

# Amendments Regarding Compulsory Mediation, Concordatum, and Receivables Arising from Subscription Agreements

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The Law No. 7155 on the Initiation of Enforcement Proceedings Regarding Monetary Claims Arising from Subscription Agreements was published in the Official Gazette No. 30630 dated 19 December 2018. In addition to providing a new procedure for enforcement proceedings arising from subscription agreements, the law introduced a compulsory mediation procedure for certain commercial lawsuits and a new section in the Law on Mediation in Civil Disputes, and also made several amendments to the Enforcement and Bankruptcy Law.

## A. Compulsory Mediation

The Law No. 7155 on the Initiation of Enforcement Proceedings Regarding Monetary Claims Arising from Subscription Agreements (the “Law No. 7155”) introduces a new article to the Turkish Commercial Code<sup>1</sup> (“TCC”), which requires that a party must seek mediation at first, before initiating a legal proceeding before the courts, for certain commercial disputes. This is regulated as a cause of action (*dava şartı*), meaning that, if a party files a lawsuit subject to compulsory mediation without first having applied for mediation, the lawsuit will be rejected by the courts based on procedural grounds, without considering the merits of the case.

### 1. Lawsuits Subject to Compulsory Mediation

The Law No. 7155 requires that the lawsuits that are specified as “*commercial lawsuits*” under the TCC and other laws and that relate to monetary claims for receivables and compensation (which would normally be filed before a commercial court) be subject to compulsory mediation primarily. The Law No. 7155 does not set forth any limitations regarding the monetary value of the matter in dispute.

However, the provisions regarding compulsory mediation will not be applied if there is an arbitration agreement between the parties or if application to arbitration or to any other alternative dispute resolution method is required by law.

### 2. Mediation Procedure

The mediation process for commercial lawsuits must come to a conclusion within 6 weeks as of the date of application to the mediator. The mediator may extend the duration for an additional 2 weeks, if necessary.

<sup>1</sup> Published in the Official Gazette No. 27846, dated 14 February 2011.

In order to file a lawsuit, the plaintiff is required to attach to its lawsuit petition the final minutes of the mediation process stating that the parties were unable to reach to an agreement. Otherwise, the lawsuit will be rejected by the court based on procedural grounds.

The Law No. 7155 also introduced a new section in the Law on Mediation in Civil Disputes<sup>2</sup> (the “Mediation Law”) to clarify the procedures concerning the appointment, decision-making, and remuneration of the mediator. Also, it has been expressly stated that the statute of limitations (*zamanaşımı*) and the prescription (*hak düşürücü süre*) will be suspended starting from the application to the mediation office until the issuance of the final minutes of the mediation process.

### **3. Effective Date**

The amendments regarding compulsory mediation for commercial lawsuits will come into force as of **1 January 2019**. The lawsuits pending before the courts as of the effective date will not be affected by these provisions. On the other hand, the amendments made in the Mediation Law became effective on **19 December 2018**, by the publication of the Law No. 7155.

## **B. Amendments to the Enforcement and Bankruptcy Law<sup>3</sup>**

### **1. Requests for Attachment**

The Law No. 7155 brings novelties in certain areas of enforcement procedures prior to the attachment stage. The creditor can now make an inquiry on whether the debtor has any property, rights, or receivables that can be subject to attachment, through the National Judiciary Informatics System (“UYAP”), in return for a fee. However, the inquiry will not give detailed information on the essence of the property, rights, or receivables but only give general information on whether it exists or not. Once the existence is confirmed, a request for attachment may also be made through UYAP.

In addition, attachment notifications made to third persons under Article 89 of the Enforcement and Bankruptcy Law and replies made to these notifications can now be made through UYAP with secured electronic signature as well.

### **2. Revisions to the Concordatum Provisions**

Following the Law No. 7101 Amending the Enforcement and Bankruptcy Law and Certain Other Laws<sup>4</sup>, the number of concordatum proceedings increased. The Law aims to improve certain provisions in order to prevent the abuse of concordatum by debtors.

#### **a. *Documents Required for Concordatum***

A financial analysis report showing that the proposal in the concordatum preliminary project is likely to succeed was one of the documents required to be attached to the concordatum request. With the amendments introduced by the Law No. 7155, instead of this financial analysis report, an audit report prepared in accordance with Turkish auditing standards and granting reasonable assurance that the proposal in the concordatum preliminary project will succeed, must be attached to the concordatum request.

#### **b. *Qualifications of Concordatum Commissars***

The Law No. 7155 requires that the concordatum commissars will be selected from a list that will be prepared beforehand by the regional board of expertise. In order to apply to the list of concordatum commissars, a training given by authorities to be determined by the Ministry of Justice must be completed. In cases where 3 commissars are appointed, one of them must be an independent auditor authorized by the Public Oversight, Accounting and Auditing Standards Authority.

#### **c. *Rejection of the Concordatum Request***

“Actions of the debtor aimed at damaging the creditors” is added as a new ground for the rejection of the concordatum request by the court.

<sup>2</sup> Published in the Official Gazette No. 28331, dated 22 June 2012.

<sup>3</sup> Published in the Official Gazette No. 2128, dated 19 June 1932.

<sup>4</sup> Please [click here](#) to see our Client Alert on this matter.

### **3. Effective Date**

The amendments to the Enforcement and Bankruptcy Law became effective as of **19 December 2018**. However, concordatum proceedings pending as of the effective date will not be affected of these amendments.

### **C. Enforcement Proceedings Regarding Monetary Claims Arising from Subscription Agreements**

The Law No. 7155 introduces a new procedure of initiating enforcement proceedings concerning certain claims arising from subscription agreements. The main aim of the Law No. 7155 is to simplify the procedures of enforcement proceedings prior to the attachment stage and decrease the workload of enforcement offices.

Accordingly, the Law No. 7155 provides for a Central Enforcement System (*Merkezi Takip Sistemi*) to be established and incorporated within UYAP, where all enforcement operations up until the attachment stage can be followed through electronically. Enforcement proceedings subject to the Law No. 7155 can only be initiated through this system. Otherwise, the enforcement office will reject the request.

#### **1. Scope of the Implementation**

Enforcement proceedings subject to the Law No. 7155 are considered as general enforcement proceedings without a court decision regarding monetary claims arising from subscription agreements. These subscription agreements are those regulated in the Law Concerning the Protection of the Consumer<sup>5</sup> and in other legislation. Enforcement proceedings within the scope of implementation must be initiated through the Central Enforcement System. Posta ve Telgraf Teşkilatı Anonim Şirketi ("PTT") is the responsible authority to deliver the legal notifications of the payment order it receives from the Central Enforcement System.

#### **2. Effective Date**

The provisions regarding the enforcement proceedings arising from subscription agreements will come into force as of **1 June 2019**. The enforcement proceedings pending as of the effective date will not be affected by these provisions.

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<sup>5</sup> Published in the Official Gazette No. 28835, dated 28 November 2013.