Email:

conference@houghtonstreetreview.com

Website:

www.houghtonstreetreview.com/index.php/conference

© 2026 International Online Conference on Multidisciplinary Academic Research. All Rights Reserved.

Editor-in-Chief:

Dr. Ewelum Johnson Nnadi

Managing Editors:

1.Harold Jan R. Terano

2.Dr. Mandakini Singla

3.Massoud Kaykhaii








# CONFIDENTIALITY IN ARB-MED-ARB: THE USE OF MEDIATION INFORMATION IN RESUMED ARBITRATION

**Isaeva Sevinch Oybek qizi**
Master's student, International Arbitration and Dispute Resolution, University of World Economy and Diplomacy

**Abstract**

Arb-Med-Arb has emerged as a hybrid dispute resolution mechanism combining the adjudicative function of arbitration with the consensual and flexible nature of mediation. Under this procedure, a dispute is first submitted to arbitration, subsequently referred to mediation, and, if no settlement is reached, returned to arbitration. The mechanism is designed to enable parties to explore settlement without losing access to a binding arbitral determination. However, the sequential interaction between arbitration and mediation raises a distinct procedural question: what should happen to information disclosed during mediation when arbitration resumes?

The issue is particularly significant because mediation depends upon confidentiality and candid communication. Parties may disclose settlement offers, concessions, assessments of their legal position and other information that would not otherwise be disclosed in arbitration. If mediation fails, allowing such information to influence the subsequent arbitral proceedings may undermine both the confidentiality of mediation and the parties' willingness to participate openly. The problem becomes even more complex where the same individual performs the functions of mediator and arbitrator.

This paper examines the limits of using mediation-related information in resumed arbitration, analyses relevant international standards and considers the adequacy of the existing legal framework of Uzbekistan. It argues that the development of Arb-Med-Arb requires a functional separation between information generated exclusively for mediation and evidence that independently exists outside the mediation process. The paper proposes several directions for improving Uzbek legislation, including clearer rules on evidentiary admissibility, confidentiality, the burden of proof and the consequences of using protected mediation information in subsequent arbitration.

**Keywords:** Arb-Med-Arb, arbitration, mediation, confidentiality, mediation information, admissibility of evidence, arbitrator, mediator, impartiality, Uzbekistan.

## 1. Introduction

The increasing complexity of international commercial disputes has encouraged the development of mechanisms that combine different forms of dispute resolution. Arbitration and mediation traditionally represent two distinct approaches: arbitration results in an adjudicative decision by a tribunal, whereas mediation is based upon party autonomy and consensual settlement facilitated by a neutral third party. Recent practice, however, demonstrates a growing interest in combining these mechanisms within a single dispute resolution framework.

Email:

conference@houghtonstreetreview.com

Website:

www.houghtonstreetreview.com/index.php/conference

© 2026 International Online Conference on Multidisciplinary Academic Research. All Rights Reserved.

Editor-in-Chief:

Dr. Ewelum Johnson Nnadi

Managing Editors:

1.Harold Jan R. Terano

2.Dr. Mandakini Singla

3.Massoud Kaykhaii








One of the most prominent examples is the Arb-Med-Arb procedure. The mechanism allows a dispute to commence in arbitration, be temporarily referred to mediation and, where settlement is not achieved, return to arbitration. The SIAC-SIMC Arb-Med-Arb Protocol provides an established institutional model for this process.[1]

The principal attraction of Arb-Med-Arb is therefore its ability to combine the flexibility of mediation with the finality and enforceability associated with arbitration. Nevertheless, the interaction of the two procedures produces legal questions that do not arise, or arise less acutely, when arbitration and mediation operate independently.

One of the most significant questions concerns confidentiality. During mediation, parties may communicate information that is disclosed solely for the purpose of facilitating settlement. Such information may include settlement proposals, admissions, concessions, assessments of litigation risk and confidential information communicated privately to the mediator.

If the mediation fails and the arbitration resumes, the question arises whether such information can, directly or indirectly, affect the arbitral proceedings.

The problem can be formulated as follows:

**How can the confidentiality of mediation be effectively protected when the same dispute subsequently returns to arbitration?**

The question is particularly sensitive where the mediator and arbitrator are the same person. Even if the individual acts in good faith, the fact that confidential information has entered the decision-maker's knowledge may create concerns regarding impartiality and procedural fairness.

This paper argues that the effectiveness of Arb-Med-Arb requires a clear functional separation of mediation information from arbitral evidence. Such separation should protect information created specifically for settlement negotiations while preserving the admissibility of evidence that independently exists outside the mediation process.

## 2. Confidentiality as a Fundamental Element of Mediation

Confidentiality is not merely an ancillary feature of mediation. It is one of the conditions that enables parties to participate meaningfully in settlement negotiations.

Unlike adjudicative proceedings, mediation encourages parties to explore possible compromises without necessarily committing themselves to a particular legal position. A party may, for example, acknowledge the existence of litigation risks or offer to accept a reduced amount to achieve a settlement. Such statements do not necessarily represent the party's substantive position on the merits.

The possibility that these statements may later be used against the party in arbitration could significantly reduce the willingness of participants to communicate openly.

This rationale is reflected in international instruments. Article 11 of the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation establishes restrictions on the use of certain mediation-related information as evidence in subsequent judicial, arbitral or

[1] Singapore International Arbitration Centre and Singapore International Mediation Centre, *Arb-Med-Arb Protocol* (5 November 2014

Email:

conference@houghtonstreetreview.com

Website:

www.houghtonstreetreview.com/index.php/conference

© 2026 International Online Conference on Multidisciplinary Academic Research. All Rights Reserved.

Editor-in-Chief:

Dr. Ewelum Johnson Nnadi

Managing Editors:

1.Harold Jan R. Terano

2.Dr. Mandakini Singla

3.Massoud Kaykhaii








similar proceedings.[2] The protected categories include invitations to mediate, expressions of willingness to accept proposals, views and proposals made during mediation, admissions, proposals made by the mediator and statements indicating a willingness to accept a settlement proposal.

At the same time, the Model Law recognises an important distinction. Information that is independently admissible in subsequent proceedings does not become inadmissible merely because it was used during mediation.[3]

This distinction is essential for Arb-Med-Arb.

Consider, for example, a commercial contract that was concluded several years before a dispute arose. During mediation, one party produces the contract to explain its position. The contract does not become a privileged mediation document merely because it was discussed during the mediation. It existed independently of the mediation and may remain relevant to the arbitration.

By contrast, a statement such as "we are prepared to accept 60 per cent of the claimed amount in order to settle the dispute" is intrinsically connected to the settlement process. Its subsequent use in arbitration would undermine the very purpose of confidential negotiations.

Accordingly, confidentiality should not be understood as creating a blanket exclusionary rule covering every document or fact mentioned during mediation. Rather, the central distinction should be between:

1. information generated specifically for the purposes of mediation; and
2. information that exists independently of mediation.

This distinction provides the foundation for a workable confidentiality regime in Arb-Med-Arb.

**3. The Problem of Information Transfer from Mediation to Arbitration**

The sequential nature of Arb-Med-Arb creates what may be described as a problem of procedural information transfer.

The parties enter mediation with the understanding that their communications will remain confidential. However, if no settlement is reached, the same dispute returns to the arbitral tribunal.

Suppose, for example, that during a confidential mediation a claimant tells the mediator:

"We believe that our chances of obtaining the full amount are limited, and we would accept a settlement for 60 per cent of the claim."

If the mediation fails, the claimant should not be placed in the position where this statement is treated as an admission concerning the merits of the dispute.

The statement was made in a particular procedural context and for a particular purpose: settlement.

Permitting its use in the resumed arbitration could create a serious chilling effect. Parties might begin to treat mediation as an extension of adversarial litigation rather than as a protected environment for negotiation.

---

[2] UNCITRAL, *UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation* (2018), art 11.

[3] Ibid.

Email:

conference@houghtonstreetreview.com

Website:

www.houghtonstreetreview.com/index.php/conference

© 2026 International Online Conference on Multidisciplinary Academic Research. All Rights Reserved.

Editor-in-Chief:

Dr. Ewelum Johnson Nnadi

Managing Editors:

1.Harold Jan R. Terano

2.Dr. Mandakini Singla

3.Massoud Kaykhaii








The principle should therefore be that participation in mediation should not worsen a party's procedural position in subsequent arbitration.

This approach is consistent with the UNCITRAL framework. The Model Law seeks to protect settlement-related communications while preserving the evidentiary status of information that would otherwise be admissible.[4]

For Arb-Med-Arb, however, the issue is more complicated because the arbitral tribunal may already have been constituted before the mediation began. The tribunal may therefore have access to evidence from the initial stage of the arbitration while the mediation introduces an additional layer of confidential information.

Institutional rules and procedural agreements should consequently distinguish between the two information environments.

A useful approach would be to establish a presumption that information created exclusively for mediation cannot be introduced into the resumed arbitration unless the parties expressly agree otherwise.

**4. The Same Person as Mediator and Arbitrator**

A particularly controversial issue arises when the same individual acts first as mediator and subsequently as arbitrator.

At first sight, combining the two roles may appear efficient. The neutral already understands the dispute, the relevant factual background and the parties' positions. Avoiding the appointment of a separate mediator may also reduce costs and procedural delays.

However, the efficiency argument must be balanced against the confidentiality and impartiality concerns created by the accumulation of roles.

A mediator may receive information during a private caucus that is never disclosed to the other party. For example, one party may privately inform the mediator that it is experiencing financial difficulties and therefore has a limited capacity to continue the dispute. Such information may be highly relevant to settlement negotiations but entirely irrelevant to the legal merits of the arbitration.

If the same individual later acts as arbitrator, the question is whether that individual can genuinely exclude the information from the decision-making process.

This is not necessarily a question of actual bad faith. A person may act honestly and nevertheless be affected, consciously or unconsciously, by information previously received.

The concern is therefore partly objective: **would a reasonable party have sufficient confidence that the subsequent arbitral decision will be based exclusively on information properly before the tribunal?**

The SIAC-SIMC model addresses this concern through institutional separation. The Arb-Med-Arb Protocol provides for the appointment of an arbitral tribunal and a mediator as separate neutral functions.[5]

The separation of roles provides an institutional safeguard against the transfer of confidential information from mediation to arbitration.

---

[4] Ibid.

[5] SIAC and SIMC, *Arb-Med-Arb Protocol* (5 November 2014).

Email:

conference@houghtonstreetreview.com

Website:

www.houghtonstreetreview.com/index.php/conference

© 2026 International Online Conference on Multidisciplinary Academic Research. All Rights Reserved.

Editor-in-Chief:

Dr. Ewelum Johnson Nnadi

Managing Editors:

1.Harold Jan R. Terano

2.Dr. Mandakini Singla

3.Massoud Kaykhaii








This approach does not necessarily mean that the combination of functions should be prohibited in every legal system. Rather, where parties choose to permit the same individual to act in both capacities, enhanced safeguards may be required.

These could include:

- express and informed consent of both parties;
- clear procedural rules concerning confidential information;
- prohibition on the use of private caucus information in arbitration;
- disclosure of circumstances that may affect impartiality;
- a mechanism for challenging or replacing the arbitrator where appropriate.

The central principle should remain that party autonomy cannot eliminate fundamental requirements of procedural fairness.

**5. The Uzbek Legal Framework**

The issue is particularly relevant to Uzbekistan, where both mediation and international commercial arbitration have received dedicated legislative regulation.

The Law of the Republic of Uzbekistan "On Mediation" establishes confidentiality as one of the fundamental principles of mediation.[6] It also restricts the disclosure and subsequent use of information obtained during mediation, including information relating to settlement proposals and the positions of the parties.

Separately, the Law of the Republic of Uzbekistan "On International Commercial Arbitration" provides for confidentiality of arbitral proceedings and related documents.[7]

The coexistence of these two legal regimes creates an important foundation for the application of Arb-Med-Arb.

Nevertheless, a conceptual difficulty remains.

The Uzbek legislation regulates mediation confidentiality and arbitration confidentiality as separate matters. Arb-Med-Arb, however, requires them to operate sequentially within the same dispute.

This creates a potential regulatory gap concerning the precise status of information that originates in mediation and is subsequently brought into the arbitral phase.

The legislation would benefit from more explicit rules addressing at least four questions.

First, which categories of mediation information are absolutely inadmissible in resumed arbitration?

Second, how should the tribunal determine whether particular information was generated exclusively for mediation or existed independently?

Third, who bears the burden of demonstrating that information has been improperly transferred from mediation to arbitration?

---

[6] Law of the Republic of Uzbekistan No ZRU-482 of 3 July 2018, 'On Mediation'.

[7] Law of the Republic of Uzbekistan No ZRU-674 of 16 February 2021, 'On International Commercial Arbitration', art 53.

Email:

conference@houghtonstreetreview.com

Website:

www.houghtonstreetreview.com/index.php/conference

© 2026 International Online Conference on Multidisciplinary Academic Research. All Rights Reserved.

Editor-in-Chief:

Dr. Ewelum Johnson Nnadi

Managing Editors:

1.Harold Jan R. Terano

2.Dr. Mandakini Singla

3.Massoud Kaykhaii








Fourth, what procedural consequences should follow if confidential mediation information has influenced the arbitral proceedings?

These questions become particularly important as Uzbekistan develops its position as a jurisdiction for international commercial dispute resolution.

**6. Proposed Approach for Uzbekistan**

A possible solution would be to introduce a **functional separation test**.

Under this approach, mediation-related information could be divided into three categories.

**6.1. Settlement-specific information**

This category would include settlement offers, concessions, admissions made solely for settlement purposes, evaluations of settlement options and other statements whose existence is directly connected to the mediation.

Such information should generally be inadmissible in the resumed arbitration.

**6.2. Independently existing evidence**

This category would include contracts, invoices, correspondence, expert reports, financial documents and other materials that existed independently of the mediation.

Their use in arbitration should not be prohibited merely because they were discussed or presented during mediation.

**6.3. Confidential information disclosed privately to the mediator**

The third category is particularly sensitive. Information disclosed by one party during a private caucus should not subsequently be communicated to the arbitral tribunal or used as a basis for the arbitral decision without the express consent of the party that disclosed it.

This classification would prevent both overprotection and underprotection of mediation confidentiality.

A further safeguard could involve establishing a procedural mechanism for determining admissibility. If one party alleges that evidence derives from confidential mediation communications, the tribunal should be able to determine its status without unnecessarily requiring disclosure of the protected communication itself.

The burden of demonstrating that information was independently obtained could, depending on the circumstances, rest with the party seeking to introduce it.

Finally, legislation or institutional rules could specify that serious violations of confidentiality may constitute grounds for procedural remedies, including exclusion of the evidence, replacement of the affected neutral or, where the applicable legal framework permits, challenges concerning the validity or enforceability of the resulting award.

**7. Conclusion**

Arb-Med-Arb provides an important bridge between consensual and adjudicative dispute resolution. Its principal value lies in allowing parties to attempt settlement without abandoning their right to a binding arbitral determination.

However, the effectiveness of the mechanism depends upon maintaining a meaningful distinction between the mediation and arbitration stages.

Confidentiality is therefore not a peripheral procedural issue. It is a structural requirement of Arb-Med-Arb. If parties believe that statements made during mediation may subsequently be used against them in arbitration, the incentive to engage in genuine and constructive settlement negotiations may be substantially reduced.

Email:

conference@houghtonstreetreview.com

Website:

www.houghtonstreetreview.com/index.php/conference

© 2026 International Online Conference on Multidisciplinary Academic Research. All Rights Reserved.

Editor-in-Chief:

Dr. Ewelum Johnson Nnadi

Managing Editors:

1.Harold Jan R. Terano

2.Dr. Mandakini Singla

3.Massoud Kaykhaii








The appropriate solution is not to make every document or fact discussed during mediation inadmissible. Instead, the legal framework should distinguish between information created specifically for settlement and evidence that independently exists outside mediation.

The same principle should inform the regulation of dual roles. Where a mediator subsequently acts as arbitrator, particular safeguards are necessary because confidential information obtained during mediation may affect perceptions, and potentially the reality, of arbitral impartiality. The institutional separation reflected in the SIAC-SIMC model offers one possible approach.

For Uzbekistan, the development of Arb-Med-Arb presents an opportunity to move beyond the separate regulation of arbitration and mediation and develop a coherent legal framework addressing their interaction. Specific rules concerning mediation confidentiality, evidentiary admissibility, the burden of proof, the use of private caucus information and the consequences of confidentiality violations would provide greater procedural certainty.

Ultimately, the success of Arb-Med-Arb depends upon ensuring that the parties can enter mediation without sacrificing their procedural position should the dispute return to arbitration. Protecting this principle would strengthen confidence in hybrid dispute resolution mechanisms and contribute to the further development of Uzbekistan's legal framework for international commercial dispute resolution.