

An Examination On The Interaction Between Concordat, The Concordat Commissariat, And The Independent Audit Report: An Example Of The Independent Reasonable Assurance Report For A Preliminary Concordat Project*

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ABSTRACT

This study theoretically discusses concordat and the concordat commissariat as a topic of current interest in Turkey. In addition, the interaction of concordat and the concordat commissariat with the independent audit report was analyzed. Furthermore, in order to support the theoretical information, an example of an independent reasonable assurance report for a preliminary concordat project for debtors was discussed in detail.

Keywords: Concordat, Concordat Commissariat, Preliminary concordat project, Independent Reasonable Assurance Report.

Jel Classification: M40, M41, K30, G33.

Konkordato, Konkordato Komiserliği ve Bağımsız Denetim Raporu Etkileşimi Üzerine Bir İnceleme: Konkordato Ön Projesi Bağımsız Makul Güvence Raporu Örneği

ÖZET

Çalışmada; Türkiye’de gündemdeki yeni güncel konulardan birisi olan konkordato ve konkordato komiserliği kuramsal olarak ele alınmıştır. Ayrıca konkordato ve konkordato komiserliğinin bağımsız denetim raporu ile etkileşimi incelenmiştir. Ardından kuramsal bilgiyi desteklemek amacıyla borçlunun konkordato ön projesine ilişkin bağımsız makul güvence raporu örneği ayrıntılı bir şekilde ele alınmıştır.

Anahtar Kelimeler: Konkordato, Konkordato Komiserliği, Konkordato Ön Projesi, Bağımsız Makul Güvence Raporu.

JEL Sınıflandırması: M40, M41, K30, G33.

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1. INTRODUCTION

Today, concordat and the concordat commissariat within the context of new arrangements are amongst the subjects that are gaining importance in Turkey. In our country, in the Execution and Bankruptcy Law numbered 2004 dated 09.06.1932, according to the Amendment on the Execution and Bankruptcy Law and Numerous Laws numbered 7101 dated 28.02.2018, “Postponement of Bankruptcy” was abrogated and “Concordat” remained in force. The study subject investigates new arrangements for this establishment in the current year. In this regard, particularly the regulations, the circular, the decision of the Public Oversight, Accounting, and Auditing Standards Authority (POA), and the relationship between the relevant Turkish Auditing Standards (TAS) as of International Standards of Auditing (ISA) 805 and International Standard on Assurance Engagements (ISAE) 3000 with ISAE-3400, the subject are analyzed, and then a sample report is discussed.

2. METHODOLOGY

Within the context of this study, concordat and the concordat commissariat are briefly discussed first. In 30.01.2019, arrangements were made with the “Regulation on Documents for Concordat Application” and the “Regulation on the Concordat Commissariat and Formation of the Board of Creditors”. In 14.02.2019, a Tax Compliance Law (TCL) Circular titled “Regarding the Status of Concordat Institution against Doubtful Receivables Allowances” was published. Finally, a sample report to be prepared as a result of the audit was provided to the appliers through the decision of dated 14.02.2019 published in 16.02.2019 by the POA.

In accordance with the amendments to the Execution and Bankruptcy Law, the procedures and principles of the concordat commissariat assigned by the Basic Commercial Court were organized. Under the new Regulation on the Concordat Commissariat and Formation of the Board of Creditors that was published in 30.01.2019, “the Regulation on the Qualifications of the Concordat Commissariat and Mandatory Formation of the Board of Creditors” dated June 2018 was abolished. It was determined that the commissariat training shall be provided through the universities embodying law faculties, the Turkish Bar Association, and the Union of Chambers of Certified Public Accountants of Turkey (TÜRMOB) (the Regulation on Concordat Commissariat and Formation of the Board of Creditors, 30.01.2019). In this regulation context, TÜRMOB published a circular regarding the commissariat training (TÜRMOB, 07.02.2019/49-1).

“*A concordat*” is a compulsory agreement that a debtor makes with the majority of its creditors that is validated by ratification by the commercial courts, and through this creditors may renounce a certain percentage of the debtor’s debts, and/or give the debtor some more time to pay his debts. Concordat is essentially an institution that aims to prevent bankruptcy and restructure debts. According to Execution and Bankruptcy Law numbered 2004 the concordat process is regulated in several phases (*temporary respite, peremptory respite, rejection of the concordat, and acceptance of the concordat project*), and the application of doubtful trade receivable provisions is considered separately for each phase of the concordat process. According to Law Article 287 of Law numbered 2004, “*The temporary relief is for three months. The court can extend this period by up to two months at the debtor or concordat trustee's request. If the extension is requested by the debtor, the view of the concordat trustee*

is also requested. The total period of the temporary relief cannot exceed five months” In Law Article 289, *“The court gives its decision on the preemptory respite during the temporary respite...If the court understands from the trustee’s evaluations and the judge’s review that concordat could be successful, it will grant definite relief to the debtor for one year.”* In Law Article 291 states, *“After the declaration to the law court that the improvement targeted with the concordat request is realized prior to the end of the preemptory respite with the commissary’s written report, the law court directly decides to refuse the concordat request by ending the preemptory respite.”* In Law Article 306, it is stated that *“The decree of approval of concordat will indicate the extent to which the creditors renounced their claims, and how the debtor will pay his debts and to which schedule.”* Article 308/c includes the decree *“The concordat will be binding upon the approval decision.”* In accordance with Law Articles 287 and 288 of Law numbered 2004, in the case of the decision to refuse the concordat request with the end of the temporary respite, it is required to not make any adjustment for the provision of doubtful receivables as they were reverted to the lawsuit or execution phase prior to the temporary respite; for the provision of the doubtful receivables with the declaration of the decision, it is required that the doubtful receivables provision amount should be adjusted as of the accounting period when the refusal decision of the concordat request was declared after the temporary respite was abolished (the provision amount was recorded to the income account). In Law Articles 289, when the preemptory respite decision is made, although the possibility of success of the concordat is accepted, as the lawsuit and execution phases cannot be implemented by the creditors during this phase there is no need to make any adjustments regarding the previous provisions for doubtful receivables. In the implementation of Law 213, provision should be made for the doubtful receivables in the related account period as it is not possible to take account of the provision of the doubtful receivables in the following accounting periods if it is not accounted for in the related account period, if the provision of doubtful receivables is not accounted for as of the accounting period when the temporary respite is declared, in case of the declaration of the preemptory respite in the following account period, no provision is made for doubtful receivables. In Law Article 292 of Law numbered 2004, for a debtor who is subjected to bankruptcy, in the case of the realization of the conditions defined in the related article after providing the preemptory respite, it is proposed to directly decide on the end of the preemptory respite by the law court to the refusal of the concordat request and the bankruptcy of the debtor, and in that case in accordance with the relevant legislation, as the doubtfulness of the receivables that are recorded in the bankruptcy estate will continue, so there is no need for any adjustment on previously accounted provisions (TCL Circular-112/2019-2).

These are summarized as in the following (TÜRMOB, 16.02.2019/52-1):

- There is no obligation to make any correction for the allowances provided for the receivables submitted to the lawsuit or enforcement phase prior to the temporary respite decision. For the receivables that are still not submitted to the lawsuit or enforcement phase, doubtful receivables allowances may be provided for the same accounting period with the declaration of the temporary respite decision.
- In case of the approval of the concordat project, the allowance for the invaluable receivables that is given up on behalf of the debtor is written off as the invaluable receivables as of the accounting period when the concordat approval decision is declared.

- The allowance that is not provided for the receivables that become doubtful in the related accounting period is not taken into account in the following accounting periods.
- In the concordat application, the allowance of doubtful receivables is provided only for the amount exceeding the guarantee amount.

In accordance with the rules and procedures regarding the documents that will be included in the concordat request; the debtor will add the preliminary concordat project, documents indicating the debtor's assets and properties, a list of creditors and claims, a comparison chart, and a reasonable assurance audit report, and debtors who are not subjected to bankruptcy will only include the prescribed documents. If the debtor is obliged to keep accountability books, the most recent related to one year balance sheet, income statement, and cash flow statement prepared in accordance with the new Turkish Commercial Code, an interim balance sheet related to recent in 90 days in accordance with the continuity of the business, an interim balance sheet based on the assets' potential sales value, the opening and closing confirmation for the commercial journal & ledger and e-ledger certificate information for ledgers prepared in an electronic environment, lists of tangible and intangible assets with their book values, lists and documents that indicate all receivables and payables with their terms, and other information and documents to explain the financial status of the debtors will be supplied in the request. The audit is performed in order to determine whether reasonable assurance is provided for the debtor's offer included in the preliminary concordat project. While the independent audit company prepares the independent reasonable assurance report; it audits the preliminary concordat project, the documents that prove the existence and value of the debtor's property, the list of creditors and claims, the comparison chart, as well as other information and documents that the company regards as necessary. The documents that prove the existence and value of the debtor's property and the list of creditors and claims are audited in accordance with the ISA 805; the preliminary concordat project, comparison chart, ISAE-3000 and ISAE-3400 (the Regulation on the Documents will be added to the Concordat Request, 30.01.2019).

In accordance with the legislation, in case of a positive opinion that the offer provided in the concordat preliminary projects will be realized, the reasonable assurance audit report is prepared and attached to the concordat request. However, a qualified opinion may be issued by the audit conducted in accordance with ISA-805, and even with ISAE-3000 and ISAE-3400. This result should also be notified. For the reports and the audits that will be the basis for these reports, the judgments of Decree Law 660 are implemented regarding the operations, rights, and obligations of the audit company, the examination and audit of the reports, administrative and legal responsibilities, and other issues. The judgments of "the Independent Auditing Legislation" are implemented in cases where there is no judgment on legislation. The independent audit organization informs the POA of the agreement and the report that will be added to the request in 60 days following the concordat request. If there is not any concordat request to the law court, the agreement and the audit report are informed within 120 days following the date of the other documents detailing the wealth. The announcement of the agreement and the report is done through the "Agreement Information Entry System" of the POA (POA, Regulation Information Meeting About on the Documents will be added to the Concordat Request, 12.02.2019).

With the arrangements decision of dated in 14.02.2019 and published in 16.02.2019, when a debtor receives a concordat offer from the courts, they are obliged to add the audit report to the request that provides reasonable assurance to guarantee that the offer prepared by the independent auditing companies authorized by the POA and included in the preliminary concordat project is realizable. “An example of an independent reasonable assurance report” was published by the POA to guide the audit report. “The Independent Reasonable Assurance Report on the Debtor’s Preliminary Concordat Project” included *subtitles of opinion (conclusion), base for opinion (on conclusion), debtor’s responsibility, the auditor’s responsibility for the assurance audit and examination, structural limitations, the objective of the report, and studies and analyses carried out as the basis for the opinion (to conclusion)* (The Decision of the POA Committee 75935942-050.01.04-[01/71], 2019). This report is expected to serve as a model. TÜRMOB published a circular regarding the sample report (TÜRMOB, 18.02.2019/57-1). In the independent auditing, while preparing the independent reasonable assurance auditing report; it is emphasized that the audit should be done in accordance to documents indicating assets and properties, a list of creditors and claims the ISA-805 from the related TAS; the preliminary concordat project and comparison chart, ISAE-3000, and ISAE-3400.

In planning and performing the audit of a single financial statement or of a specific element of a financial statement, the auditor shall adopt all ISA-805s relevant to the audit as necessary in the circumstances of the engagement regarding the acceptance, planning, and implementation of the audit and building opinion on financial statements and reporting (ISA 805, 2017). ISAE-3000 deals with assurance engagements other than audits or reviews of historical financial information (ISAE 3000, 2018). ISAE-3400 establishes standards and provides guidance on engagements to examine and report on prospective financial information, including examination procedures for best-estimate and hypothetical assumptions (ISAE 3400, 2014).

3. FINDINGS

Concordat and the concordat commissariat were discussed in this study. New arrangements have been made through the “Regulation on Documents for Concordat Application” and the “Regulation on the Concordat Commissariat and Formation of the Board of Creditors” that was published in 30.01.2019 and through the TCL Circular “Regarding the Status of Concordat Institution against Doubtful Receivables Allowances” published in 14.02.2019.

Pursuant to the decision of the POA, an example of “*The Independent Reasonable Assurance Report on the Debtor’s Preliminary Concordat Project*” was published as a template as in the following. (See. Fig. 1).

[Debtor's name/title] **OF THE INDEPENDENT REASONABLE ASSURANCE
REPORT FOR THE PRELIMINARY CONCORDAT PROJECT**

..... To [Debtor's name/title] [or Applicable Respondent]

1) Opinion (Conclusion)

Based on the audit of the concordat preliminary project that will be added to the (*Debtor's name/title*) **concordat application conducted in accordance with Law Articles 285 and 286 of the Execution and Bankruptcy Law number 2004, WE ENSURE A REASONABLE ASSURANCE regarding the project offer will be realized. This opinion has been reached based on the following evaluations and conclusions:**

- This assurance audit report was prepared as a result of the reasonable assurance audit and examination engaged due to the unqualified opinion (*or limited unqualified opinion*) reached in the independent audit conducted according to the International Standard on Auditing 805 to determine whether the most recent balance sheet, income statement, cash flow statement, interim balance sheets, and other historical financial information were prepared in accordance with the financial reporting framework and presented truthfully pursuant to Article 13 of the regulation on the documents that will be added to the concordat request.
- **The comparison table** (presenting the forecasted financial information) (comparatively indicating the projected amount according to the offer in the concordat preliminary offer that will be available to be transferred to the creditors and also the possible amount that will be transferred to the creditors in case of the debtor's bankruptcy) that will be added to the debtor's concordat application was examined by us within the scope of Articles 285 and 286 of the Execution and Bankruptcy Law numbered 2004. **Based on our examination regarding the evidence supporting the basis of the assumptions for the comparison table, these assumptions constitute a reasonable basis for the comparison table. In addition, based on our opinion, the comparison table was prepared in accordance with the assumptions and it was presented in accordance with Articles 285 and 286 of the Execution and Bankruptcy Law numbered 2004 through all its significant aspects.**
- **The concordat preliminary project** (presenting the forecasted financial information) that will be added to the debtor's concordat application was examined by us within *the scope of Law Articles 285 and 286 of the Execution and Bankruptcy Law numbered 2004. Based on our examination regarding the evidence supporting the assumptions used in the concordat preliminary project, these assumptions constitute a reasonable basis for the concordat preliminary project. In addition, the concordat preliminary project was properly prepared based on the assumptions and presented in accordance with Law Articles 285 and 286 of the Execution and Bankruptcy Law numbered 2004 through all its significant aspects.*

2) Basis for Opinion (on Conclusion)

Our reasonable assurance engagement was conducted in accordance with the Independent Auditing of the Historical Financial Statements of a part of the Turkish Auditing Standards (TAS) published by the Public Oversight, Accounting, and Auditing Standards Authority (POA) or International Standard on Assurance Engagements (ISAE-3000) other than Limited Independent Auditing, and it was defined in clause (i) of the 12th paragraph of ISAE-3000.

The concordat preliminary project and the comparison table prepared by the debtor were examined by us in accordance with the Examination of Prospective Financial Information (ISAE-400) as a part of the TAS. In addition, the independent audit of the most recent balance sheet, income statement, cash flow statement, interim balance sheets, and other historical financial information that will be added to the debtor's concordat request was carried out by us in accordance with the International Standard on Auditing 805 and unqualified opinion [*or limited unqualified opinion*] was provided.

Our responsibilities within the context of these Standards were explained in details in our report in the section of the *Auditor's Responsibility on the Assurance Audit and Examination*.

In accordance with the Ethical Rules for Independent Auditors (the "Ethical Rules") issued by the POA and the ethical decrees included in the legislation of the independent auditing of the financial statements, we declare our independence from the debtor. Ethical Rules and other ethical responsibilities subject to the legislation were followed by us.

Our company applies Quality Control Standard 1 (QCS-1) for Independent Audit Companies and Independent Auditors Conducting Independent and Limited Independent Audits of Financial Statements and Other Assurance Audits and accordingly follows a proper, detailed quality control system in accordance with the documented policies in accordance with the Ethical Rules, ethical requirements, and valid legal and regulative requirements.

We believe that the audit evidence obtained throughout the audit process forms a sufficient and appropriate basis on which to generate our opinion.

3) Debtor's Responsibility

The debtor is responsible for the preparation of the concordat preliminary project and the comparison table in accordance with Law Articles 285 and 286 of the Execution and Bankruptcy Law numbered 2004. In addition, the debtor is responsible for the preparation of the most recent balance sheet, income statement, cash flow statement, interim balance sheets, and other historical financial information, which were independently audited in accordance with Independent Auditing Standard 805 as suitable for the financial reporting framework and presented in a realistic way. The debtor is also responsible for the required internal control to prepare documents without any significant mistakes based on any errors or cheating. [*If that kind of an internal control mechanism is not expected from the debtor, this sentence will be removed.*]

The top management are responsible for the observation of the preparation of these documents. [*If there is no suitably qualified person, this sentence will be removed.*]

Including the determination and explanation of the assumptions that the concordat preliminary project and the comparison table are based on, the debtor is also responsible for the preparation and presentation of this information as well.

4) The Auditor's Responsibility in the Assurance Audit and Examination

Our responsibilities in this audit conducted in accordance with the ISAE-3000 and ISAE-3400 are defined below.

Our responsibility is to provide an assurance as to whether the concordat preliminary project and the comparison table include any significant mistakes based on errors or cheating, and whether the offer in the concordat preliminary project will be realized, and produce a reasonable assurance audit report that includes our opinion (conclusion).

In addition, we are responsible for obtaining a reasonable assurance and reaching an opinion on whether the most recent balance sheet, income statement, cash flow statement, interim balance sheets, and other historical financial information that were independently audited by us in accordance with the Independent Auditing Standard 805 were prepared in accordance with the financial reporting framework and presented truthfully. A reasonable assurance provided as a result of the assurance audit done in accordance with the ISAE-3000 is a high assurance level; however, it does not guarantee that an important mistake will always be identified. The mistakes may be based on errors or cheating. If it is expected that the mistakes alone or combined will reasonably affect the decision that will be taken by the users of the concordat preliminary project, the comparison table, and the assurance report regarding the offer in this project and the assurance report, these mistakes are accepted as significant.

Pursuant to the assurance audit implemented in accordance with ISAE-3000, we use our professional judgment and maintain our professional scepticism during the whole assurance audit. In addition, the concordat preliminary project and the offer in this project were determined and evaluated by us for the risks of error- or fraud-based “significant mistakes” through the comparison table, and audit procedures were designed and applied by us to react to these risks to obtain sufficient and proper audit evidence to constitute the basis for our opinion (on conclusion).

To conclude, our responsibility is to provide assurance through sufficient and proper evidence for the subjects on whether the concordat preliminary project and the comparison table:

- were prepared properly for the assumptions,
- were presented properly and with sufficient explanation for all significant assumptions,
- were prepared such that the most recent balance sheet, income statement, cash flow statement, interim balance sheets, and other historical financial information that will be added to the concordat request were based on proper accounting principles, and
- included any significant mistake based on errors or fraud and the offer in the concordat preliminary project was realized.

5) Structural Limitations

Due to the possibility that the projected events do not usually occur as expected and the variation can be significant, actual outcomes will probably be different from the concordat preliminary project and the comparison table.

[If it is suitable/if it is required, each structural limitation regarding the evaluation of whether the concordat preliminary project and the comparison table were prepared in accordance with Articles 285 and 286 of the Execution and Bankruptcy Law numbered 2004 is provided in this section.]

6) The Objective of the Report

Without making any changes to our conclusion, we pay attention to the debtor’s responsibility in the debtor’s concordat preliminary project and the comparison table. This assurance report was prepared to assist with the implementation of the debtor’s obligations for the concordat request in accordance with Law Article 286 of the Execution and Bankruptcy Law numbered 2004. It may not be appropriate for any other purposes.

7) Studies and Analyses Carried Out as the Basis for the Opinion (to Conclusion)

The studies and analyses that we conducted are presented below.

*[In this section, the analysis, comparisons done by the auditor and the studies that the auditor based their opinion on regarding whether the offer in the preliminary project will be realized will be provided. **For instance**, the applied audit procedures, such as confirmation, questioning, observation, investigation, analytical procedures, re-calculation, re-application, and audit evidence and opinions obtained as a result of these procedures will be included in this section.]*

[Date]

[Signature of the Audit Organization Responsible]

[Name, Surname of the Audit Organization Responsible]

[The Title of the Audit Organization Responsible]

[The Title of the Independent Audit Organization]

[The Address of the Audit Organization]

Source: The Decision of POA, 2019.

Figure 1. An example of The Independent Reasonable Assurance Report on the Debtor's Preliminary Concordat Project

Figure 1 shows an example was considered of the "Independent Reasonable Assurance Report Regarding the Concordat Preliminary Report of the Debtor" published in 16.02.2019 through the decision of dated in 14.02.2019 the POA.

After providing the information in the relevant sample report, in practice, it will be useful to provide information for the prepared report based on this sample report. However, only a few points from the report will be referred owing to the following reasons: the reports presented in the study are extensive, the confidentiality of the company information, page number limitations, etc. In the examined reports, the cover letter of the report, the report number, the report date, and attachments were presented. In addition to the information on the independent audit company that prepared the report, the concordat preliminary project company information, analysis term, and conclusion were included. Under heading number 7, the objective, subject, context, detailed company general information, and general and legal fundamentals of the proposed project were reviewed in order to constitute the whole content of the reasonable assurance report. Company financial statements and account examinations, fair value accounting, ratio analysis and comments, proforma financial statements, detailed statements, maturation and restructuring of company debts and credits, secured assets, bankruptcy, debt submergence, and proposals were compared. Baseline, audit procedures and audit evidence, special considerations, and all realistic evaluations were presented. In this regard, it was observed that the required information (Findex report, etc.) and documents predicted by the auditor were included, the responsible auditor and audit team were determined, a conclusion was reached, and the appendices were presented at the end.

At the end of this section, I want to mention Turkish Agenda about Concordat. In 2018, Turkey's agenda was intensively of concordat newspaper headline. The number of companies of declaring concordat was increased because of 30% losses values USD against

for TL in August. The process that started with the firms operating in the construction sector affected most sectors and occupied the country's agenda for a long time. Cost of Concordat was been effect on application. In the concordat context, among these companies; Ulusoy, Karaca, Hotiç, Yörsan, Nuhuğlu İnşaat et al., there were many well-known companies that we cannot count. Until today, some companies' demand for concordat has been accepted, some have been rejected and some have declared bankruptcy. For example, Pamukkale AŞ has made bankruptcy decision.

Minister of Trade, Ruhsar PEKCAN; “The number of companies, 10.11.2018’da 356, 13.12.2018’da 846, 27.12.2018’de 979” has announced that the information. Again in the newspaper headlines “Last minute! Minister Albayrak: Concordat comes out of the agenda” (<https://www.cnnturk.com>, <https://www.gazetedokuzeylul.com>, 24.01.2019). In 2019, the first statement was made by Treasury and Finance Minister Berat ALBAYRAK. He said that “There is a 30% decrease in the declaration of the concordat, 318 companies have come out of the concordat” (Sözcü, 07.03.2019). In April 2019, made a statement on Twitter:” Minister Albayrak: We are removing the concordats from our agenda”. We remove the concordats from our agenda with the effect of the balancing process and the responsibility taken by our banks. In the first quarter of this year, applications fell by two-thirds compared to the previous quarter. 8 billion liras of credit and 787 companies came out of concordat (<http://www.hurriyet.com.tr>, 24.04.2019). On the same day, another local newspaper also reads as follows: “the concordat, the pointer is reversed! Applications have decreased and outputs have accelerated” (<http://www.haberturk.com.tr>, 24.04.2019). Recent developments in Turkey showed the concordat looking that way. This study also addressed issues related to the agenda of Turkey it is of importance.

4. CONCLUSION

In this study analyzing the interaction between concordat, the concordat commissariat, and the independent audit report amongst the new current issues, an example of the independent reasonable assurance report from a preliminary concordat project for debtors was examined. In this sense, the discussion and evaluation of the subject in both national and international areas will make a valuable contribution to the literature.

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