

Law Bulletin

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NEW REGULATIONS EXPANDING MEDIATION'S SCOPE

Law No. 7445 on the Amendment of the Enforcement and Bankruptcy Law and Certain Laws ("**Law**") was published in the Official Gazette on 5 April 2023. The Law introduced significant amendments regarding mediation, as the scope of disputes subject to mediation continue to expand. Some of the amendments entered into force on 5 April 2023, while the rest of the amendments entered into force on 1 September 2023.

The Law also establishes certain facilitations related to mediation documents, paving the way for the system to work more efficiently. In this article, we will discuss the amendments as well as the new regulations introduced by the Law.

1. Amendments Regarding Mediation Institution in Commercial Disputes

Turkey is a party to the United Nations Convention on International Settlement Agreements ("**Singapore Convention**") which aims at increasing execution of settlement agreements at the end of mediation processes. To ensure effective implementation of the Singapore Convention's purposes, as of 5 April 2023, the Law provides that settlement agreements concluded after mediation processes (falling within the scope of the Singapore Convention) can be enforced by obtaining an enforceability certificate from the first instance commercial courts.

Furthermore, individuals not registered in the Mediators Registry can act as mediators in disputes falling within the scope of the Singapore Convention.

The Law also introduced a facility for settlement agreements concluded through mediation in commercial disputes. Before the amendment, if the settlement agreement was signed by the parties, their attorneys, and the mediator, it could be directly enforced. However, if only the parties

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and the mediator or only the attorneys and the mediator signed the agreement, it could be enforced only after an enforceability certificate is obtained from the court. With the Law, in commercial disputes, settlement agreements that are jointly signed by attorneys and the mediator can now be enforced without the need for an enforceability certificate (to be obtained from the court). This amendment streamlines the process by eliminating the requirement for the parties' signatures in settlement agreements. However, this facility does not apply to cases where obtaining an enforceability certificate is mandatory. In such cases, even if the agreement is signed by both the parties and the mediator, it cannot be considered an enforceable document without an enforceability certificate.¹

Last amendment related to commercial disputes is the inclusion of annulment of objection lawsuits, restitution lawsuits, and negative declaratory lawsuits within the scope of mandatory mediation. Annulment of objection and restitution lawsuits were already considered as being subject to mandatory mediation in the current practice, with some hesitations. However, it is an important amendment that negative declaratory lawsuits are also subject to mandatory mediation.

2. Amendments Regarding Mediation Institution in Employment Disputes

With the Law, annulment of objection lawsuits, restitution lawsuits, and negative declaratory lawsuits related to employee or employer claims and compensation claims also became subject to mandatory mediation.

3. Amendments Regarding Mediation Institution in Real Property and Lease Disputes

New amendments allow parties to resort to mediation in disputes regarding transfer of immovables and establishment of limited rights *in rem* on immovables. In such cases, the settlement agreement, if reached, can serve as the basis for actions related to the transfer of the immovable or the establishment of limited rights *in rem* on the immovable. This amendment ended discussions on whether an enforceability certificate can be obtained for settlement agreements prepared as a result of mediation processes that impose an obligation to dispose of immovable property.

Another amendment introduced concerns disputes related to the transfer of immovables and the establishment of limited rights *in rem* on immovables. In these disputes, parties may, during the mediation process, annotate the title deed in a way that restricts the power of disposition on the relevant immovable. Accordingly, parties may place a restriction on the transfer of the immovable or the establishment of limited rights *in rem* on the immovable as an indication of their willingness for mediation and mutual trust at the beginning of the process. This restriction will be lifted upon

¹ The amendments from the beginning of this bulletin to the end of this paragraph entered force on 5 April 2023. The amendments after this paragraph entered into force on 1 September 2023.

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the mediator's request if the parties cannot settle or if the parties mutually agree on lifting of the restriction or automatically at the end of a three-month period.

Another amendment is related to lease disputes. Except for provisions related to the evacuation of leased immovables through execution without a court order, mediation has become a procedural prerequisite for all types of disputes arising from lease relationships. Within this context, lawsuits cannot be filed in these disputes without completing a mediation process. Especially recently, the number of disputes related to residential and workplace leases have been significantly increased. This amendment is expected to reduce the courts' workload.

Mediation has also become a procedural prerequisite for disputes related to the elimination of joint ownership in movable and immovable properties, disputes arising from the Condominium Law, and disputes stemming from neighbor rights.

It is worth emphasizing that it is required to obtain an enforceability certificate for settlement agreements when resorting to mediation for foregoing types of disputes reviewed under this Section 3.

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