

## NOTE ON TURKISH and GREEK LAW ON MEDIATION CONFIDENTIALITY

**Turkish**

**Law:**

Before I get to your questions I want to inform you about the mediators' reporting duty in Turkey. After conducting a mediation, the mediator has to make a report of the outcome and send it to the Ministry of Justice Mediation Division within one month. This report includes the parties names, the category of the dispute and whether a settlement was reached or not. Sending this report is mandatory for all mediators and this is not deemed to be a breach of any existing confidentiality clause. The Mediation Department is expected to keep such reports strictly confidential.

whether or not the Courts have power:

1. to enquire into what went on in a mediation; The current Turkish Mediation Code (due to change within next year) is largely based on the European Directive, the confidentiality clause and exceptions are regulated in a similar way.

“unless the parties agree otherwise, neither mediators nor those involved in the administration of the mediation process shall be compelled to give evidence in civil and commercial judicial proceedings or arbitration regarding information arising out of or in connection with a mediation process, except:

(a) where this is necessary for overriding considerations of public policy of the Member State concerned, in particular **when required to ensure the protection of the best interests of children or to prevent harm to the physical or psychological integrity of a person; or**

**To the extent that disclosure of the content of the settlement agreement is necessary in order to implement or enforce that agreement.**

Another exception to confidentiality is in cases where there is an allegation of a vitiating factor (duress, misrepresentation, undue influence and illegality, fraud).

2. compel a party to disclose what was said in a mediation; and/or
3. issue a witness summons for a mediator to attend court to give evidence about what was said and by whom in a mediation?

The answer to 2 and 3 are the same, in this respect everybody who has participated in the mediation process is treated equally. When a legal action is filed or an arbitration proceeding is started, mediator or third persons including those participating in mediation shall not testify, and the mediation invitation or the request of a party to participate in the mediation activities, opinions and proposals submitted by the parties, suggestions made by the parties or acceptance of an event or claim, and the documents prepared only for the mediation activity shall not be asserted as evidence.

As a conclusion: there are exceptions to mediation confidentiality however it is not clearly defined by law how the evidence will be collected in case one of the exceptions apply.

### **Greek Law:**

I am copying below the relevant articles of the Greek Law, which are very similar to Turkish

Law (This is not surprising considering the Turkish Mediation Law was an adoption of the EU Directive).

*§5 The mediation process is in principle confidential, records are not being kept and it must be conducted in a way that does not violate its confidentiality, unless the parties agree otherwise. Prior to the commencement of the procedure, all participants commit in writing to maintain the confidentiality of the mediation process. The same obligation has any third party involved in the process. The parties, if they so wish, commit in writing to maintain the confidentiality of the content of the agreement, which they may reach during mediation, unless its disclosure is necessary for its implementation (enforcement), in accordance with paragraph 4 of Article 8 or this is imposed for reasons of public order.*

*§6 If the dispute is brought before the courts or in arbitration, the Mediator, the parties, their legal representatives and those who have participated in any way in the mediation process are not examined as witnesses and are prevented from presenting evidence arising from or related to the mediation process, referring in particular to the discussions, statements and proposals of the parties, as well as to the views of the Mediator, unless this is required for reasons of public order, in particular to ensure the protection of minors or to avoid physical integrity or mental health of a person*