

COMPETITION COMES TO COURTS IN ECONOMIC, FAMILY, AND EMPLOYMENT DISPUTES

A passing on 29 March 2019 of the Law of the Republic of Azerbaijan, *On Mediation*, is a part of the ongoing court and legal reforms.

A mediation is a process developed to settle based on a mutual understanding of a dispute between parties by means of a mediator (mediators). The process applies to civil cases and economic disputes, including disputes involving foreign elements, disputes arising under family and employment/labour relations, as well as disputes arising under administrative legal relations.

One of the most intriguing features of the Law is the requirement effective 1 July 2020 for the parties to participate in an initial mediation session before applying to a court for an economic dispute as well as a dispute arising under family and employment relations. In other words, individuals (also, those engaging in business without establishing an entity, sole proprietors) and entities must, before applying to a court, participate in an initial mediation session regardless of whether there was a prior agreement to submit to a mediation. The requirement is expected to decrease a courts workload and to affect positively quality of considerations by courts.

Under the Law, mediators are engaged on an occupational basis from among those appointed by a mediation institution by the parties to run the mediation process and are at least 25 years old with at least three years of the length of service. A mediation institution is an entity marketing mediation services, establishing an order of paying service fees and costs of mediators, providing for facilities for negotiations during a mediation, appointing mediators to run mediation processes, as well as taking other actions for efficient operations of mediators.

Mediation shall be regulated and overseen by the Mediation Council. One of the requirements of the Law is that an individual meeting the requirements to be a mediator can start mediating only after becoming a member of the Mediation Council. This requirement applies also to entities wishing to act as mediation institutions.

The Mediation Council is a self-governing not-for-profit established on a mandatory membership of mediation institutions, mediators, and mediation training institutions. The Council is organised and functioning based on the Law of Mediation, other legal and regulatory acts, and its charter.

The Law provides for a mediation initiated by courts. At any stage of a court consideration, a court, upon consideration of specifics of a case, may, at its own initiative and upon agreement of the parties or application by one of the parties and consent by the other(s), propose to the parties that a dispute be settled by mediation. It is a commendable circumstance that the Law provides for consideration, upon evaluation of a service of a judge, of the numbers of cases directed by the judge to mediation and of the resulting court proceedings terminated as a result of settlement.

The following are included into the costs related to mediation proceedings: a fee of a mediator or mediation institution, including an award (success fee) payable to the mediator or mediating institution upon a successful settlement of a dispute, and disbursements, including for transportation to and from and accommodation and meals at the place of mediation, incurred by the mediator and mediating institution in relation to conducting mediation proceedings. Execution of a settlement agreement between the parties resulting from a mediation is mandatory for the parties.

One of the most expected outcomes of mediation, upon evaluating it against the background of continuing reformation of courts and overall reforms in the legal sphere, including promoting advocacy and actions and services taken so far, is a substantial decrease of workload at courts along with an improvement of quality of court proceedings.

PLEASE CONTACT US FOR ANY QUESTIONS AND FURTHER INFORMATION AT:

BM Morrison Partners
Tel: (994 12) 497 19 14; 497 19 15
Fax: (994 12) 497 19 13
E-mail: info@bmlawaz.com

©2019 BM Morrison Partners. All rights reserved.

* Information in our updates does not constitute legal or other professional advice.