

# TURKEY



## Legislative framework

### Legislative framework for insolvency proceedings

Insolvency proceedings in Turkey are governed by the Enforcement and Bankruptcy Code no. 2004 (BC).<sup>1</sup> The insolvency legal framework applies to all businesses including natural persons carrying out a commercial activity. The Turkish Commercial Code No. 6102 and various other governmental decrees contain further provisions of relevance to commercial insolvency.<sup>2</sup>

### Legislative framework for insolvency office holders

Legislative provisions relating to insolvency office holders (IOHs) are found in the BC.

## Types of insolvency procedures

There are several gateways into bankruptcy proceedings in Turkey, including filing for bankruptcy directly or indirectly through an execution procedure.<sup>3</sup> Bankruptcy may result in: (i) liquidation with the purpose of winding up the debtor's business and liquidating its assets; (ii) a compromise agreement with creditors for the sale of certain assets of the debtor in order to satisfy creditors' claims; and (iii) (for legal entities other than banks and insurance companies) restructuring aimed at restoring the debtor's financial condition in accordance with a plan.

Opening of bankruptcy proceedings for legal entities may be postponed for a period of up to one year (capable of extension up to an aggregate period of four years), in order for the debtor to develop a financial restructuring "project" under the supervision of a court appointed IOH.

## Institutional framework

The key players in insolvency proceedings in Turkey are the insolvency court (and the judge), the execution and bankruptcy offices, the IOH (known as the bankruptcy administration or trustee) and creditors (acting as a whole).<sup>4</sup>

In Turkey two courts play an important role in insolvency proceedings. A bankruptcy lawsuit must be filed before the competent Commercial Court of First Instance (which is located at the place of registration of the debtor's headquarters) for the bankruptcy to be opened. The relevant file is then sent to the competent bankruptcy office (also located at the debtor's place of registration), which oversees the procedure (including any liquidation). The bankruptcy office acts as the IOH until the permanent IOH, known as the bankruptcy administration, is appointed by the competent Enforcement Court.

The bankruptcy administration consists of three bankruptcy administrators nominated at the creditors' meeting. It is the legal representative of the bankruptcy assets and takes control over and manage the property of the debtor. The bankruptcy administration collects the debtor's claims and initiates lawsuits on behalf of the debtor. All of the transactions conducted by the bankruptcy administration are subject to the supervision of the relevant bankruptcy office.

Creditors participate as part of the general body of creditors and are not represented by a nominated person or committee. Their tasks include, inter alia, the nomination of candidates to be appointed as IOHs (in bankruptcy), voting on any reorganisation or restructuring plan and deciding on any urgent issues that may concern the debtor's business operations.

If the debtor has successfully requested the postponement of bankruptcy, the competent Commercial Court of First Instance shall assign, at its own discretion, a trustee to the debtor starting from the filing of the postponement request until the end of the postponement term. The court may decide to delegate all management powers of the debtor business to the trustee or require that any decisions of (and transactions contemplated by) the board of directors receive the trustee's prior approval.

## Assessment overview/strengths and weaknesses

Based on the results of the assessment, a partial legal framework exists for the IOH profession in Turkey, yet this would benefit from improvements to address certain key areas of weaknesses and thus further improve IOH capacity and performance.

Benchmarks	Strengths of the Turkish IOH professional framework	Weakness of the Turkish IOH professional framework
<b>Licensing and registration:</b>		<ul style="list-style-type: none"> <li>IOHs are not required to obtain a formal permission to act (either a licence or registration).</li> <li>There is no official list of IOHs.</li> </ul>
<b>Regulation, supervision and discipline:</b>	<ul style="list-style-type: none"> <li>A high standard of conduct applies to members of the bankruptcy administration as public officers.</li> </ul>	<ul style="list-style-type: none"> <li>There is no dedicated regulatory body for IOHs, although the court and/or the Bankruptcy Office supervise the activities of IOHs.</li> <li>There is no legal</li> </ul>

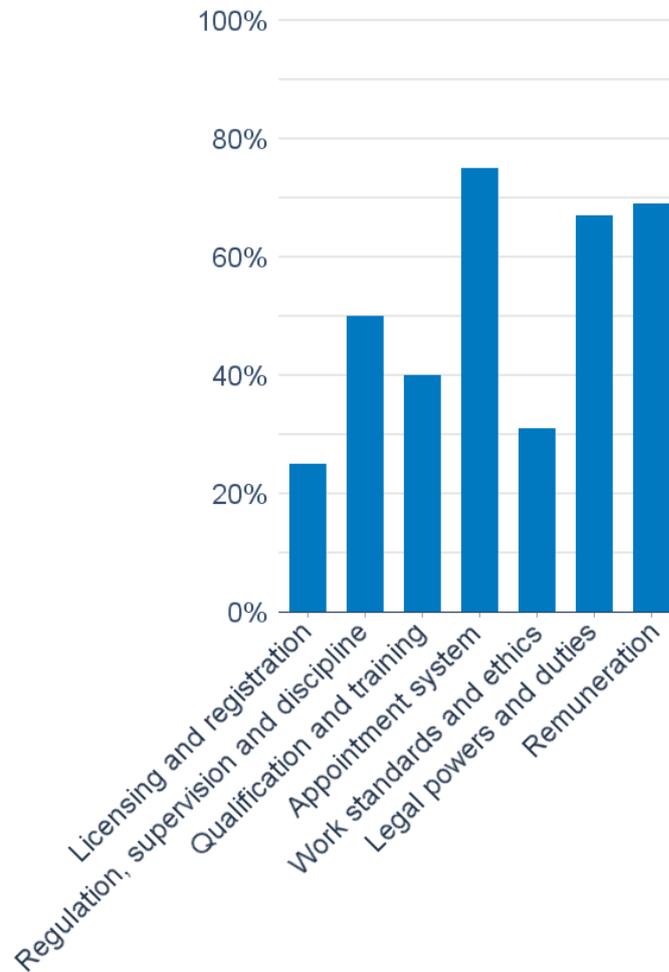
Benchmarks	Strengths of the Turkish IOH professional framework	Weakness of the Turkish IOH professional framework
		<p>requirement for regular monitoring of the performance/activities of IOHs by a dedicated regulatory body.</p> <ul style="list-style-type: none"> <li>• There is no separate complaints system operated by a dedicated body, but complaints may be filed with the relevant execution court (following payment of a small levy).</li> <li>• A limited range of sanctions may be imposed by the court on members of the bankruptcy administration for misconduct (for example, dismissal, damages caused by fault and criminal sanctions under the Turkish Criminal Code).<sup>5</sup> No specific provisions apply to trustees.</li> </ul>
<p><b>Qualification and training:</b></p>	<ul style="list-style-type: none"> <li>• Pursuant to the relevant provision of the BC, the bankruptcy administration shall comprise of persons with sufficient knowledge and experience regarding the subject matter.</li> </ul>	<ul style="list-style-type: none"> <li>• A tertiary qualification is not required for prospective IOHs, although IOHs are in practice often appointed from groups of professionals, such as accountants, lawyers and academics.</li> <li>• IOHs are not required to pass a specific examination for the entry to the profession, although in bankruptcy they are required to have sufficient knowledge and experience.</li> <li>• There is no requirement for prospective IOHs to have previous work experience with a licensed IOH.</li> <li>• There is no direct prohibition on IOH candidates with criminal records before being appointed as IOHs, but as public officials, members of the bankruptcy administration are subject</li> </ul>

Benchmarks	Strengths of the Turkish IOH professional framework	Weakness of the Turkish IOH professional framework
		<p>to criminal checks before appointment (this does not apply to trustees in postponement of bankruptcy proceedings).</p> <ul style="list-style-type: none"> <li>• There is no continuing training requirement.</li> </ul>
<b>Appointment system:</b>	<ul style="list-style-type: none"> <li>• In bankruptcy proceedings creditors have significant influence over the appointment of the IOH, since the court must appoint three IOHs from the pool of candidates selected by the creditors.</li> </ul>	<ul style="list-style-type: none"> <li>• Appointment of the IOH in postponement of bankruptcy is at the sole discretion of the court ex officio.</li> <li>• The appointment process does not stipulate the criteria for appointment other than IOHs (both members of the bankruptcy administration and trustees) must have sufficient knowledge and experience.</li> </ul>
<b>Work standards and ethics:</b>		<ul style="list-style-type: none"> <li>• There is no professional code of conduct covering professional and/or ethical rules for IOHs, although IOHs have certain duties as public officials.</li> </ul>
<b>Legal powers and duties:</b>	<ul style="list-style-type: none"> <li>• IOHs have strong powers to manage the debtor's business in an autonomous way; however, some of the actions of IOHs (trustees) appointed as part of the postponement of bankruptcy are subject to prior court approval.</li> <li>• IOHs in bankruptcy proceedings have strong legal powers and duties which, inter alia, enable them to request cooperation from connected or unconnected parties, state authorities and third parties (including to provide information and deliver up any assets of the debtor) and to sell the assets of the debtor (subject to creditor approval).</li> </ul>	<ul style="list-style-type: none"> <li>• In bankruptcy proceedings IOHs are not required to report to creditors regularly on the progress of the insolvency case, although certain decisions by IOHs are required to be published and creditors' lawyers can consult the case records at the bankruptcy office.<sup>6</sup></li> </ul>

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	<ul style="list-style-type: none"> <li>In postponement of bankruptcy proceedings, the trustee must report to the court every three months as to whether there is an improvement in the debtor's position and the court may remove the postponement judgement if there is no improvement.</li> </ul>	
<b>Remuneration:</b>	<ul style="list-style-type: none"> <li>A statutory system exists for the calculation of IOH remuneration in bankruptcy proceedings and there is significant flexibility in the ability of the court to increase (up to three times) or reduce the amount depending on the nature of the work and performance of the IOH.</li> <li>Remuneration of IOHs is classified as bankruptcy estate receivables and has priority of payment over bankruptcy receivables (which include amounts owed to unsecured and preferential creditors).<sup>7</sup></li> </ul>	<ul style="list-style-type: none"> <li>There are no guidelines on remuneration of IOHs (trustees) during the postponement of bankruptcy proceedings; such remuneration is entirely within the court's discretion.</li> </ul>

The following chart shows us the quality of legal framework related to IOHs in the key areas as listed below.

### Turkey



## Key recommendations

As illustrated in the chart above, Turkey appears to have an underdeveloped legal framework for IOH profession, which covers only some of the key elements of the profession. Certain areas where reforms are particularly needed include: licensing and registration, regulation, supervision and discipline, qualification and training, appointment system, work standards and ethics, legal powers and duties and remuneration.

- A licensing and registration system should be established in order that IOHs are appointed exclusively from a list(s) maintained by a dedicated in recognition of the specialist nature of the IOH's role and responsibilities.

- Consideration should be given to the creation of a dedicated regulatory body for IOHs. Experience demonstrates that an active regulatory body is more effective at enhancing IOH professional standing and performance. Such regulatory body could monitor the activities of IOHs on a regular basis (a task which courts often lack the resources to perform).
- As part of the establishment of a dedicated regulatory body, a separate complaints procedure operated such body should be considered.
- Specific entry exams to the IOH profession, relevant practical insolvency work experience for prospective IOHs, as well as regular continuing educational training for registered IOHs would, if introduced, enhance the IOH profession.
- Certain provisions should be introduced to clarify the IOH appointment procedure and to provide a fair and transparent appointment system for the protection of stakeholders' interests.
- A comprehensive and publicly available code of professional conduct for IOHs of a binding nature (also encompassing ethical rules) should be adopted to provide useful guidelines and principles for IOH professional activities.
- The establishment of regular reporting duties for IOHs in bankruptcy proceedings would enhance the accountability and transparency for stakeholders.
- Statutory provisions regarding the definition and amount of remuneration relating to trustees during postponement of bankruptcy proceedings should be clarified.

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<sup>1</sup> Published in the Turkish Official Gazette No. 2128 and dated 9 June 1932.

<sup>2</sup> Published in the Turkish Official Gazette No. 27846 and dated 14 February 2011.

<sup>3</sup> Typically a bankruptcy judgment is preceded by a debt enforcement procedure.

<sup>4</sup> It is legally possible to combine execution and bankruptcy offices into one entity which shall act as execution and bankruptcy office in places where the population and the work load do not require establishment of a separate entity as a bankruptcy office.

<sup>5</sup> For example, under Article 333 of the BC, if a bankruptcy administration member obtains a particular interest from anyone in order to obtain approval for the compromise agreement restructuring plan, such member shall be sentenced to imprisonment for up to three years.

<sup>6</sup> In bankruptcy proceedings, the bankruptcy administration presents a report to the second creditors' assembly regarding the course of the liquidation and also submits a final report to the Commercial Court of First Instance which granted the bankruptcy judgment at the close of the procedure.

<sup>7</sup> These are the debts of the bankruptcy estate incurred from the moment of opening of bankruptcy until finalisation of the liquidation process.