



İTÖTAM

İSTANBUL TİCARET ODASI
TAHKİM VE ARABULUCULUK MERKEZİ

ISTANBUL CHAMBER OF COMMERCE
ARBITRATION AND MEDIATION CENTER

ISTANBUL CHAMBER OF COMMERCE ARBITRATION AND MEDIATION CENTER (İTÖTAM) MEDIATION RULES

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COMMERCE 1882



**ISTANBUL CHAMBER OF
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MEDIATION RULES**

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ISTANBUL CHAMBER OF COMMERCE ARBITRATION AND MEDIATION CENTER (ITOTAM)

MEDIATION RULES INTRODUCTORY PROVISIONS

Article 1

The Mediation Rules (“the Rules”) are administered by the Arbitration Court (“the Arbitration Court”) and Secretariat (“the Secretariat”) of the Istanbul Chamber of Commerce Arbitration and Mediation Center.

The Rules provide for the procedures and principles for the appointment of a Mediator to assist the parties in settling their civil law dispute or of one or more real person(s) expert on the subject of the dispute to provide guidance to the Mediator (“the Expert”). The Expert provides guidance on subjects which the Mediator requires assistance.

If parties request to modify any provision of the Rules, such requests shall be evaluated by the Arbitration Court. If the Arbitration Court finds such amendments appropriate, it shall decide to apply them.

The parties are free to commence, continue, terminate and withdraw from the mediation proceedings. The parties, under no circumstances can be forced to be included to the proceedings and may any time decide not to pursue mediation, save for the situations

Both parties have equal rights when applying to a Mediator and throughout the whole process.

COMMENCEMENT OF THE MEDIATION PROCEEDINGS

Article 2

Where there is an agreement between the parties to refer their dispute to the Rules, any party or parties wishing to commence mediation shall file a written Request with the Secretariat. The Request shall include:

- a) the names, surnames, titles, addresses, telephone numbers, e-mail addresses and any other contact details of the parties to the dispute and of any person(s) representing the parties;
- b) a short description and value of the dispute;
- c) any agreement as to time limits for conducting the mediation, or, in the absence thereof, any proposal with respect thereto;
- ç) any agreement of the parties as to the language(s) of the mediation, or, in the absence thereof, any proposal as to such language(s);
- d) any agreement of the parties as to the location of the mediation, or, in the absence thereof, any proposal as to such location;
- e) any agreement or joint proposal of the parties as to the attributes of a Mediator or an Expert, or, in the absence thereof any proposal of the parties as to the attributes of a Mediator and an Expert to be appointed by the Arbitration Court.

A copy of the mediation agreement shall be attached to the Request.

Together with the Request, the filing fee required by the Appendix hereto, in force on the date the Request is filed, shall be paid. If any of the information stated hereinabove is missing, the Secretariat will suspend the proceedings and notify the relevant party to

complete the missing information within two weeks from the date of the notice. If the relevant party does not complete the Request, the mediation proceedings shall be discontinued.

The Secretariat shall inform the parties of the Request and the payment of the filing fee, provided that the Request was not filed jointly by all parties.

In the absence of an agreement to mediate, any party may recourse to mediation by way of sending its mediation Request to the Secretariat and paying the filing fee. In this case, the Secretariat shall convey the Request to the other party. Where the parties do not reach an agreement to solve their dispute through mediation within 30 days from the date of the receipt of the Request by the Center, the proceedings shall be terminated.

COMMENCEMENT OF THE MEDIATION PROCEEDINGS AND ITS EFFECT ON TIME LIMITS

Article 3

If the parties recourse to mediation before filing a lawsuit, the date on which the parties agree to continue the proceedings with a Mediator and record it with minutes shall be deemed to be the date of the commencement of the proceedings.

If the parties recourse to mediation after the filing of a lawsuit, the date on which the parties accept the mediation invitation of the court; or, out of the hearing, the parties inform the court in writing that they have reached an agreement to apply to a Mediator; or, writing to the minutes of the same during the hearing shall be deemed to be the date of the commencement of the proceedings.

PLACE AND LANGUAGE OF THE MEETINGS

Article 4

Unless otherwise agreed by the parties, the meetings regarding the proceedings shall take place at a location determined by the Arbitration Court, or, determined by the Mediator after the appointment of the Mediator.

Unless otherwise agreed by the parties, the Arbitration Court shall determine the language in which the mediation shall be conducted by also considering the parties' views.

NOMINATION AND APPOINTMENT OF THE MEDIATOR AND THE EXPERT

Article 5

The Mediator shall be nominated among the real persons that are registered to the registry kept by the Ministry of Justice. The Experts shall be appointed by the Board of Directors of the Istanbul Chamber of Commerce upon the Arbitration Court's suggestion among experienced individuals in their fields that are registered to the Experts' List by way of completing the relevant training provided by the Arbitration Court and received their certificates thereof. The individuals that are registered to the Experts' List shall successfully complete a 16-hour training and qualify for the certificate. The Experts' List may be renewed if necessary.

The parties may jointly nominate the Mediator and the Expert for confirmation by the Arbitration Court.

The Expert shall be appointed if a mention thereof is made in the agreement to mediate or upon a joint

request made by the parties thereof at a later stage.

If the parties fail to nominate the Mediator and the Expert within the given period designated by the Arbitration Court, they shall be appointed by the Arbitration Court by also considering the parties' views.

The Mediator and the Expert shall be independent and impartial. The Mediator and the Expert shall sign a statement of acceptance, independence and impartiality required by the Appendix hereto before the confirmation of the Arbitration Court. The Secretariat shall send the signed statement of impartiality and independence to the parties prior to the confirmation of the Arbitration Court and ask the parties to submit their comments, if any, within reasonable time limits. The Mediator and the Expert shall disclose all circumstances which might call into question their impartiality and independence to the Arbitration Court whether arisen prior to the confirmation by the Arbitration Court or during the proceedings.

When appointing a Mediator or an Expert, the Arbitration Court takes into consideration the agreement to mediate and views of both parties along with the experience of the Mediator and the Expert.

Any party may challenge the appointment of the Mediator or the Expert by stating the reasons for such objection. If the Arbitration Court admits the challenge, it will appoint a new Mediator or an Expert within a week.

The parties may nominate more than one Mediator or Expert. Taking into account the attributes of the dispute and number of parties involved, the Arbitration Court may propose to nominate more than one Mediator or Expert.

CONDUCT OF THE MEDIATION

Article 6

The Mediator and the parties shall discuss the manner in which the mediation shall be conducted. If an agreement thereof cannot be reached, the Mediator shall conduct the mediation proceedings in a manner having regard to the nature of the dispute, parties preferences and, procedures and principles necessary to solve the dispute in an expeditious manner. The Mediator consults with the Expert while conducting the proceedings.

The parties may attend the mediation meetings in person or through their representatives.

The Mediator and the Expert shall be impartial and independent when conducting mediation proceedings and cannot act in a manner which raises doubts about their impartiality or independence.

Each party shall act in good faith throughout the mediation.

TERMINATION OF THE MEDIATION PROCEEDINGS

Article 7

The mediation proceedings shall terminate if:

- a) the parties reach a settlement on the subject of the dispute;
- b) after consulting with the parties, the Mediator determines that it is no longer worthwhile to make more efforts;
- c) a party notifies the other party of its withdrawal from the mediation proceedings;
- ç) parties agree to terminate the mediation proceedings;

- d) it is determined that the dispute is not appropriate for mediation;
- e) unless otherwise agreed by the parties, the mediation proceedings were not completed within 3 months.

The situations arising from mandatory mediation procedures defined by the laws are reserved.

At the end of the mediation proceedings, settlement or non-settlement of the parties; or, the manner in which the mediation proceedings are terminated shall be documented with a record. This document is to be prepared by the Mediator and signed by the parties or their representatives. If the parties or their representatives do not sign the document, the Mediator shall solely sign the document by stating the reasons thereof.

Upon the termination of the mediation proceedings, the Mediator shall keep the notifications regarding the proceedings, the documents that are sent to him or her or at his or her possession, and the record that is prepared according to paragraph two herein, for five years. The Mediator shall send a copy of the final record to the parties and the Secretariat. The Mediator shall send a copy of the final record within one month at the latest to the Legal Affairs General Directorate of the Ministry of Justice.

If the Mediator or the Expert, *de jure* or *de facto* cannot perform his or her duties regarding the mediation proceedings, the proceedings may be continued with a new Mediator and Expert nominated by the parties. Any acts that took place previously shall continue to be valid.

In the event of death of any of the parties, the mediation proceedings shall terminate.

SETTLEMENT OF THE PARTIES

Article 8

The content of the mediation settlement reached at the end of the mediation proceedings shall be determined by the parties; if a settlement agreement is drafted, it shall be signed by the parties and the Mediator.

CONFIDENTIALITY

Article 9

Unless otherwise agreed by the parties, the parties and their representatives, if any, the Arbitration Court, the Secretariat, the Mediator and the Expert shall keep any information, documents and other records submitted to them or otherwise obtained by them strictly confidential.

The confidentiality obligation also applies to persons working with or under the supervision and monitoring of the Arbitration Court, the Secretariat, the Mediator and the Expert.

DISUSE OF STATEMENTS AND DOCUMENTS

Article 10

The parties, the Mediator, the Expert or a third party including those involved in mediation, may not produce the following declarations or documents as evidence, and testify in regard to those in judicial or arbitral proceedings in respect of the dispute:

- a) the invitation to mediation sent out by the parties, or the willingness of one of the parties to participate to the mediation proceedings;
- b) any views or proposals put forward by the par-

- ties to settle the dispute by means of mediation;
- c) proposals put forward by the parties or admission of an event or allegation;
- ç) the documents prepared solely for the purposes of the mediation process.

The provisions of the first paragraph shall be applicable regardless of the form of a statement or document.

No court, arbitrator or administrative authority shall request the disclosure of the information specified under the first paragraph herein. Even if such statements and documents are produced as evidence in violation of the first paragraph, they cannot have effect on the judgement. Such information, however, may be disclosed to the extent required by the law, or to the extent required for the fulfilment and execution of the agreement reached at the end of the mediation proceedings.

The first, the second and the third paragraphs hereinabove as well applies to judicial and arbitral proceedings, regardless of pertinence to the subject matter of mediation.

Without prejudice to the limitations specified under the first paragraph, evidence introduced into mediation that is otherwise admissible in judicial and arbitral proceedings shall not become inadmissible in such proceedings solely because it was previously introduced into mediation.

FEES AND COSTS

Article 11

The party filing a mediation Request shall pay the filing fee. The party filing the Request shall also pay administrative costs fixed by the Secretariat.

Following the commencement of the proceedings, the Secretariat may request the parties to pay an advance to cover the Mediator and Expert's fee.

The responsibility to pay the Mediator and Expert's fees and administrative costs lies with the parties. Unless agreed otherwise, this responsibility shall be borne in equal shares by the parties. The unpaid amount may be paid by the other party, should a party fails to pay its share.

If the advance fixed by the Secretariat is not paid, the Arbitration Court may suspend or terminate the proceedings.

Upon termination of the mediation proceedings, the Secretariat shall fix the Mediator and Expert's fee. The Mediator's fee shall be calculated pursuant to the Mediator's Fee Tariff of the Turkish Code of Mediation of Legal Disputes. If the advance is insufficient to cover the Mediator and Expert's fee and other mediation costs, an additional payment may be requested from the parties. The excess amount of the advance shall be reimbursed to the parties. The filing fee and the administrative costs shall not be reimbursed.

GENERAL PROVISIONS

Article 12

Unless parties agree otherwise, a Mediator or an Expert shall not act as an arbitrator, expert witness; or, a representative or a consultant of a party and, give opinion on the subject matter of the dispute after the termination of the proceedings.

The Arbitration Court, the Secretariat, the Mediator and the Expert shall only be liable for their intentional acts.

EFFECTIVE DATE

Article 13

This Mediation Rules enter into force on 11.03.2021.

Appendix:

I- Model Mediation Clause

II- Statement of Impartiality and Independence

III- Mediation Costs and Fees Tariff

ANNEX I

MODEL MEDIATION CLAUSE

The parties hereby agree that any dispute relating to this contract shall be settled by mediation in accordance with the Rules of Mediation of the Istanbul Chamber of Commerce Arbitration and Mediation Center (ITOTAM).

ANNEX II

STATEMENT OF INDEPENDENCE AND IMPARTIALITY

❖ **The statement of independence and impartiality
that shall be made by the nominated mediator**

I hereby declare that I am impartial and independent of each of the parties to the dispute regarding which I have been nominated as a mediator and I intend to remain so. To the best of my knowledge, there are no circumstances, past or present, likely to give rise to justifiable doubts as to my impartiality or independence. I accept and undertake to promptly notify the Secretariat in writing of any such circumstances that may subsequently come to my attention during the mediation proceedings. I confirm that I will provide the necessary diligence to conduct this mediation and I will provide the necessary time to act in accordance with the time limits in the Rules.

❖ **The statement that shall be made by the mediator in case of circumstances that shall be disclosed regarding independence and impartiality**

I hereby declare that I am impartial and independent of each of the parties to the dispute regarding which I have been nominated as a mediator and I intend to remain so. Attached is a statement of (a) my past and present professional, business and other interest relationships with the parties and/or (b) any other relevant circumstances. I confirm that those relationships and/or circumstances do not affect my independence and impartiality. I accept and undertake to promptly notify the Secretariat in writing regarding any such circumstances that may subsequently come to my attention during the mediation proceedings.

ANNEX III

MEDIATION COSTS AND FEES TARIFF

Filing Fee: 100 TRY

Administrative Costs: 200 TRY

Expert fee is 1/4 of the mediator's fee.

The Mediator's fee shall be calculated pursuant to the Mediator's Fee Tariff of the Turkish Code of Mediation of Legal Disputes.

