bs., Beta 2016).

Yıldırım MK, '4949 Sayılı Kanunun Getirdiği Değişikliklerle İcra İflas Kanunu'nda Yer Alan İptal Davalarına ve İflasın Ertelenmesine İlişkin Yeni Hükümler' in *İcra ve İflas Kanunu'nda 4949 Sayılı Kanunla Yapılan Değişiklikler Sempozyumu* (2004) 1(2) Yeditepe Üniversitesi Hukuk Fakültesi Dergisi 471-484.

Yılmaz E, *İcra ve İflas Kanunu Şerhi* (Yetkin 2016).

Zengin İÇ, *Türk Ticaret Kanunu'na Göre Anonim Ortaklık Genel Kurulunda Yeter Sayılar* (On İki Levha 2020).

Databases/Online Resources

http://www.kazanci.com/kho2/ibb/giris.html

https://www.lexpera.com.tr/ (*Lexpera*)

https://www.resmigazete.gov.tr/

https://www.resmigazete.gov.tr/eskiler/2018/04/20180405-1.pdf

https://www.e-uyar.com/ (*e-uyar*)

https://app.e-uyar.com/makale/index/68923b17-5275-4669-945c-a6ca65c2220e

https://app.e-uyar.com/makale/index/781b7b5b-f030-46ea-9efa-0c21d205ef3b

https://beck-online.beck.de/Home (*BeckOnline*)

https://www.swisslex.ch/ (*Swisslex*)

https://www.resmigazete.gov.tr/eskiler/2018/12/20181219-1.htm

https://fedlex.data.admin.ch/filestore/fedlex.data.admin.ch/eli/cc/11/529_488_529/20190101/de/pdf-a/fedlex-data-admin-ch-eli-cc-11-529_488_529-20190101-de-pdf-a.pdf

https://www.dw.com/tr/analiz-t%C3%BCrkiyede-konkordato-say%C4%B1s%C4%B1-2019-sonunda-iki-bine-dayand%C4%B1/a-52071822#:~:text=2019'un%20son%20%C3%BC%C3%A7%20ay%C4%B1nda,da%20bin%20993'e%20ula%C5%9Ft%C4%B1.&text=Konkordato%20ilan%20eden%20toplam%20bin,622'si%20Anonim%20%C5%9Firket%20stat%C3%BCs%C3%BCnde

https://lexist.com.tr/blog/2020/12/29/turk-ticaret-kanununun-376-maddesinin-uygulanmasina-dair-usul-ve-esaslar-hakkinda-tebligde-degisiklik-yapilmistir/