

Mandatory Mediation for Commercial Receivables

Mediation has become a must in commercial receivables actions and to this end some provisions of Turkish Commercial Code (“TCC”) and Code of Mediation in Civil Disputes have been amended within the scope of Code of Commencement of Execution Proceedings in Monetary Receivables Arising from Subscription Agreements (the “Code”) which became effective by being published in Official Gazette dated 19 December 2018 and numbered 30630. In this regard;

- By incorporating Article 5/A into TCC, the application for mediation before bringing a legal action has become mandatory for the actions -among those listed under Article 4, TCC- in which a request for compensation or payment of a certain amount is sought. In these cases, the application to mediation is regulated as a condition to bringing a legal action. The effective date of this piece of regulation is 01.01.2019.
- It is also stated by this article that any applications to mediators will be finalized within 6 weeks starting from the appointment of the mediator and that this time period can only be extended for another two weeks only under exceptional circumstances.
- By incorporating Temporary Article 12 into TCC, it is regulated that the relevant provisions as to the mandatory mediation of the Code are not to be applied as of its effective date to the pending lawsuits before first instance courts, regional civil courts and Court of Cassation.
- The 5th Section with the heading “Mediation as a Condition to Bringing a Legal Action” has been added to the Code of Mediation in Civil Disputes following its 4th Section and general provisions as to the mediation have been provided under its Article 18/A. Within the scope of the article, how the mediation procedure is to be conducted is regulated if this procedure is applicable as per the relevant codes which regulate the application to mediation as a prerequisite to bringing a legal action before court. The article also regulates how mediation costs will be distributed among parties and how mediators are appointed. This provision has become effective as of the publication date of the Code.
- In this regard, if parties to a dispute -that is subject to mandatory mediation- cannot reach to an agreement which eventually leads to a lawsuit before a court, the original copy of the final report of the mediation or its copy approved by the mediator must be presented to the court.

Also considering the complex and extensive nature of the commercial disputes, we also believe that necessary legislation should be enacted which foresees among other points that the counter party must be given appropriate time before the meeting and must be informed properly on the dispute. We hope that the follow-up legislations are enacted by pointing out the problems arisen in the practice which can be achieved by monitoring the conduct of mediation closely after the regulations become effective.



RIZA GÜMBÜŞOĞLU
PARTNER

+ 90 (212) 354 00 05
riza.gumbusoglu@gun.av.tr



ASENA AYTUĞ KESER
SENIOR ASSOCIATE

+ 90 (212) 354 00 05
asena.keser@gun.av.tr



PINAR ECE BİŞKİN
ASSOCIATE

+ 90 (212) 354 00 05
pinarece.biskin@gun.av.tr

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Kore Şehitleri Cad. 17, Zincirlikuyu, 34394 İstanbul, Turkey

T: +90 (212) 354 00 00 F: +90 (212) 274 20 95 E: gun@gun.av.tr www.gun.av.tr