



# **TOBBUYUM MEDIATION RULES**

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## TOBBUYUM MEDIATION AND CONFLICT RESOLUTION CENTER MEDIATION RULES

### Sample Mediation Agreement

Following is the sample mediation clause that necessitates mediation to be performed under TOBBUYUM Mediation Rules.

*“All disputes arising out of or in connection with the present contract shall be settled by mediation under TOBBUYUM Mediation Rules before TOBBUYUM.”*

#### ARTICLE I AIM

The aim of TOBBUYUM Mediation Rules, (*Here in after referred to as Rules*) is to set out the principles of resolving both internal and international legal disputes convenient for mediation before TOBBUYUM.

#### ARTICLE II SCOPE

1. All the mediation processes under the Rules shall be conducted in compliance with United Nations Convention on International Settlement Agreement Resulting from Mediation, Mediation in Civic Disputes Act (numbered 6325), Mediation in Civic Disputes Act Regulations, Türkiye-Ethical Rules of Mediation, the Tariff for Minimum Fees of Mediation in effect, and the provisions of the Rules that do not conflict with the aforesaid regulations.
2. The Rules shall prevail from the date of acceptance and putting on the record of application by TOBBUYUM to the end of mediation process.

#### ARTICLE III APPLICATION AND COMMENCEMENT OF MEDIATION

1. For the commencement of mediation before TOBBUYUM, it is necessary for the application to be accepted and put on the record by TOBBUYUM.
2. TOBBUYUM has the absolute authority to deny the application due to such reason as the subject of dispute not being appropriate for mediation or any reason in compliance with law.
3. The application methods to commence a mediation are as the following.



bilgi@tobbuyum.com.tr



+90 (312) 969 8986



TOBB İKİZ KULELER MUSTAFA KEMAL MAH.  
DUMLUPINAR BLV. NO: 252 İÇ KAPI NO: Z24  
(SOSYAL TESİSLER) 06530 ÇANKAYA/ ANKARA

- 3. 1** Making an oral or written application to the Secretary
  - 3. 2** Sending an e-mail to the e-mail address of TOBBUYUM (bilgi@tobbuyum.com.tr)
  - 3. 3** Filling the application form on the TOBBUYUM's official website
  - 3. 4** Parties' mutual application for mediation through above-mentioned methods
- 4.** The application form shall contain the following:
- 4. 1** The name, surname, title, address, phone and fax numbers and e-mail addresses of each party
  - 4. 2** The name, surname, address, and other contact information of each parties' representatives and attorneys
  - 4. 3** Explanations concerning the subject of the dispute
  - 4. 4** The certain amount of dispute where it is possible to determine, and the approximate amount of dispute where the certain amount is not possible to determine
  - 4. 5** The copies of mediation agreement or clause
  - 4. 6** The identity of the Mediator, the period of mediation, the language of mediation and the procedural rules of mediation if determined by the parties
  - 4. 7** The original document of official or certified translation of the application form written in languages other than Turkish
- 5.** TOBBUYUM shall allow extra time for the applicant to complete the missing information in the application form.
  - 6.** TOBBUYUM is authorized not to accept the application in case the missing information is not completed in the given extra time.
  - 7.** After the acceptance of applications meeting the standards set by the Rules, the dispute shall be referred to the Mediator appointed by TOBBUYUM.
  - 8.** The Mediator shall inform the other party of the invitation through an appropriate method.
  - 9.** The mediation shall commence by the Mediator's putting on the record of the acceptance of invitation in a document after the other party accepts the invitation.
  - 10.** The Mediator shall not initiate a mediation process and inform TOBBUYUM of the situation in three days in case the other party does not accept the invitation.





## **ARTICLE IV**

### **MEDIATION EXPENSES AND MEDIATOR'S FEE**

1. TOBBUYUM may demand expenses in advance from the parties if doing so is necessary to conduct mediation.
2. If the demanded expenses are not deposited into the bank account informed by TOBBUYUM in a given period, the mediation is not processed further and the concerned is informed of the pause.
3. The mediation process resumes from where it stopes in case the demanded expenses are deposited.
4. The remnant of the expenses deposited in advance shall be returned to the depositor at the end of mediation.
5. The Mediator's fee shall be determined freely by the parties on no less than the amount indicated by the Minimum Tariff on Mediation Fees in force.
6. The Mediator's fee may be received either at the start or at the end of the mediation.
7. The Mediator's fee may not be requested to return back once mediation process starts in accordance with Article III, Paragraph 9 of the Rules.

## **ARTICLE V**

### **APPOINTMENT OF MEDIATOR**

1. Parties may mutually appoint a mediator from TOBBUYUM Mediator List.
2. Commission shall appoint the Mediator chosen by the parties if the Mediator accept the assignment.
3. If parties cannot choose the Mediator or ask TOBBUYUM to appoint the Mediator, TOBBUYUM shall appoint a Mediator from the Mediator List.
4. Parties may mutually request from TOBBUYUM to appoint a Mediator who does not take part in TOBBUYUM Mediator List through a written request.
5. It is within TOBBUYUM's discretion to appoint a Mediator who does not take part in TOBBUYUM Mediator's List. Parties hold the right to terminate the process if a party-appointed Mediator is not approved by TOBBUYUM.
6. The Mediator appointed by TOBBUYUM is considered to having accepted the Rules by accepting the appointment.
7. Parties wishing not to continue to mediation with the already appointed Mediator may mutually determine to continue with another Mediator from TOBBUYUM Mediator List, or request in writing from TOBBUYUM to appoint another Mediator.
8. TOBBUYUM shall appoint a new Mediator within seven days after the written request is recorded by TOBBUYUM Secretary.
9. TOBBUYUM may advise parties more than one Mediator if the nature of the conflict requires to do so.



10. The Mediator appointed by TOBBUYUM shall sign a letter of commitment and submit it to TOBBUYUM within three workdays after the appointment. The commitment letter shall contain the following statement:

*“I, as Mediator, having accepted the appointment, declare that there is not any conflict of interest between me and parties to mediation, and I shall act as an independent and impartial Mediator and allocate enough time to perform mediation in the best way.”*

11. TOBBUYUM is authorized to cancel the appointment and replace the Mediator who did not submit this written declaration and re-appoint a new mediator in accordance with Article V of the Rules.

## **ARTICLE VI INDEPENDENCE AND IMPARTIALITY**

1. The Mediator shall make reasonable research to understand if there is any conflict of interest or other situation that brings their impartiality into doubt and has to deny the appointment if so.
2. The Mediator, learning the situations that brings their impartiality in to doubt after the appointment, shall inform the parties of the situation without losing time.
3. The Mediator is authorized to either quit his role as a mediator or continue to conduct mediation provided that parties give their consent to do so explicitly in writing.
4. The Mediator shall comply with both subjective (before the eyes of third persons) and objective elements of “Impartiality and Independence” principle.
5. The Mediator shall avoid displaying any behaviour or discourse regarding the parties’ personality features, pasts, beliefs, values and religious and social views that may bring their impartiality into doubt no matter what political, religious or social views the Mediator own.
6. The Mediator shall avoid such behaviours as spending more time with any party to the dispute or other behaviours that may be interpreted as establishing more intimate relationship with either of the parties.
7. The Mediator shall avoid -upon the request of the parties- proposing resolutions that may put their impartiality in doubt, and act in a way that will remove the possible risks regarding their impartiality while proposing any resolution to the parties.



## **ARTICLE VII CONFIDENTIALITY**

1. The Mediator acts in a confidential manner regarding the assignments by TOBBUYUM, the identities of the parties, the content of dispute, and the information acquired through mediation.
2. Parties and the other participants of mediation shall keep the information that they accessed through mediation secret.
3. The confidentiality principle shall be removed if either party agree to or upon the necessities arising from legal obligation.
4. The online or in face mediation meetings cannot be recorded unless agreed otherwise.

## **ARTICLE VIII OBLIGATIONS OF THE MEDIATOR**

1. The Mediator shall conduct mediation in compliance with professional and ethical principles, and scientific and legal bases of mediation.
5. The Mediator, in order to conduct mediation process successfully and resolve the conflict, shall apply all the basic applications of mediations as required at each state of the mediation process.
6. The Mediator shall prepare the final document, which is legally compulsory to prepare, give one copy of it to each party and load it into the UYAP Information Network in one month.
7. The Mediator shall help parties prepare an agreement document if requested by the parties to do so.
8. Having completed mediation, the Mediator shall prepare a result declaration document containing the current description of the dispute, starting & ending dates of mediation, if the mediation resolved or not, if resolved the amount parties settled upon in a confidential manner, and submit it to TOBBUYUM in one week.
9. TOBBUYUM is authorized to exclude the Mediator from its List who did not submit the result declaration form or not to assign any more dispute to that Mediator.

## **ARTICLE IX OBLIGATIONS OF THE PARTIES**

1. Parties shall cooperate with TOBBUYUM and share the documents and information with the Mediator in order for the process to be conducted properly.



bilgi@tobbuyum.com.tr



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(SOSYAL TESİSLER) 06530 ÇANKAYA/ ANKARA



2. Parties shall keep the information, -commercial confidentialities being in the first place- secret regarding TOBBUYUM and other participants of mediation throughout the process.
3. Parties, if asked by TOBBUYUM to do so, shall deposit expenditures of mediation and the Mediator's fee into bank account informed by TOBBUYUM in a settled time period.
4. Parties shall act toward TOBBUYUM and other participants in a respectful manner.

## **ARTICLE X**

### **COMPLETION OF MEDIATION**

1. The maximum period of time for mediation processes before TOBBUYUM, if not agreed otherwise by the parties, is 90 days; If an agreement is not reached within this maximum time period, the mediation shall automatically end.
2. Mediation process shall end whereas either of the following shows up.
  - 2.1 Parties reaching an agreement
  - 2.2 Mediator's confirmation that subject matter of dispute not being suitable for mediation
  - 2.3 After consulting to parties, Mediator's confirmation that continuing the mediation is unlikely to settle dispute
  - 2.4 Application to the Mediator or TOBBUYUM for ending mediation process by -at least- one of the parties
  - 2.5 Not attendance of -at least- one party to the two meetings in succession

## **ARTICLE XI**

### **INFORMING ON ARBITRATION**

1. The Mediator shall inform the parties of arbitration as a conflict resolution method in a detailed way in case parties do not settle in mediation.
2. The Mediator shall help parties write an arbitration agreement if parties requested from the Mediator to do so.

