

## Litigation - Turkey

### Court of Appeals determines legal conditions for stay of bankruptcy

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On April 12 2010 the Court of Appeals rendered a decision regarding two group companies that had applied jointly for a stay of bankruptcy.

Two companies under the same group applied jointly for a stay of bankruptcy, claiming that they had organic bonds, had become insolvent due to the current economic climate and could recover under the improvement plan that they had submitted to the court. The local court accepted the plaintiff companies' application and ordered a stay of bankruptcy for them both, stating that their submitted plan was serious and convincing.

On appeal by the creditors, the 19th Chamber of the Court of Appeals overruled the local court's decision by a majority vote. The Court of Appeals identified the following legal conditions for a stay of bankruptcy:

- The improvement plan submitted by the company requesting the stay of bankruptcy must be serious and convincing;
- Whether there is a probable chance of improving the company's financial situation will be determined according to concrete findings; and
- Indications of an uncertain nature will not be adequate for a court decision on the stay of bankruptcy.

Following these general explanations, the Court of Appeals refused the companies' improvement plan on the grounds that it could not be considered serious and convincing, and overruled the local court's decision based on the following findings:

- In the expert report submitted in the case file and also in the companies' petitions, it was determined that the companies required external sources to recover their financial situations. However, no document or information in the file demonstrated that the provision of such external sources was likely.
- In the improvement plan submitted in the file there was a plan to benefit from the companies' "construction (superficies) right". However, it had been determined in the case file that such right had already been sold and thus the companies' assets were already reduced.
- Although the companies' headquarters were transferred to another address just before the commencement of the bankruptcy proceedings, it had been determined that the companies were still operating from their previous addresses. This fact also showed that the companies were not acting in good faith.

On the other hand, the Court of Appeals confirmed that two or more companies that belong to the same company group may have a legal interest in jointly filing a lawsuit for a stay of bankruptcy.

The chairman of the 19th Chamber of the Court of Appeals and one of the members dissented against this decision. In their dissenting opinion they stated that the companies which were jointly claiming for the stay of bankruptcy were separate corporate entities with separate creditors and debtors. The facts that both companies belonged to the same group or were jointly liable either as joint debtors or as one securing the other's debt could not constitute grounds for the joint filing of a lawsuit for the stay of bankruptcy. Furthermore, the dissenting opinion argued that if a lawsuit for a stay of bankruptcy were to be filed jointly by group companies, this would give them the opportunity to save on court fees, which would otherwise be higher. Since the regulations on court fees are considered a matter of public policy, this fact alone should have prevented the companies from jointly filing the lawsuit for the stay of bankruptcy.

The parties may apply for correction of this decision within 15 days of it being issued. To date, the parties' reaction to the decision is unknown.

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