

Gökçe –

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## ARBITRATION AND MEDIATION IN INSURANCE DISPUTES



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Due to changes and developments in technology and the effect of speed in the internet age, effectual and deep rooted changes to the process of dispute resolution has become a necessity. Nowadays, instead of being resolved at general courts, certain types of specialised disputes are resolved through insurance arbitration by experts in the field, providing a quicker process. This system is not only based on a statutory framework but also supported by an organised structure in an effort to meet the needs of a quick and thorough resolution process.

Insurance arbitration was introduced in an effort to solve insurance disputes quicker and more efficiently. The Insurance Arbitration Commission, a body within the Insurance Association of Turkey, composes a list of arbitrators based on certain criteria and these arbitrators decide the cases brought to arbitration.

This system is a departure from the criteria outlined in the Turkish Civil Procedure Code, as on one hand the parties of a dispute are not required to have signed an arbitration agreement and on the other hand disputes arising from all insurance contracts are included within the scope of this arbitration. At the same time, the time limit in order to resolve an insurance dispute through arbitration is designated as 4 months, instead of the general arbitration time limit of 1 year to bring a case to arbitration. Should such a dispute remain unresolved in this time period, the dispute can be brought before the relevant court of competent jurisdiction. It should be pointed out that the aforementioned 4-month period can be extended through an openly worded and written agreement.

Insurance arbitration can be characterised as a hybrid system of dispute resolution with contains mandatory and optional distinctions. Insurance arbitration is mandatory for members of the arbitration regime, while it is optional for policy owners and those protected through insurance agreements as they can also apply to the Arbitrational Tribunal for Consumer Issues and general courts.

Insurance arbitration cases can only be brought forward through an application by insurants or those that benefit from insurance contracts. The Insurance Tribunal is made up of different committees. In order for an arbitration case to be brought before the Committee, the party in dispute with the insurance provider is required to have made the necessary appeal for recourse to the insurer and possess documental evidence of a wholly or partially adverse outcome of such an appeal. The failure of an insurer to issue a reply to such an appeal within 15 days of the filing of the appeal is a sufficient reason to bring the case for arbitration before the Committee. Following this pre-arbitration appeal stage of the proceedings, arbitration proceedings are carried out by arbitrators under the co-ordination of the Insurance Arbitration Committee. In order for arbitrators to be able to judge the case, the other part of the dispute, which is the insurance company, should be a member of the arbitration regime and the settlement appeal filed to the insurance company should be rejected or unanswered. In addition, the applicant is required to not have previously filed a petition to resolve the dispute in the Arbitrational Tribunal for Consumer Issues or in the general courts.

Arbitration proceedings can take place if these pre-requisites have been met. The arbitration committee adjudicates the case in accordance with the claims and defences of the parties in the case file. For disputes amounting less than TL 40,000 the judgements of arbitrators are definitive and judgements for claims worth more than TL 40,000 can be appealed. In this context, it should be stated that a claim is worth less than TL 40,000 can be appealed provided that one of the specific conditions set forth in the legislation is present.

The differences in the regulation of arbitration in the provisions in the Insurance Law and the Code of Civil Procedure can lead to certain issues. While the Code of Civil Procedure prescribes that arbitration decisions can be taken to the local court of first instance for nullity thereof, the consequences of an appeal under the Insurance Law provision has become a topic of debate. However, following the entry into force of the Code of Civil Procedure, it can be seen that the preference of the legislative body was not to depart from the concept and regulation of an appellate process in favour of an approach which adopts an appellate/cassation system for arbitration decisions.

The fact that the judgements in insurance arbitration cases are predominantly definitive judgements is especially important from the point of view of similar disputes. In such cases, the absence of a right to an objection requesting to have the trial in the general courts represents a substantial deficit especially from the point of insurance companies. In addition, seeking legal assistance from the very beginning of proceedings can bring positive results.

However, the introduction of mandatory mediation as a pre-requisite to commercial litigation has also made mediation a mandatory requirement before insurance related disputes can be brought before the courts. In insurance arbitration cases, the matter of dispute should pertain to money owed and claim for damages. Moreover, the dispute matter should not be eligible for compulsory application for arbitration or an alternative dispute resolution method as expressed in a special provision. Also, the matter will be ineligible for insurance arbitration if the two parties have concluded an arbitration agreement.

Thus, with the exception of compulsory traffic insurance, as a pre-requisite to a claim being brought in relation to liability insurance cases by the injured party, mediation to resolve the dispute must be exhausted. The Highway Traffic Code (Code) will continue to apply to compulsory traffic insurance cases. According to the Code, the stage of appealing to the insurer should be completed first and should the parties fail to come to an agreement, the need to try mediation still remains as a pre-requisite to trial.

To conclude, with the introduction of compulsory mediation in commercial disputes in 1st January 2019, the process of taking insurance disputes to trial will be as follows: "Petition to the Insurance Company" - "Pre-requisite Mediation before Trial" - in the event of an unsuccessful mediation process "Filing a Court Case". The importance of legal assistance in an effort to avoid loss of claims throughout the process described above should be emphasised.

# Answers. Not theories.

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Gokce Attorney Partnership is an Istanbul-based law firm offering legal services across a broad range of practice areas including mergers and acquisitions, joint ventures, private equity and venture capital transactions, banking and finance, capital markets, insurance, technology, media, telecoms and internet, e-commerce, data protection, intellectual property, regulatory, debt recovery, real property, and commercial litigation. Please visit our web site at [www.gokce.av.tr](http://www.gokce.av.tr) for further information on our legal staff and expertise.

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