

ISTANBUL ARBITRATION CENTRE MEDIATION-ARBITRATION RULES

ARTICLE 1

Objective

1. These Mediation-Arbitration Rules aim to regulate the rules on procedure and practice to be followed before the Istanbul Arbitration Centre in the course of the resolution of disputes, which may be subject to mediation and arbitration, where mediation and arbitration are together determined as the dispute resolution mechanism.

ARTICLE 2

Scope of Application

1. These Mediation-Arbitration Rules shall apply when the parties agree that the dispute between the parties shall primarily be resolved through mediation and, if the parties fail to reach agreement, finally through arbitration.
2. In cases where the parties have agreed to submit their disputes under the Istanbul Arbitration Centre Mediation-Arbitration Rules, these Mediation-Arbitration Rules shall apply. This requirement shall be deemed to be fulfilled when the parties decide to hold the mediation-arbitration process at the Istanbul Arbitration Centre or to apply the relevant rules of the Istanbul Arbitration Centre to either of the previously agreed mediation and arbitration processes which have been determined as the dispute resolution mechanism between the parties.
3. Parties may agree on the application of the Istanbul Arbitration Centre Mediation-Arbitration Rules by using a phrase referencing “Istanbul Arbitration Centre” such as “ISTAC” or “İTM” along with a phrase referencing “mediation-arbitration” mechanism such as “med-arb” or “arbitration”.
4. These Mediation-Arbitration Rules shall apply together with the Istanbul Arbitration Centre Mediation Rules and the Istanbul Arbitration Centre Arbitration Rules. In cases where the Mediation-Arbitration Rules are silent (in particular on issues of commencement of the mediation and arbitration, choice of mediators and arbitrators, procedures regarding mediation and arbitration procedures, costs regarding these procedures) the relevant rules of the Istanbul Arbitration Centre Mediation Rules and the Istanbul Arbitration Centre Arbitration Rules shall apply.

ARTICLE 3

Time of the Mediation-Arbitration Clause

1. Parties may agree on a mediation-arbitration clause at any time until the final resolution of a determinable dispute between themselves that may arise or has arisen from a legal relationship between them.
2. A mediation-arbitration agreement may be made by the parties regardless of the fact that parties have previously negotiated on, or commenced mediation or arbitration for, the resolution of such dispute.
3. In cases where the parties make a mediation-arbitration agreement in accordance with the Istanbul Arbitration Centre Mediation-Arbitration Rules after having commenced mediation for the resolution of a dispute between themselves, the parties shall continue such mediation process in accordance with the Istanbul Arbitration Centre Mediation-Arbitration Rules.

4. In cases where the parties make a mediation-arbitration agreement after the arbitration proceedings have commenced, the arbitration proceedings will be suspended and the dispute shall be resolved in accordance with the Istanbul Arbitration Centre Mediation-Arbitration Rules. If the parties fail to reach an agreement at the end of the mediation process in accordance with the Istanbul Arbitration Centre Mediation-Arbitration Rules, the arbitration proceedings will continue from the stage where the parties suspended arbitration with the same arbitral tribunal but according to the Istanbul Arbitration Centre Mediation-Arbitration Rules. If the proceeding of the arbitral process by the reconvened tribunal under the Istanbul Arbitration Centre Mediation-Arbitration Rules is incompatible with the laws of the place of arbitration, the Istanbul Arbitration Centre Mediation-Arbitration Rules, the Istanbul Arbitration Centre Arbitration Rules or the principle of good faith, the Board of Arbitration may decide, upon the written request of one of the parties, not to continue the previous arbitration proceeding and to commence a new arbitration proceeding in accordance with the Istanbul Arbitration Centre Mediation-Arbitration Rules.

ARTICLE 4

Mediation Process, Failure to Reach Agreement During Mediation and the Commencement of Arbitration Proceedings

1. Any of the parties may initiate the mediation-arbitration process by filing a request for mediation pursuant to Article 4 of the Istanbul Arbitration Centre Mediation Rules. A mediator shall be appointed pursuant to Article 7 of the Istanbul Arbitration Centre Mediation Rules and shall act in accordance with the Istanbul Arbitration Centre Mediation Rules.
2. The parties may file a request for emergency arbitrator pursuant to the Istanbul Arbitration Centre Emergency Arbitrator Rules at the time of the commencement of mediation-arbitration process or during the mediation process. After the request for emergency arbitrator has been submitted, the time limit specified in Article 2(5) of the Emergency Arbitrator Rules will not start as the mediation is ongoing. This time limit will begin running at the end of the mediation process. The Emergency Arbitrator's Decision to Grant Interim Measure will lose its binding character pursuant to Article 7(6)(a) of the Istanbul Arbitration Centre Emergency Arbitrator Rules, in the event that the time limit specified in Article 2(5) of the Istanbul Arbitration Centre Emergency Arbitrator Rules lapses between the time of termination of the mediation process and the submission of the request for arbitration.
3. In case the mediation process is terminated and the parties fail to reach an agreement pursuant to Article 12 of the Istanbul Arbitration Centre Mediation Rules, this status will be drawn up by a record of non-agreement to be signed by the mediator and the parties. In case one of the parties refuses to sign the protocol, the mediator shall sign the record, inscribing the reason of such refusal.
4. Unless otherwise agreed by the parties, a request for arbitration shall not be submitted before the termination of the mediation process and in any case before eight weeks of time after the mediation process commenced.
5. In case one of the parties submits a request for arbitration before the commencement of the mediation process or the termination of the mediation process or in any case before eight weeks of time after the mediation process commenced, the other party may request the suspension of arbitration proceedings along with the commencement of mediation process or continuation of the ongoing mediation process at the latest with its answer to the request for arbitration. Upon the arbitral tribunal's decision to suspend the arbitration process, the mediation process commences. In case the mediation process terminates with parties' failure to reach an agreement, the

arbitration process will continue from the stage where it was suspended upon the request of any of the parties. The arbitral tribunal may, upon the request of a party, decide on the damages arising from the other party's breach of the mediation-arbitration agreement.

6. The suspension of the arbitration process shall not cause the termination of the previously granted interim measures. However if the parties reach an agreement through mediation or the parties do not continue with arbitration following mediation, the interim measure shall be terminated upon the request of the party against whom the interim measure was granted.
7. Parties may submit a request for arbitration without commencing mediation or before termination of the mediation process under the following circumstances:
 - a. Circumstances showing that the dispute cannot feasibly be resolved through mediation;
 - b. At least one of the parties cannot reasonably expect any kind of agreement from mediation due to obvious reasons;
 - c. One of the parties' intention to reach an expeditious decision by directly requesting arbitration in cases where the satisfaction of the requirement to proceed first with mediation will place the claimant in a difficult situation, such as the case of the other party's bankruptcy;
 - d. One of the parties' failure to submit an answer within the time specified in Article 7 of the Istanbul Arbitration Centre Mediation Rules or one of the parties' failure to attend two consecutive mediation meetings without a valid excuse.

ARTICLE 5

The Mediator Acting as the Arbitrator

1. A person who acted as the mediator for a dispute during the mediation-arbitration or mediation process shall not act as an arbitrator for the same dispute without the parties' express and written consent.
2. In the event that the mediator acts as an arbitrator, Article 6 of these Rules regarding confidentiality and evidence shall be reserved.
3. In case the mediation process is terminated upon the parties' agreement, Article 12(3) of the Istanbul Arbitration Centre Mediation Rules regarding the recording of the settlement agreement in the form of an arbitral award is reserved.

ARTICLE 6

Confidentiality and Prohibition of the Use of Information and Documents Obtained During the Mediation Process in the Arbitration Proceedings

1. Parties and third persons, who acted as the mediator or under any other capacity participated in the mediation process, shall not use the following statements or documents as evidence or shall not act as witness for the following during the arbitration proceedings:
 - a. Opinions and offers expressed by the parties with the purpose of reaching an agreement through mediation;
 - b. Offers or acceptances in relation to facts and claims made by the parties during the mediation process;
 - c. The mediator's agreement proposal;
 - d. Statement of any party expressing acceptance or possible acceptance of the mediator's agreement proposal;
 - e. Documents solely prepared for the mediation process.

2. The arbitral tribunal shall not request or order the disclosure of information and production of documents listed in the first paragraph. Such information and documents shall not have any evidential value even if submitted as evidence in violation of the first paragraph. The arbitral tribunal may decide that the party who submitted such information or documents as evidence pays all expenses of the arbitration process upon the request of the other party.
3. Provided that the limitations listed in the first paragraph are reserved, admissible evidence for the arbitration proceedings shall not become inadmissible on the grounds that such evidence was presented in the mediation process.
4. In case there is any doubt or dispute in the arbitration proceedings between the parties regarding the admissibility of evidence, which was used in the mediation process, the arbitral tribunal shall decide on the admissibility of such evidence before examining the content of such evidence. In case the arbitral tribunal is unable to decide on the admissibility of evidence without examining its content, the arbitral tribunal may appoint an expert to deliver an opinion on the admissibility of such evidence within five business days.
5. Parties and third persons, who acted as the mediator or under any other capacity participated in the mediation process, shall keep the information and documents and other records as specified in the first paragraph confidential. This requirement continues to be in effect even after the mediation process and the arbitration proceedings are terminated.