

MediMare Game

SHIP'S DEVIATION

- **In this game, the player will be able to think about Deviation**
- Deviation is when a ship changes its route due to justifiable causes, such as saving lives, supporting another ship in danger or without justifiable cause. Deviation may lead to a delay in the contract deadlines. Unjustified deviation is a fundamental breach of contract and the charterer has the right to elect to terminate the contract.

[PLAY](#)

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Ship Maria (with registered place of business in Ecuador) was navigating from Ecuador to Qatar. On its way, it deviated its course in order to support another ship that was in danger. Ship Maria saved many lives, but breached its chartering contract with Transports Inc. (with place of business in Qatar).

In the charter contract signed by the contracting parties, there was a mediation clause (according to the ICC Mediation Rules), which made attempt of mediation mandatory for the parties, before any other legal action (including arbitration or State Courts).

The charterer is looking to sue, claiming the deviation was unjustified, as other ships in the area could have deviated to save the ship in danger. Ecuador and Qatar are parties to the Singapore Convention on Mediation.

You are the charterer (Transports, Inc) and you want to start an arbitration procedure against Ship Maria, for the damages you have suffered, due to unjustifiable breach. Is starting an arbitration procedure a good idea?

YES

NO

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Well, maybe that is not the best idea! If both parties sign a contract with a mediation clause, they have to attempt mediation, unless both parties decide, at their free will, to change their obligation regarding the mediation clause.

Let's understand what are the advantages of choosing mediation over arbitration for you to decide whether you want to move on with arbitration or not.

Mediation is cheaper, faster and less bureaucratic than arbitration. Arbitration procedures may take a long time to be decided and can be very expensive. Also, there is the matter of discussing the appropriate rules to be applied to each dispute and the fact that the decision is taken by a third party. Mediation procedures are decided by the Parties (though "guided" by the Mediator, who supports them during the process), that also decide upon the normative framing of the solution of the dispute. This mechanism usually restores and maintains the parties' commercial relationships, as they talk during the process of solving their controversy.

So, what would your decision be? Will you try to convince the Shipowner to start an arbitration or move on with mediation (as foreseen in the contract)?

**CONVINCE HIM TO MOVE
WITH ARBITRATION**

**INVITE HIM TO A
MEDIATION PROCEDURE**

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Both parties have signed a contract with a mediation clause, thus, would have to attempt to mediate.

There are three possibilities for using arbitration or other forms of legal actions:

- 1) When the parties start a mediation procedure and it is not successful – they do not reach an agreement;
- 2) When the parties agree not to implement the mediation clause, agreeing to move with arbitration or other forms of forms of legal action;
- 3) When applicable law allows for the disregard of the mediation clause.

Do you still want to move on with arbitration or mediation?

ARBITRATION

MEDIATION

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Your company spent several months in an arbitration procedure/litigation which did not render the result you have expected.

Your company suffered major financial distress, and have destroyed the commercial relationship you had with Ship Maria.

Do you want to start again?

YES

NO

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The Parties enforce the mediation clause contained in the Contract, which states mediation takes place according to ICC Mediation Rules.

The owner of Ship Maria wants to invite his friend Bill, who is also his business partner, to mediate the conflict.

Do you accept that Bill is indicated by him as the mediator of the conflict or do you want another option?

ACCEPT

ANOTHER OPTION

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Your Lawyer heard about your decision and advised you not to accept.

He told you that the Mediator has to be a neutral third party, according to ICC Rules. The Parties have to nominate a neutral third party, that has no interest in the decision of the cause, to be the mediator. You need to choose a neutral third party to be the mediator.

KNOW MORE

Article 1 Mediation Rules ICC

“2 - The Rules provide for the appointment of a neutral third party (the “Mediator”) to assist the parties in settling their dispute.”

Available at: Mediation Rules - ICC - International Chamber of Commerce (iccwbo.org)

Do you want to choose the mediator alone or with the charterer?

ALONE

TOGETHER

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Indeed, Bill is not the right fit for mediation. The Mediator has to be a neutral third party, according to ICC Rules.

KNOW MORE

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Do you want to choose the mediator alone or with the Ship Owner?

ALONE

TOGETHER

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The owner of Ship Maria complained about your decision, and you can't choose alone the mediator.

According to ICC Rules, the Mediator might be chosen in a joint nomination by all the Parties or the Parties may agree on the attributes of a Mediator to be appointed by the Center, when no joint nomination is made.

After long discussing, you couldn't decide on a common nomination for the mediator. There is the possibility of requesting an indication from the ICC. Regarding that nomination, what would you prefer?

A SPECIALIST IN MARITIME LAW
AS MEDIATOR

KNOW MORE

Article 2 Mediation Rules ICC

“Where there is an agreement between the parties to refer their dispute to the Rules, any party or parties wishing to commence mediation pursuant to the Rules shall file a written Request for Mediation (the “Request”) with the Centre. The Request shall include:

(...)

g- any joint nomination by all of the parties of a Mediator or any agreement of all of the parties as to the attributes of a Mediator to be appointed by the Centre where no joint nomination has been made, or, in the absence of any such agreement, any proposal as to the attributes of a Mediator;

Available at: [Mediation Rules - ICC - International Chamber of Commerce \(iccwbo.org\)](https://www.iccwbo.org)

A SPECIALIST IN INTERNATIONAL
CONTRACTS AS MEDIATOR

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The other parties appreciate your proactivity to choose the mediator together.

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Wise choice!

It would be preferable to have as a mediator a specialist in the field of maritime law, to support the parties, particularly because there is an interaction between contractual obligations and obligations of rescue at sea.

You were able to finally reach an international mediation settlement according to which the Charterer has to compensate in 1/3 of the losses incurred.

Ship Maria's owner however did not pay the amount in the delay agreed and YOU (Transports Inc.) wish to enforce the mediation settlement. Where do you try to enforce the settlement?

ECUADOR

QATAR

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Next time think about a specialist in maritime law.

A specialist in international contracts would help the parties, but a specialist in maritime law may help even more, since he or she is aware of technicalities of the area, particularly because there is an interaction between contractual obligations and obligations of rescue at sea.

You were able to finally reach an international mediation settlement according to which the Charterer has to compensate in 1/3 of the losses incurred.

Ship Maria's owner however did not pay the amount in the delay agreed and YOU (Transports Inc.) wish to enforce the mediation settlement. Where do you try to enforce the settlement?

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According to Article 3 of the Singapore Convention, Mediation

Settlement agreements are directly enforceable in Countries bound by the Singapore Convention, as is Ecuador and Qatar. The requisites for granting relief are established in Article 4 and are easy to fulfill.

Article 3. General principles

Each Party to the Convention shall enforce a settlement agreement in accordance with its rules of procedure and under the conditions laid down in this Convention.”

Available at: Mediation Rules - ICC - International Chamber of Commerce (iccwbo.org)

Thank you for playing the MediMare Game
“SHIP'S DEVIATION”

Please fill this survey to tell us about your experience and suggestions for next games:
((insert link))

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Diagram

