

POLITIS & PARTNERS

Law Firm

Mandatory mediation in civil and commercial disputes by virtue of Law 4640/2019

By **Nikos Anastopoulos**, Senior Associate



i. Introduction

On the 30th November 2019 law 4640/2019 on Mediation¹ was published in the Greek Government's Gazette (Issue A' 190/30.11.2019).

The law introduces the institution of mediation as an alternative dispute resolution (ADR) mechanism in civil and commercial matters, and further harmonizes Greek legislation with the provisions of Directive 2008/52/EC on mediation matters in civil and commercial disputes of either national or cross-border nature.

ii. Disputes subject to mandatory initial mediation session

In general, law 4640/2019 provides that civil and commercial disputes, national or cross-border, existing or future, may be subject to mediation, provided that the parties have the power to dispose of the subject-matter related to the dispute, in accordance with the provisions of the substantive law.

More specifically, by virtue of article 6 of law 4640/2019 on mandatory initial mediation session the following civil and commercial disputes shall be subject to the mandatory initial mediation session, provided that the parties have the power to dispose of the subject-matter of their dispute:

- (a)** Family disputes, except for matrimonial disputes pertaining to (i) the divorce, (ii) the annulment of marriage, (iii) the recognition of the existence or non-existence of marriage and (iv) the parent-children relationships, such as the contesting of fatherhood or motherhood;
- (b)** Disputes heard in the ordinary course of proceedings (i) before the Single-Member Court of First Instance, if the value of the claim exceeds the amount of thirty thousand (30,000) Euros, and (ii) before the Multi Member Court of First Instance, in accordance with the provisions of the Greek Code of Civil Procedure;
- (c)** Disputes for which a written agreement between the parties is in force providing for a mediation clause.

In the above cases, for the admissibility of the hearing of the lawsuit, that may be lodged, the minutes of the

¹ Mediation in civil and commercial matters - Further harmonization of the Greek legislation with the provisions of Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 and other provisions

mandatory initial mediation session shall be filed together with the pleadings at the hearing of the case.

Disputes in which the Greek State or any public entity/organization is a party are excluded from the abovementioned mandatory initial mediation session.

iii.Obligation to be informed by the proxy attorney

Prior to appealing to the Court of Justice, the proxy attorney must inform his/her principal in writing of the possibility of mediating the dispute or part of it, as well as of the obligation to refer to the mandatory initial session under articles 6 and 7 of law 4640/2019.

The briefing document shall be completed and signed both by the principal and his/her proxy attorney and it is filed along with the introductory legal document of the lawsuit, that may be lodged, or with the pleadings, the latest by the hearing of such lawsuit. In case such document is not filed as above, the hearing of the lawsuit shall be considered as inadmissible.

iv.Procedure of the mandatory initial mediation session

The mandatory initial mediation session shall take place no later than twenty (20) days after the request for recourse to the mediation process was sent to the mediator by the initiating party. If any of the parties resides abroad, the above time limit shall be extended to thirty (30) days following the date on which such request was sent to the mediator.

The person of the mediator may be jointly agreed upon by the parties; otherwise the selection is made in a non-discriminatory manner from the Special Registry of Mediators, maintained by the Central Committee of Mediation.

The mandatory initial mediation session, except for the consumer disputes and the disputes of up to five thousand (5,000) Euros (articles 5 par. 1 and 6 par. 5 of law 4640/2019), is compulsorily attended by the parties along with their attorneys.

In case the mediation process has been successful, the mediator shall prepare the respective minutes, which shall be then countersigned by the mediator, the parties and their lawyers. Such minutes may be submitted before the secretariat of the competent Court by any party. Following such submission, the minutes constitute a “res judicata” rendering any future legal action on the same subject-matter inadmissible, whereas after the issuance of a writ of execution thereof the entitled party can initiate enforcement acts.

On the other hand, in case the mediation process has been unsuccessful, the mediator shall prepare the respective minutes depicting such failure. In this latter case, the parties have the right to refer the case before the competent Court, by submitting along with their pleadings, the minutes proving the attempt and failure of the mediation; otherwise the hearing of the lawsuit lodged shall be considered as inadmissible.

v.Entry into force

Pursuant to its article 44, law 4640/2019 entered into force on the day of its publication in the Government Gazette, with the exception of articles 6 and 7 thereof, which shall enter into force and take effect upon lawsuits filed after the following dates:

(a) 15 January 2020, with respect to family disputes as above under ii. (a.); and

(b) 15 March 2020, with respect to disputes, which are heard in the ordinary course of proceedings and are subject to the material jurisdiction (i) of the Single-Member Court of First Instance, if the value of the claim exceeds the amount of thirty thousand (30,000) Euros and (ii) of the Multi-Member Court of First Instance.

For more information please contact:



Vangelis Politis
Managing Partner
vpolitis@politispartners.gr



Nikos Anastopoulos
Senior Associate
nanastopoulos@politispartners.gr

POLITIS & PARTNERS
Law Firm

14, SOLONOS STR.
10673, ATHENS, GREECE

Tel.: +30 210 7297252
Fax: +30 210 7251144
Email: info@politispartners.gr
Web: www.politispartners.gr

This article contains general information only and is based on the experiences and research of the author. Neither the author nor Politis & Partners are, by means of this publication, rendering business, financial, investment, legal, or other professional advice or services. This article is not a substitute for such legal advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified legal or professional advice. The author shall not be responsible for any loss whatsoever sustained by any person who relies on this publication. The author gives his permission to link, post, distribute, or reference this article for any lawful purpose, provided attribution is made to the author. The authors can be reached at info@politispartners.gr.