

## CLIENT ALERT

LITIGATION | TURKEY

APRIL 2023

### REGULATIONS IN PRIVATE LAW UNDER LAW NO 7445

Below, please find some information on the main private law amendments introduced pursuant to Law on the Amendment of the Enforcement and Bankruptcy Law and Certain Laws (the "**Law**"), published in the Official Gazette dated 5 April 2023.

#### The Latest Amendments to the Enforcement and Bankruptcy Law

- Article 1 of the Law entered into force on the date of its publication. It adds Article 79/a to the Enforcement and Bankruptcy Law No 2004 ("**EBL**") stipulating that, if the bailiff determines that the place where the seizure is requested is a residence, the bailiff must apply to the enforcement court and obtain the judge's approval of the decision regarding the seizure procedures in this residence. In line with the regulation, the enforcement court will review the file and will either give the final approval or will revoke the seizure order within three days of the date of its submission by the bailiff. However, this new regulation does not cover cases of precautionary distraint, cases where the debtor consents, or eviction/delivery transactions that by require entry into the residence by their nature.
- Article 2 of the Law entered into force on the date of its publication. It amends Article 82 section 1 subsection 3 of the EBL on prohibiting the seizure of personal belongings of the debtor and family members living at the same residence, along with all household goods that serve the common use of the family, regardless of the need and number.
- Article 2 also amends Article 85 section 1 of the EBL by prohibiting the creditor from applying excessive seizures on the movable and immovable properties of the debtor in a way that exceeds the total amount of the receivable, including accessories.
- Articles 4 and 6 of the Law add Article 88/a to the EBL, regulating the procedural rules and principles regarding the liquidation process of the seized property held by the depository upon release of the seizure.

#### The Latest Amendments to the Turkish Commercial Code

- Article 15 of the Law amends Article 5 section 3 of Law No 5235 on the Establishment, Duties and Authorities of the Civil Courts of First Instance and Regional Courts of Appeal. Article 30 of the Law amends Article 4 section 2 of the Turkish Commercial Code No 6102 (the "**TCC**"). These amendments change the monetary thresholds for disputes heard in the Commercial Courts of First Instance, by committee and under simple procedure. The monetary threshold for disputes heard by a single judge in a simple trial procedure was increased from 500 thousand Turkish Liras to 1 million Turkish Liras.
- Article 31 of the Law enters into force on 1 September 2023. It adds Article 5/A of the TCC, making an application for mediation compulsory as a condition of litigation before filing a lawsuit for a claim, for

compensation, for the cancellation of an objection, for negative declaratory and replevin cases with a monetary value, from among the commercial lawsuits specified in Article 4 of the TCC and other legislation.

### The Latest Amendments to the Law on Mediation in Civil Disputes

- Article 32 of the Law entered into force on the date of its publication. It amends Article 17 section 3 of the Law on Mediation in Civil Disputes No. 6325 ("LMCD"). Following the amendment, the mediator is obliged to use any means of communication necessary to inform the absent party or parties about the minutes issued at the end of the mediation process, and the legal consequences thereof.
- Article 33 of the Law entered into force on the date of its publication. It adds Article 17/A to the LMCD, making it compulsory to obtain a certificate of enforceability from the commercial court of first instance for the execution of a settlement agreement issued as a result of mediation within the scope of the Convention adopted by the Law on the Ratification of the United Nations Convention on International Settlement Agreements Concluded as a Result of Mediation No 7282.
- Article 34 of the Law enters into force on 1 September 2023. It will make disputes regarding the transfer of immovable property, or the establishment of limited real rights on immovable property, eligible for voluntary mediation.
- Article 35 of the Law entered into force on the date of its publication. It states that a settlement agreement signed jointly by the lawyers and the mediator without being signed by the parties to a commercial dispute, except in cases where the law requires an enforceability annotation, will be deemed a court decree without seeking an enforceability annotation.
- Article 37 of the Law enters into force on 1 September 2023. It adds Article 18/B to the LMCD, making an application for mediation compulsory as a condition of litigation before filing a lawsuit for disputes arising from a lease relationship, except where it involves an eviction from a leased property through enforcement proceedings without a judgement under the EBL, or the division of movables and immovables and the elimination of joint ownership, under the Condominium Law No 634 and neighbouring rights.
- Article 41 of the Law enters into force on 1 September 2023. It amends Article 3 section 1 of the Labour Courts Law No 7036 by making an application for mediation compulsory as a condition of litigation before filing a lawsuit for a claim, for compensation, for the cancellation of an objection and for negative declaratory and replevin cases with a monetary value in disputes between the employee and the employer.

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*In compliance with Turkish bar regulations, opinions relating to Turkish law matters that are included in this client alert have been issued by Özdirekcan Dündar Şenocak Ak Avukatlık Ortaklığı, a Turkish law firm acting as correspondent firm of Gide Loyrette Nouel in Turkey.*

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