

# GEDİK & ERAKSOY

19 December 2018

## *Mandatory Mediation Requirement for Commercial Disputes*

*On 19 December 2018, a new law is published in the Official Gazette, amending the Turkish Commercial Code (“TCC”) and the Mediation Act on Civil Law Disputes (“Mediation Act”). The law, among others, expands the scope of application of the mandatory mediation of commercial disputes. Therefore, as of 1 January 2019, parties to a commercial dispute will first have to resort to a mediator before filing a claim in the courts.*

### (a) Background

Excessive workload of the courts, which has been one of the main problems of the Turkish legal system, has led the government to focus more on alternative dispute resolution methods. As a result, the Mediation Act, under which parties are encouraged to resort to mediation for civil law disputes, entered into force on 22 June 2013. This change was followed by a mandatory mediation requirement for labour disputes.

According to statistics released by the Ministry of Justice, during the first half of 2018, 97% of the voluntary and 65% of the mandatory mediation cases have been resolved with an amicable settlement. After the successful outcome of both voluntary and mandatory mediation practices over the years, the Turkish Parliament passed a law envisaging mandatory mediation in commercial disputes as well. This law entered into force upon the approval of the President and its publication on the Official Gazette on 19 December 2018.

### (b) Highlights

As the preamble of the law indicates, the amendment’s aim to resolve disputes in a swift and cost-efficient way. The main amendment brought by the law is on Article 4 of the TCC. The said article now has a new paragraph stating that mediation is a cause of action in commercial disputes regarding monetary claims. In other words, parties are obliged to resort to registered mediators first, before filing a lawsuit, which includes a claim regarding the payment of a certain amount of money, before the commercial courts.

Other than the amendment to the TCC, additional provisions were introduced by the Mediation Act on this subject. These amendments provide the procedural steps that should be followed by the parties, in cases where the mediation is a cause of action. Some of these steps are described below:

- Applications should be made to the mediation offices located in the same region with the competent court.

- The mediator is assigned by the mediation office unless parties reach an agreement on this regard.
- The mediator shall contact and convene parties.
- The mediator shall finalize the application within three weeks after he/she is instructed. This period may be extended for a maximum of one week in compulsory situations.
- The mediator shall end the proceeding and report such situation immediately to the mediation office, if: (i) he/she cannot reach the parties; (ii) parties do not attend the meetings; (iii) parties reach a settlement; and (iv) parties do not reach a settlement.
- If one of the parties does not attend the first meeting without any reasonable justification, he/she will bear the cost of the entire case that will follow. If both parties do not attend the first meeting, each one of them shall bear their own costs for the entire case. In the case of a settlement, parties will equally bear the costs of the mediation, unless they agree otherwise.
- The Ministry of Justice bears the costs of the first two hours of the mediation, if the proceedings end because: (i) the mediator cannot reach the parties; (ii) parties do not attend the first meeting; or (iii) the parties do not reach a settlement after a less than a two hour long meeting.
- Necessary expenses incurred by the mediation office are covered by the parties in case of a settlement; otherwise this amount is covered by the Ministry of Justice to be reimbursed by the losing party.
- The limitation period for the specific claim in question stops from the date of application to the mediation office until the date of the last meeting minute.
- The last mediation meeting minute regarding the failure of settlement must be appended in the statement of claim, otherwise the case will be dismissed based on lack of cause of action.
- Mediation is not applicable to cases where arbitration or another alternative dispute resolution mechanism is envisaged.

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