



International Chamber of Commerce

The world business organization

ICC Dispute Resolution Services – ADR

**5th ICC INTERNATIONAL COMMERCIAL
MEDIATION COMPETITION**

COMPETITION RULES

Saturday 6 February to Wednesday 10 February 2010

38 cours Albert 1^{er}

Paris, France

TABLE OF CONTENTS

| | |
|---|-------|
| <u>COMPETITION RULES</u> | p. 4 |
| Rule 0.0 Definitions..... | p. 4 |
| Rule 1.0 Organization of the Competition..... | p. 8 |
| Rule 1.1 Introduction..... | p. 8 |
| Rule 1.2 Language | p. 9 |
| Rule 1.3 Format..... | p. 10 |
| Rule 2.0 Mediation Session Procedures..... | p. 11 |
| Rule 2.1 General Procedures..... | p. 11 |
| Rule 2.2 Assignment of Teams..... | p. 12 |
| Rule 2.3 Judging Criteria | p. 13 |
| Rule 2.4 Mediators and Judges..... | p. 13 |
| Rule 2.5 Timekeeping..... | p. 14 |
| Rule 2.6 Caucuses..... | p. 14 |
| Rule 2.7 Governing Law | p. 15 |
| Rule 2.8 Exhibits and Props..... | p. 15 |
| Rule 2.9 Permissible Assistance..... | p. 15 |
| Rule 2.10 Outside Assistance to Teams..... | p. 16 |
| Rule 2.11 Observers | p. 16 |
| Rule 2.12 Judges' Feedback..... | p. 17 |
| Rule 2.13 Scoring | p. 18 |
| Rule 2.14 Tie-breaking Procedure in Mediation Sessions..... | p. 19 |
| Rule 2.15 Winning the Preliminary Rounds..... | p. 19 |
| Rule 2.16 Ranking of Teams | p. 20 |
| Rule 2.17 Scores and Ranking Provided to the Teams..... | p. 20 |
| Rule 3.0 Representation Plans..... | p. 20 |
| Rule 3.1 Case Analysis..... | p. 20 |
| Rule 4.0 Competition Problems..... | p. 21 |
| Rule 4.1 Problems | p. 21 |
| Rule 4.2 Clarifications and Interpretation of the Problems..... | p. 22 |
| Rule 4.3 Staying Within Record | p. 22 |

| | |
|--|-------|
| Rule 5.0 Participation and Eligibility | p. 22 |
| Rule 5.1 Selection Criteria..... | p. 22 |
| Rule 5.2 Team Composition | p. 23 |
| Rule 5.3 Eligible Students..... | p. 23 |
| Rule 5.4 Team Selection Process | p. 24 |
| Rule 6.0 Team Registration | p. 24 |
| Rule 6.1 Team Registration Form and Team Contact | p. 24 |
| Rule 6.2 Registration Fee | p. 24 |
| Rule 6.3 Team Contact | p. 24 |
| Rule 7.0 Judges..... | p. 25 |
| Rule 7.1 Statement of Independence..... | p. 25 |
| Rule 7.2 Coaches..... | p. 25 |
| Rule 7.3 Confidential Information..... | p. 25 |
| Rule 8.0 Penalties | p. 26 |
| Rule 8.1 Application of Penalties..... | p. 26 |
| Rule 9.0 Awards | p. 26 |
| Rule 9.1 Awards | p. 26 |
| Rule 10.0 ICC Organizing Committee | p. 26 |
| Rule 10.1 Power to Take Additional Measures..... | p. 26 |
| Rule 10.2 Interpretation of Rules..... | p. 26 |
| Annex I Sample of Judges' Score Sheet..... | p. 27 |
| Annex II Instructions for Participants..... | p. 32 |
| Annex III Instructions for Mediators..... | p. 34 |
| Annex IV Instructions for Judges..... | p. 37 |

COMPETITION RULES

RULE 0.0 DEFINITIONS

The following terms have the corresponding meanings:

- “ADR” means Amicable Dispute Resolution, as provided by ICC.
- “ADR Rules” means the ICC ADR Rules.
- “BATNA” means Best Alternative to a Negotiated Agreement, and it refers to what the best case scenario would be if the Parties fail to reach an agreement.
- “Break” means a 3 minute period of time that is granted only once per Team per Mediation Session to the two students acting as Counsel and Client for a private Team discussion (other members of the Team, the Coach and other persons are not permitted to participate in the Break) and during which the overall time of the Mediation Session continues to run.
- “Caucus” means a separate meeting between the Mediator and a Team.
- “Coach” means a person selected by a Team or the Team’s University, who is permitted to accompany the Team to the 2010 ICC International Commercial Mediation Competition.
- “Confidential Information” means the background factual information for the Competition Problem and for the exclusive use of a Party, the Competition Judges and, in case of a tie, the Mediator.
- “Competition” means the 2010 ICC International Commercial Mediation Competition.

- “Counsel” and “Client” refer to the roles played by two members of a Team during each Mediation Session.
- “Crossed Caucus” means a meeting between the Mediator and Counsel for both Parties *or* meeting between the Mediator and the Clients of both Parties.
- “Drafting Committee” refers to the group in charge of drafting the Competition Problems.
- “Eligible Student” means a student who is enrolled in legal studies for the academic period coinciding with the dates of the Competition. A student who is qualified in any jurisdiction to practise law, by having passed a bar exam or otherwise, is NOT an Eligible Student.
- “Final Rounds” means the Quarter-Finals, the Semi-Finals and the Final.
- “ICC” means the International Chamber of Commerce headquartered in Paris.
- “Impermissible Assistance” means advice, instructions, or other communication to a Team that is not in compliance with Rule 2.10.
- “Judge” means a mediation professional in charge of scoring during a Mediation Session.
- “Mediation Session” means a mediation between two Teams, one representing the Requesting Party and one representing the Responding Party, as described in Rule 2.1.
- “Organizing Committee” means the official ICC group in charge of organizing and managing the Competition.
- “Penalties” means points deducted for any Rule violation pursuant to Rule 8.1.

- “Preliminary Rounds” means the eliminatory phase prior to the Final Rounds.
- “Problem” means an official international commercial dispute case study distributed by the Organizing Committee, as supplemented or corrected by any Problem Clarifications, that Teams will attempt to resolve with the help of the Mediator during the Mediation Sessions.
- “Problem Clarifications” means the official clarifications or corrections of the Competition Problem and of these Rules, as published pursuant to Rule 4.2.
- “Problem-Solving Approach” means an approach to mediation in which participants discern each other’s interests, brainstorm options and create a solution that meets their interests and needs better than their BATNA.
- “Representation Plan” means each Team’s written case analysis, submitted to the Judges prior to the Mediation Session pursuant to Rule 3.0.
- “Requesting Party” and “Responding Party” mean the Team (or the members of a Team) which argues on behalf of the party requesting mediation or the party responding to the request for mediation respectively at any given point in the Competition.
- “Rules” mean these Competition Rules.
- “Team” means a group of 2 to 4 Eligible Students recognized by the Organizing Committee which participates in the Competition, pursuant to Rules 5.1, 5.2, 5.3 and 5.4.

- “Tie” means that the two Judges assigned to a particular Mediation Session have circled the word “win” on their score sheets for different Teams.
- “Timekeeper” means a volunteer member of the Organizing Committee who, if available, may keep time during a Mediation Session.
- “WATNA” means Worst Alternative to a Negotiated Agreement, and refers to what a Party’s worst case scenario would be if the Parties’ fail to reach an agreement.

RULE 1.0 ORGANIZATION OF THE COMPETITION

Rule 1.1 Introduction

The International Chamber of Commerce has 90 years' experience in devising rules to govern and facilitate the conduct of international business. These rules include those designed to resolve the conflicts that inevitably arise in trading relations. The dispute resolution services offered by ICC include the Rules of Arbitration, the ADR (Amicable Dispute Resolution) Rules, the Rules for Expertise, the Dispute Board Rules, and the DOCDEX (Documentary Instruments Dispute Resolution Expertise) Rules.

Amicable settlement is a desirable solution for almost all business disputes and differences. Amicable settlement techniques can be used at different stages to resolve disputes and differences: Before the signing of a contract, during the course of a contract, before litigation or arbitration proceedings are commenced, during the course of litigation or arbitration proceedings, or after such proceedings.

Different amicable settlement techniques exist. Mediation is the most frequently used amicable settlement technique.

Other amicable settlement techniques include mini-trial, neutral evaluation, conciliation and others.

The use of amicable settlement techniques can often be facilitated through the aid of a third party (a "Neutral") acting in accordance with simple rules. The parties can agree to commence amicable settlement procedures at any point or agree to submit their dispute to an ADR procedure in the dispute resolution clause of their underlying contract.

ICC sets out amicable dispute resolution rules, entitled the ICC ADR Rules, which permit the parties to agree upon the settlement technique they believe to be appropriate to help them settle their dispute. The choice of the most appropriate ADR technique will depend upon the facts of the case, the relationship between the parties, and the business culture of the respective parties, among other factors.

According to the ADR Rules, where there is no agreement between the parties on a settlement technique, mediation, the most common form of ADR, is the settlement technique used under the Rules.

In mediation, the mediator, who is a neutral third person, acts as a facilitator to the negotiations between the disputing parties seeking to reach a mutually acceptable resolution. Mediation is usually voluntary, and if successful, results in a contractually-binding agreement.

The ICC ADR Rules recognize that different cultures have different methods and approaches to mediation. Counsel representation of Clients in mediation is one such method. Problem-solving is one such approach.

This Competition assumes that the parties could not agree on another settlement technique, and mediation was chosen under the ICC's ADR Rules.

For academic purposes, the focus of this Competition is the effective combination of Client representation and collaborative problem-solving skills. It is ICC's hope that this Competition will encourage the teaching and learning of effective mediation skills so that tomorrow's practitioners can better meet the dispute resolution needs of an increasingly cross-cultural global market.

Rule 1.2 Language

The official language of the Competition will be English. The oral and written phases will be in English only.

Rule 1.3 Format

The Competition will first consist of four (4) Preliminary Rounds on the first three (3) days of the Competition.

In principle, each Team will participate in a Mediation Session at least once each day on one of the four (4) different Problems during the Preliminary Rounds. Depending on the Competition schedule, a Team may participate twice in one day.

The Final Rounds will be held on the last two days of the Competition on the three Problems assigned to the Quarter-Finals in the morning of the fourth day, the Semi-Finals in the afternoon of the fourth day, and the Final in the afternoon of the fifth day.

A Mediation Session will be performed by two (2) Teams, with two (2) Team members on each side representing the Requesting Party and the Responding Party respectively, as well as the Mediator and two Judges. In the event of a Tie, the Mediator, having reviewed the parties' Representation Plans and the Confidential Information, will make the final decision.

Each university may nominate two (2) to four (4) students to participate in a Team. Only two (2) students per Team will participate orally in the roles of Client and Counsel per Mediation Session. **Due to logistical restraints, Teams will NOT be permitted to invite observers other than their individual Coaches to attend the Competition or the Mediation Sessions.**

A violation of the rule regarding the number of Team members during the Mediation Session shall result in disqualification of the Team.

RULE 2.0 MEDIATION SESSION PROCEDURES

Rule 2.1 General Procedures

In every Mediation Session, each Team will be represented by two students, with one acting as Counsel and the other acting as Client. The students on each Team are to determine amongst themselves who will act in which role and they may switch roles from one Mediation Session to the next.

In advance of the Competition, the Organizing Committee will assign Teams for the Preliminary Rounds (Requesting Party or Responding Party).

Timing

Each Mediation Session will run for a total of one hundred thirty-five (135) minutes, eighty-five (85) minutes of which will be the actual mediation and twenty (20) minutes of which will be the Judges' feedback of the teams (ten minutes per Team). The remaining Mediation Session time will include five (5) minutes for all participants to locate their assigned mediation rooms and ten (10) minutes for the Judges to read the Teams' Representations Plans, and fifteen (15) minutes for Judges to work on the score sheets after the mediation. The timing of each session is illustrated below:

| | |
|--|--------------------------------------|
| <u>Total time for Mediation Session</u> | = 135 min (2 hrs and 15 min) |
| Time for all participants to find rooms | = 5 min (2 hrs and 10 min remaining) |
| Time for Judges to read Representation Plans | = 10 min (2 hrs remaining) |
| Mediation | = 85 min (35 min remaining) |
| Scoring | = 15 min (20 min remaining) |
| Feedback | = 20 min (0 min remaining) |

Breaks

Each Team may take one break of no more than three (3) minutes during the Mediation Session. If a Team calls for a Break, both Teams must leave the room during the Break, but the Coach and non-speaking members of the Team must remain inside the room.

Caucuses

Each Team, as well as the Mediator, will have the right to call for one not more than five (5) minute Caucus when considered necessary (Rule 2.6). Each team will also have the right to call one not more than five (5) minute Crossed-Caucus when considered necessary (Rule 2.6). The Mediator shall also have the right to call for one not-more-than-five (5) minute Crossed-Caucus per team when considered necessary (Rule 2.6). The number of Caucuses and Crossed-Caucuses are illustrated below:

| | |
|---|--------------------|
| Caucuses permitted by request per Team | = One (1) |
| Crossed-Caucus permitted by request per Team | = One (1) |
| Caucus permitted by request by Mediator | = One (1) per Team |
| Crossed-caucus permitted by request by Mediator | = One (1) per Team |

Please note: in the event the Mediator requests a Caucus or a Crossed-Caucus, the Teams still preserve their right to call for a Caucus or Crossed-Caucus.

Taking a Break or making use of the Caucus or Crossed-Caucus does not suspend time on the overall 85-minute mediation; time continues to run.

Rule 2.2 Assignment of Teams

In advance of the Preliminary Rounds, the Organizing Committee will match opposing Teams in a way that will ensure Teams representing different countries compete against each other, to the extent that is possible. The Organizing Committee will also designate in advance of the Preliminary Rounds which Team in each pairing is to assume the role of Requesting Party or Responding Party per round. Teams who represent the Requesting Party in round one will represent the Responding Party in round two and so on. Every attempt will be made so that no two Teams will compete against each other more than once during the Preliminary Rounds.

Rule 2.3 Judging Criteria

The judging criteria are applied to the performance of the Counsel and Client in the Team – not just to the performance of the Counsel. The judging criteria are designed to reward those participants who use an effective combination of representative skills and a Problem-Solving Approach in the mediation.

Participants are not expected to sacrifice their party interests in order to be collaborative and no extra points will be gained by reaching a settlement during the Mediation Session.

Participants are expected to make as much use as possible of the assistance that can be afforded by the Mediator (see Annex I, Using Opportunities in the Mediation Process).

Rule 2.4 Mediators and Judges

In each Mediation Session, an experienced professional mediator will serve as the facilitative Mediator. Experienced professional mediators will serve as Judges, who will observe and score the Teams' performances. In case of a tie, as stated in Rule 2.14, the Mediator will decide which Team wins. The Judges will score the performance of the Teams according to the standards and criteria provided in the Judges' Score Sheet (see Annex I). Every attempt will be made for the Teams to face a different Mediator and different Judges in each round.

The Organizing Committee is responsible for selecting experienced Mediators and Judges who understand and practice the techniques of facilitative mediation
The Organizing Committee will use its best efforts to ensure that the Mediators and Judges are independent and impartial from the students they are judging.

Rule 2.5 Timekeeping

Responsibility rests with the Teams and Judges for timekeeping during the Mediation Sessions, Caucuses, and Breaks.

Only if resources and volunteers are available will Timekeepers be provided. If no Timekeeper is available, the Judges' decision on timekeeping will be final. On the other hand, if a Timekeeper is present, the Timekeeper's decision on timekeeping will be final.

Coaches and observers of the Mediation Session may not act as Timekeepers.

Abuse of time limits shall result in a penalty (Rule 8.1). In all circumstances, decisions of the Organizing Committee with respect to elapsed times are final.

Rule 2.6 Caucuses

Caucusing is optional for each Team. If one Team requests a Caucus, the other Team may request a Caucus immediately following the termination of the other Team's Caucus, or may choose to wait until a later time, or may elect not to take a Caucus at all.

The Team that requests a Caucus will stay in the room with the Mediator and only the non-Caucusing Team members acting as Client and Counsel will leave the room.

The Team or the Mediator may request a Crossed-Caucus, unless there is an objection by either of the Parties.

Each Team will have the right to request one (1) Caucus and one (1) Crossed-Caucus, each caucus or crossed caucus should last **no more than five (5) minutes**, respectively.

The Mediator may request two (2) Caucuses (one for each party) and two (2) Crossed-Caucuses (one for each party), each caucus or crossed-caucus should last **no more than five (5) minutes**, respectively. If the Mediator has called one party for a Caucus, she/he is not obliged to call the other party for a Caucus.

Rule 2.7 Governing Law

Although the mediation exercises may refer to non-fictional places, for purposes of this Competition, it is assumed that there is no governing law, and that the jurisdiction applies general principles of uniform international commercial law.

Any exceptions will be explicitly stated in the General Information (Rule 4.1) and during the Orientation Session, which will be held on Friday, 5 February 2010.

Rule 2.8 Exhibits and Props

Although Teams are not expected to use exhibits in the Mediation Sessions, a Team may prepare in advance one (1) exhibit, limited to one page with type-written print in 12-point font for each round. Teams are permitted to write on this exhibit during the course of the Mediation Session. Teams are prohibited from using video, computers, or other technology and displays, and failure to observe this rule shall result in a penalty.

Rule 2.9 Permissible Assistance to Teams

The Coach may advise and assist the Team in its planning and preparation for the Competition, including in advance of the quarter-final, semi-final and final rounds. Coaching prior to the Competition can be given regarding mediation representation, *i.e.* advice on the opening statement, how to use listening skills to create more options and how to determine their BATNA and WATNA.

Rule 2.10 Impermissible Assistance

No one, including the Coach, may give advice, assistance or instructions to, or attempt to communicate with, any of the participants, in any way, during the period from commencement to completion of the Mediation Session.

The mere act of communication, receipt of information, or prohibited attendance will constitute a violation of the Rules, regardless of the substance thereof, and regardless of whether initiated by a participant or by any other person. Violation of this rule will result in disqualification. Harmless error will not be a defence to a complaint based on violation of this rule, because of the appearance of impropriety occasioned even by casual exchanges unrelated to the substance of the mediation.

Any Team which receives impermissible assistance as proscribed in Rule 2.10 will be disqualified from the Competition.

Rule 2.11 Observers

(a) Only the two (2) to four (4) students participating in a Team and the Coach are permitted to attend the Competition. Any person who is not a Mediator or Judge selected by the Organizing Committee, Team member or Coach will not be permitted to attend the Competition or Mediation Sessions, unless invited by the Organizing Committee. Due to logistical restraints, exceptions will not be made to this rule.

(b) Teams and Coaches may attend all Mediation Sessions during the Competition, unless otherwise prohibited. The Organizing Committee will give instructions with regard to access to the Mediation Sessions.

(c) Teams and Coaches may not attend the Mediation Session of a Team against which they know in advance their Team will compete.

(d) Teams and Coaches may not attend a Mediation Session during which a Competition Problem is discussed that has not yet been mediated by that Team.

(e) In order to avoid the appearance of, or possibility of, non-permissible assistance as defined in Rule 2.10 the Team members who are not participating in the Mediation Session and the Coach observing the Mediation Session must sit out of view of their participating Team members as far as possible.

(f) Observers will not be allowed to leave the room whilst the Mediation Session is in progress.

(g) Failure to comply with this rule will result in a penalty or disqualification as defined under Rule 8.1.

Rule 2.12 Judges' Feedback

Following the 85-minute mediation, the Teams, Coaches and observers shall leave the room and the Judges will individually score the performance of each Team (see Rule 2.13 Scoring).

While the Judges are scoring the Teams, the Mediator will be invited to stay in the room to read the parties' Representation Plans and the Confidential Information, in the event there is a Tie.

The Judges and the Mediator will not be allowed to talk amongst themselves while scoring.

The Judges, after having scored the Teams, will hand their scoring sheet to the Timekeeper or to a member of the Organizing Committee.

In the event of a Tie, the Mediator shall decide which Team wins in light of the Confidential Information and the Teams' Representation Plans.

Thereafter, the Teams, Coaches, and observers will be invited to re-enter the room. The Judges will then provide feedback to each Team for no more than 10 minutes each. The Requesting Party will be provided with feedback first.

Feedback will be based on each Team's performance and Representation Plan.

During the feedback session, students will be allowed to ask clarifications regarding the feedback on their performance, but will not be allowed to comment on their own performance or that of the opposing Team

Judges must ensure that their feedback is consistent and fair, and that they do not show favouritism towards one team.

Judges may give constructive and positive feedback, but must not reveal to any Team the results of their individual determinations, the Teams' Scores or the contents of the Confidential Information.

The Mediator may also provide feedback during the feedback session, after the Judges' feedback. The Mediator's feedback will not be reflected in the scoring of the Teams, unless there is a Tie.

Rule 2.13 Scoring

Each Judge must score the performance of each Team on the basis of the criteria set out in the Judges' Score Sheets, with a maximum of sixty-five (65) points awarded per Team, per round, by each Judge.

The criteria on which the Teams will be judged are set out in the accompanying sample of the Judges' Score Sheet (see Annex I). Judges are granted the discretion to add three additional bonus points to Teams to reward excellence in an area not covered by the judging criteria, in addition to the total 65 points.

Therefore, a maximum of sixty-eight (68) points can be awarded to a team by each Judge.

A failure by the Teams to reach settlement will not result in a lower score, unless that failure comes in the face of an offer that is clearly and manifestly in the interest of the declining party and thus appears to result from bad faith. The decision of the Judges is final.

Scoring instructions for Judges

Each Judge must independently score each Team and is not allowed to confer with the other Judge or the Mediator while scoring the Teams.

Each Judge must total his or her own scores for each Team. The Judge must then circle the word "Win" at the bottom of the score sheet for the Team he or she gives the most points to. Each Judge should circle the word "Lose" at the bottom of the score sheet for the Team that received fewer points.

If a Judge gives the same number of points to both Teams, the Judge must circle the word "Win" at the bottom of the score sheet for the Team he or she nevertheless considers to have performed better overall and the word "Lose" at the bottom of the score sheet for the Team he or she considers not to have performed better overall.

Tie

If both Judges have circled "Win" on their score sheets for opposing teams this constitutes a Tie, and Rule 2.14 will be applicable.

Rule 2.14 Tie-Breaking Procedure in Mediation Sessions

If there is a Tie after application of Rule 2.13, the Mediator shall decide which Team wins, based upon the Teams' mediation skills during the Mediation Session in light of the Confidential Information and their Representation Plans. The decision of the Mediator is final.

Rule 2.15 Winning the Preliminary Rounds

The Team with the largest number of individual score sheets designating "Win" for that Team per round will be the winner of the Preliminary Rounds. Consequently, the number of score sheets designating "Win" trumps overall points per Team for the purpose of determining the Teams' ranking.

A Team wins with a majority of the Judges casting ballots in its favour. For example, if a tally of the total points would result in one Team being higher ranked but the number of score sheets indicating “Win” would result in a different outcome, the Team with the most score sheets indicating “Win” will win the Preliminary Rounds and not the team with the greatest number of points. The goal of this rule is to even-out the scoring in the Preliminary Rounds should one judge score substantially higher or lower than the other.

Rule 2.16 Ranking of Teams

Teams will be ranked and selected for the final rounds on the following criteria, in decreasing order of importance:

1. Total Number of Score Sheets designating a “Win”; and
2. Total Number of Overall Points

Rule 2.17 Scores and Ranking provided to the Teams

Score sheets and comments sheets will be provided to the Teams after the end of the Competition, as well as the ranking of the top 20 universities.

RULE 3.0 Representation Plans

Rule 3.1 Case Analysis

Each Team shall provide a Representation Plan according to the annexed Instructions for Participants.

As indicated in Rule 1.1, this Competition assumes that the parties could not agree on a settlement technique, and therefore mediation was chosen in accordance with Article 5(2) of the ICC ADR Rules.

Representation Plans should contain a case analysis evaluating the strategic strong points and weak points of the Requesting Party and the Responding Party respectively, their respective needs and interests, their respective BATNAs, WATNAs and their respective objectives and goals during the Mediation Session.

For further guidance, please see “Instructions for Participants” (Annex II)

RULE 4.0 COMPETITION PROBLEMS

Rule 4.1 Problems

Each mediation Problem will consist of General Information for all participants and Confidential Information for each Requesting Party and for each Responding Party and their respective Counsel.

Preliminary rounds

The assignment of Problems and roles for the Preliminary Rounds (Requesting Party or Responding Party) will be made in advance of the Competition.

Seven (7) Problems will be sent to all accepted universities before the start of the Competition. All teams will receive general information and confidential information for the four preliminary rounds in advance. General information for the quarter final, semi final and final will also be sent in advance. However, confidential information will only be distributed respectively before each round.

Each Team will be invited to prepare and finalize their Representation Plans on each Problem in advance of the Preliminary Rounds. Teams must then submit their Representation Plans for the Preliminary Rounds to the Organizing Committee on or before 30 January 2010. Teams will not be permitted to modify their Representation Plans after submission to the Organizing Committee.

Teams proceeding to the Final Rounds will be invited to prepare their Representation Plans in advance of the Quarter, Semi and Final Rounds, for submission at each respective Mediation Session.

Judges, Teams and Coaches may not directly or indirectly disclose any Confidential Information to any other person (see Rules 7.3).

Final rounds

Confidential information and assignment of roles for the Final Rounds will be provided at the end of the Preliminary Rounds, Quarter-Finals and Semi-Finals.

Judges will receive copies of all General and Confidential Information provided to the Teams. Mediators will receive the General Information only. In case there may be a Tie, the Mediators will receive the Confidential Information and the Team's Representation Plan when the Judges begin to consider the scoring.

Rule 4.2 Clarifications and Interpretation of the Problems

Every effort will be made to ensure that Problems are clear. The Organizing Committee will hold an Orientation Session on 5 February 2010. Each Team may submit on or before **1 December 2009** a maximum of one (1) written question for clarification or interpretation per Competition Problem to the Organizing Committee.

These requests shall relate only to the General Information of the Problems and *not* to the Confidential Information. The Drafting Committee will have complete discretion in answering questions relating to the Competition Problems; however, no new facts will be added to the Problems.

While the participants may not make up new facts, the facts are subject to reasonable interpretation. Whether a Team's interpretation is reasonable is a matter entirely within the discretion of the Judges.

Rule 4.3 Staying Within the Record

Teams may draw reasonable inferences from the facts provided.

Failure to stay within the record may result in a penalty in accordance with Rule 8.1.

RULE 5.0 PARTICIPATION AND ELIGIBILITY

Rule 5.1 Selection Criteria

The Organizing Committee will determine the exact number of Teams participating in the Competition.

The Organizing Committee will select Teams based on the following criteria:

- preference will be given to universities who have already participated in the Competition before;
- preference will be given to universities who have an ADR curriculum;
- ensuring the pool of selected universities represents cultural and regional diversity;
- in the event that the above-selection criteria are insufficient to make a selection between two Teams, the Organizing Committee will make a random selection by flipping a coin.

Rule 5.2 *Team Composition*

(a) A Team is composed of two (2) to four (4) members. A Team cannot include more individuals than the maximum of four (4) members. In order to be eligible, the students must satisfy the requirements of Rule 5.3.

(b) Each Team may be accompanied by only one (1) Coach at the Competition. Additional advisors and students may NOT accompany a Team to attend the Competition.

Rule 5.3 *Eligible Students*

(a) The Competition is open to all full and part-time university students registered in law school during the academic period during which the Competition is held. Students who have qualified in any jurisdiction to practice law, by having passed a bar exam or otherwise, are NOT Eligible Students. However, students who have gained their qualification to practice law **automatically** with the completion of their **undergraduate** law studies (i.e. without a further bar exam or similar) and who certify that they have not yet practiced as lawyer (i.e. provided legal advice to clients) are Eligible Students as far as they are currently registered in a law school.

(b) Team members do not have to be of the same nationality as that of their universities.

(c) Each university may nominate only one Team.

(d) Any Team that utilizes an ineligible Team member under Rule 5.3 will be **disqualified** from the Competition.

(e) No student may participate as Client or Counsel in more than two ICC International Commercial Mediation Competitions.

Rule 5.4 Team Selection Process

Team members may be chosen by any method approved by the responsible authority within the university.

Teams should send a short team résumé to the Organization Committee for final approval in conformity with Rule 5.3.

RULE 6.0 TEAM REGISTRATION

Rule 6.1 Team Registration Form

Upon selection of the participating Teams, each Team must submit a completed registration form with the contact details and short CVs of each Team member.

Rule 6.2 Registration Fee

Upon selection of the Team members by the Organizing Committee, each Team must pay the appropriate registration fee within the registration deadline as indicated by the Organizing Committee.

The registration fee shall cover the costs of the Team and Coach's attendance at the Competition and related social events in Paris.

Rule 6.3 Team Contact

Each Team must designate a Team contact. Notice to the Team contact constitutes notice to all Team members.

RULE 7.0 JUDGES AND MEDIATORS

Rule 7.1 Statement of Independence

All Judges and Mediators shall provide to the Organizing Committee a Statement of Independence declaring his/her impartiality or independence, in the eyes of a third party, to judge or mediate any of the Teams selected to participate in the Competition.

The Organizing Committee may disqualify a Judge from judging or a Mediator from mediating a Team if she or he has a personal or professional relationship with that university or someone affiliated with that Team which threatens his or her impartiality.

The Organizing Committee may not disqualify a Judge from judging or a Mediator from mediating a round merely because she or he has an acquaintance with a Team member or other affiliation or relationship with the Team's university which does not threaten impartiality.

Rule 7.2 Coaches

Coaches may not act as Judges or Mediators in any Mediation Session, except in special circumstances (such as the absence of the pre-assigned Judge or Mediator) and provided there is no threat to impartiality.

Judges and Mediators may not act as Coaches at any time during the Competition.

Rule 7.3 Confidential Information

Judges must keep the contents of the Confidential Information strictly secret from Teams and Mediators, except in the situation covered by Rule 2.14 (if there may be a Tie).

Teams and Coaches may not directly or indirectly disclose any Confidential Information to any other person who is not affiliated with their Team. Failure to comply with this rule will result in immediate disqualification.

RULE 8.0 PENALTIES

Rule 8.1 Application of Penalties

If a violation of the Rules is considered to have been committed by a Team or one of its members, the Organizing Committee can impose a penalty.

A five (5) point reduction will be applicable if Rules 2.5, 2.11, or 4.3 have been violated.

Disqualification will result from a violation of Rules 2.10, 5.3 and 7.3.

RULE 9.0 AWARDS

Rule 9.1 Awards

In each Competition, the Organizing Committee shall make arrangements for appropriate recognition of Teams that achieve 1st Place, 2nd Place and for Runners-up.

RULE 10.0 ICC ORGANIZING COMMITTEE

Rule 10.1 Power to Take Additional Measures

The Organizing Committee may take such other measures as are required for the orderly conduct of the Competition.

Rule 10.2 Interpretation of Rules

The Organizing Committee's interpretation as to the implementation of these Rules shall be final.

Annex I

SAMPLE JUDGES' SCORE SHEET

**5th ICC International Commercial Mediation
Competition**

Please return this completed sheet to the Timekeeper or to the Organizing Committee after the mediation and before the feedback session. This sheet will also be provided to the Teams after the Competition.

Please make sure to fill-in or circle all the requested information below.

Please use legible handwriting.

Full name: _____

Please circle the appropriate round

Preliminary Rounds: Day 1 morning or afternoon / Day 2 morning or afternoon / Day 3 morning or afternoon / Quarter Finals / Semi Finals / Final

Date: _____

University represented by the Team: _____

1= poor

2= somewhat good

3= adequate

4= good

5= very good

Please note that criteria called "Using Opportunities in the Mediation Process" will be scored between 1 and 5, and the resultant score doubled.

| CRITERIA | SCORE (1 – 5) |
|--|------------------|
| <p>Presentation of Case in Opening Statements and Throughout</p> <ul style="list-style-type: none"> •Presented facts and law in a way that could be heard productively by other side. •Offered proposals in a way that reflected careful planning and skilful implementation. •Reflected desire to understand other side’s real interests and needs. •Accurately assessed and discussed litigation/arbitration benefits and risks, as well as other consequences of failing to reach settlement (in joint session and/or caucus). | /5 |
| <p>Teamwork Between Counsel and Client (Both Counsel and Client must participate in session)</p> <ul style="list-style-type: none"> •Effectively divided responsibilities in light of Client’s strengths and vulnerabilities. •Communicated effectively with each other. •Worked together as a coordinated Team. •Counsel ensured that Client was able to make informed choices about settlement possibilities. | /5 |
| <p>Problem-Solving Relationship Building</p> <ul style="list-style-type: none"> •Established a problem-solving relationship with other side, if possible. •Recognized other side’s interests, including those resulting from their cultural background, and tried to satisfy them when possible given Client’s interests. •Took initiatives to convert other Team into problem-solvers. | /5 |

| | |
|--|------------|
| <p>Information Gathering and Communications with Other Side</p> <ul style="list-style-type: none"> •Used active listening skills to promote communications. •Used appropriate questioning techniques to gather information. •Tested assumptions and collected necessary information at appropriate times. • Sensitively used techniques to ensure effective communication when one side or both sides do not speak English as a first language. | /5 |
| <p>Generating and Selecting Creative Options</p> <ul style="list-style-type: none"> •Generated range of legal and non-legal options to meet Client's interests, as well as interests of other side. •Evaluated and selected options based on interests and, where appropriate, objective criteria. •Actively encouraged the development of creative ideas. •Effectively avoided and overcome potential or actual impasse. •Effectively managed distributive features of dispute (effectively bridged any final gaps). •Adopted practical and realistic solutions to Problems, took financial considerations into account. | /5 |
| <p>Using Opportunities in the Mediation Process (score 1 – 10)</p> <ul style="list-style-type: none"> •Responded appropriately to the mediator's style. •Used power of Mediator over process to help break impasses including those caused by cultural differences and move toward resolution. •Chose intelligently whether and when to use a Caucus; if Caucus used, used Caucus effectively. •Responded appropriately to developments that occurred during mediation, especially new information and unforeseen moves by other side or the Mediator. | /10 |

| | |
|---|-----|
| <p>Advocating Client’s Interests – PART A</p> <ul style="list-style-type: none"> •Understood and advanced Client’s legal and non-legal interests throughout the mediation process. | /5 |
| <p>Advocating Client’s Interests – PART B</p> <ul style="list-style-type: none"> •Did not sacrifice Client’s interests in order to be collaborative. •Did not sacrifice Client’s interests in order to seek competitive advantage. | /5 |
| <p>Rule 3.0 – Quality of Representation Plan / Case Analysis</p> <p>Representation Plan accurately evaluated the strategic strong points and weak points of the Requesting Party and the Responding Party, their respective BATNAs, WATNAs and their respective objectives and goals during the Mediation Session.</p> | /5 |
| <p>RULE 2.5 -- TIME PENALTY: Deduct up to 5 points if the Team continually abused the time limits (in consultation with the Organizing Committee).</p> | /-5 |
| <p>RULE 4.3 -- FAILURE TO STAY WITHIN THE RECORD PENALTY: Deduct up to 5 points if the Team strayed from the record as prohibited in the Rules.</p> | /-5 |
| <p>RULE 2.11 -- OBSERVER’S PENALTY: Deduct up to 5 points if any Team member attends a prohibited session or leaves before it is over.</p> | /-5 |

| | |
|---|--------------------------------------|
| Subtotal Total Team Score: | /65 |
| <p>Discretionary bonus: Judges may add up to 3 points to a team's score to reward excellence in an area not covered by the judging criteria.</p> <p style="text-align: right;">Total Team Score</p> | /68 |
| <p>Please designate this Team by circling Win or Lose, in accordance with Rule 2.13:</p> | <p>Win</p> <p>Lose</p> |

REMARKS / NOTES:

ANNEX II

INSTRUCTIONS FOR PARTICIPANTS

1. Competition Rules

Please review carefully the Competition Rules and the ICC ADR Rules.

2. Representation Plan

Pursuant to Rule 3.0 of the Competition Rules, each Team must provide the Organizing Committee on or before 25 January 2010 copies of its finalized Representation Plans for the Preliminary Rounds. Upon submission to the Organizing Committee, Teams will not be permitted to modify their Representation Plans.

The Representation Plan for each Mediation Session can be no more than 2 pages in 12-point, time new roman, 1.5 spacing.

A copy of the Representation Plan will be provided to each Judge at the start of the Mediation Session and to the Mediator at the end of the Mediation Session while the Judges are scoring the Teams.

Accordingly, students should plan to have 4 copies of each Representation Plan available at the start of each round including two for the Judges, one for the Mediator and one for the Timekeeper or the Organizing Committee. Representation plan must be sent to the Organizing Committee **on or before 30 January 2010**.

The Representation Plan should contain a case analysis consisting of a brief evaluation under each of the following headings:

- (1) The Team's BATNA
- (2) The Team's WATNA
- (3) "Responsibility Sharing" – explain *how* the Team plans to share responsibilities between the Counsel and the Client in the Mediation Session;

- (4) "Allocation Strategy" – explain *why* the Team chose the particular allocation strategy;
- (5) "Your Side's Interests" – describe the interests that the Party plans to advance in the Mediation Session;
- (6) "Other Party's Interests" – describe the likely interests of the other Party;
- (7) "Other Party's BATNA" – describe the likely BATNA of the other Party
and
- (8) "Negotiating Strategy" – the mediation strategy in light of the preceding factors.

Teams should hand their Representation Plans to the Judges immediately prior to the beginning of the Mediation Session.

Before the mediation begins, the Judges are instructed to read each Team's Representation Plan, for which the students will also be graded.

For the Final Rounds (Quarter, Semi, and Final) where there may be limited time to prepare for the Mediation Session, the Representation Plan may be in the form of a hand-written or typed outline. For exceptional circumstances only, a computer and printer will be made available for Teams who need to print their Representation Plans for the Final Rounds only.

3. Feedback Session

Once Teams and Coached have returned to the room, the feedback session is a time for the Judges and Mediator to exchange with the Teams their reactions, views and positive criticism on their Mediation Session. Under no circumstances, should this time be used to denigrate or criticize the opposing Team.

In order to avoid disturbances, Coaches and Teams must remain in the room throughout the feedback sessions for both Teams.

ANNEX III

INSTRUCTIONS FOR MEDIATORS

It is essential that the Mediators participating in the Competition adopt a consistent and uniform approach to the Mediation Sessions. With this in mind, please conduct each Mediation Session using the following guidelines:

- 1. How you approach your role as mediator in this Competition determines the quality of the learning experience that each student will have during the mediation exercise.** Please keep foremost in your mind that this Competition is an extra-curricular activity for law students where the primary focus should be on the student Teams. Your primary goal as a Mediator is to encourage the greatest quality of Team performance during the Competition.
- 2. All mediators must read the Competition Rules.**
3. In order to learn about the approach that each of the Teams will be taking in the Mediation Sessions, you should study the criteria that the Teams were given and that the Judges will be using for evaluating the Teams' performances. (The criteria can be found in the Sample Judges' Score Sheet.) You should read the criteria before appearing at the Competition.
4. You should be aware that in the event of a tie between two teams the Mediator is required to decide the winner of the round, so the impartiality of the Mediator is of the utmost importance. However, in order to enable students to gain the most benefit from this learning experience, it is permissible for Mediators, after a Mediation Session, to comment informally to students and Coaches about the students' performance in that Session, provided that circumspection is used so as to avoid jeopardising the mediator's impartiality.

5. Your Mediator's opening statement should address, at minimum, the following:

- role of Mediator as a facilitator of the process
- ground rules for the Parties and their representatives (e.g. do not interrupt)
- use of Caucus
- confidentiality of matters discussed in joint session and in Caucus

Your mediator's opening statement should be less than five (5) minutes in duration.

6. **You should adopt a facilitative style, rather than an evaluative or directive one.** No matter what your regular professional practice is, you should permit each Team to present their case even if you believe it is counter-productive and artificial.

You should encourage Teams to adopt practical and realistic solutions to Problems, and to take account of financial considerations.

7. All your interventions should aim to promote the students' participation in creative Problem solving and development of settlement options. **Please do not suggest options for settlement. Please refrain expressing a view as to who is right and who is wrong and from being directive.** Remember that the Mediation Session is short and lasts only 85 minutes. This also does not mean that you should remain completely silent after your opening statement. The goal is for you to be a guiding presence in the communication process.

8. Caucusing is explained in Competition Rules 2.1 and 2.6.

Caucusing is optional for the students, and it is important to provide the student Team Members with the opportunity to decide strategically the need for a Caucus and to request such interventions by the Mediator.

If one Team requests a Caucus with you, the other Team may request a Caucus immediately thereafter, or may choose to wait until a later time, or may elect not to use a Caucus at all.

Even if you use a no-Caucus model of mediation in your practice or you think that the time chosen by the student Team is not appropriate, please allow the students to take a Caucus when requested. You may ask the Team why it wants a caucus, in case the response might be helpful to both sides, but you should accede to the request whether or not the Team chooses to explain why it has made the request.

Each caucus should last no more than 5 (five) minutes.

As the Mediator, you are also allowed to invite each respective Team for a 5 (five) minute Caucus if you consider it necessary. Thus, the Mediator may request two (2) Caucuses (one for each Team). In addition, you are allowed 1 Crossed Caucus per Team in accordance with Competition Rules 2.1 and 2.6.

9. If both Teams are tied, the Mediator shall decide which Team wins in accordance with Rule 2.14.
10. You may also provide comments to the students during the Judges' feedback session, provided they are based on the criteria contained in the Judges' Score Sheet.

ANNEX IV

General comments

1. As Judges in this Competition, you perform two extremely important functions. First, you evaluate and score the quality of representation by the student Teams. Second, you are invited to **give measured, balanced and constructive feedback** in a manner calculated to empower the students and increase their learning from this experience.
2. **All Judges must read the Competition Rules, the Problems and the Confidential Information as well as the criteria in the Judges' Score Sheet prior to the Competition start date.**
3. Actual and apparent impartiality of the Judge is of the utmost importance. However, in order to enable students to gain the most benefit from this learning experience, it is permissible for Judges, after a Mediation Session, to comment informally to students and Coaches about the students' performance in that Session, provided that circumspection is used so as to avoid jeopardising the Judge's impartiality.
4. All Judges must read each Team's Representation Plan before the Mediation Session begins. Each Representation Plan provides essential background information that will help the Judges focus their observations.

The Representation Plan should contain a case analysis consisting of a brief evaluation under each of the following headings:

- (1) The Team's BATNA
- (2) The Team's WATNA
- (3) "Responsibility Sharing" – explain *how* the Team plans to share responsibilities between the Counsel and the Client in the Mediation Session;

- (4) "Allocation Strategy" – explain *why* the Team chose the particular allocation strategy;
- (5) "Your Side's Interests" – describe the interests that the Party plans to advance in the Mediation Session;
- (6) "Other Party's Interests" – describe the likely interests of the other Party;
- (7) "Other Party's BATNA" – describe the likely BATNA of the other Party
and
- (8) "Negotiating Strategy" – the mediation strategy in light of the five preceding factors.

Timekeeping

If available, the Organizing Committee will assign a Time Keeper to observe the Mediation Session in order to assist with timekeeping.

In the event a Timekeeper is not available, please choose one Judge to also act as Timekeeper before the Mediation Session begins. Please review Competition Rule 2.1 carefully and take note of the timing for the Mediation Sessions.

Scoring

1. Before appearing at the Competition, carefully study each of the criteria for judging the performance of the Teams. The criteria can be found in the Sample Judges' Score Sheet. **For the sake of ensuring fairness and equality, you must use these criteria to evaluate the students, even if the criteria do not conform to your concept of best practice.**
2. When scoring, please remember that the Teams are expected to follow a Problem-solving approach to representation. Also, the Mediators in the Competition are to conduct the mediation in a facilitative, rather than an evaluative or directive, style of practice. **Do not penalize any Teams for failing to reach resolution. Full settlement is not the point of this Competition due to the tight timeframe.** Furthermore, do not penalize Teams for having the Client participate in the Mediation Session. In some

cultures, the Client and not the Counsel drives the mediations. Finally, Client participation may be an effective strategy depending on the nature of the role-play.

3. Judges must independently score each Team. **Do not confer with the other Judge or the Mediator or discuss any of the Teams' performances prior to the feedback session.**

4. You must complete a Judges' Score Sheet for each Team before providing feedback. This form asks you to evaluate several aspects of each Team's representation in the mediation.

Please review the various Criteria set out in the Judges' Score Sheet contained in Annex I of the Competition Rules.

You may experience tension between scoring fairly, while not engaging in grade inflation. It is essential to the integrity of the Competition to avoid disparate scoring approaches among the Judges. Therefore, please make every effort to avoid inflating the scores by scoring as outlined here:

- If the performance is **poor, the score is '1'**.
- If the Team's performance is just below adequate or "**somewhat poor,**" the **score is '2'**.
- A **'3' is described as "adequate"**. Did the Team perform adequately or better or worse than adequately?
- If the Team's performance is just above adequate or "**good,**" the **score is '4'**.
- If the performance is exceptional, the score is "**very good**" or **'5'**.
- **Please note that criteria called "Using Opportunities in the Mediation Process" will be scored from 1 to 5, as indicated above, and the resultant**

score will be doubled.

- Judges are granted the discretion to add three (3) additional bonus points, as part of the 55 total points, to any Team which the Judges deem has demonstrated excellence in an area not covered by the judging criteria.

After completing the scoring, circle the Team with the most points as the winner. If both Teams have the same number of points, then either adjust the scores or circle the word "Win" for the Team which in your opinion should be qualified as the winner.

If you have circled "Win" for the opposing Team for which your co-Judge has circled "Win", there is a Tie and the Mediator must decide which Team wins.

Your Score Sheets will be collected from you after each Mediation Session.

Feedback

Once Teams and Coaches have returned to the room, you should provide feedback to each Team after the Mediation Session. In order to avoid disturbances, Coaches for all Teams must remain in the room through the entire feedback sessions for both Teams.

PLEASE PAY CAREFUL ATTENTION TO THE FOLLOWING:

During the scheduled feedback time, please give **measured, balanced and constructive feedback** to the students in a manner calculated to empower them and increase their learning from this experience. **You are role models to these students** and they will take seriously what you have to say. You should **see yourself as a teacher** who **carefully chooses words** when evaluating the students' work and keep in mind that the students have invested significant extra-curricular time and money to participate in this event. They are in a vulnerable state when receiving feedback from you under the conditions of Competition. Therefore, **your approach to giving feedback will determine the quality of each student's entire experience.** Please note that your feedback should be tied to the Competition scoring criteria as opposed to your "real world" experience. However, after you have completed your Competition feedback, you may discuss with the participants your views on how the Competition differs from your actual mediation experience (if time permits), keeping in mind that you are not allowed to share with them your scoring results.

You should be both rigorous and careful in your comments. It is very important that you tell the students precisely the good aspects of their performance. Even if you are mostly dissatisfied, you should be able to state what was done well. It also is important to state objectively and precisely the areas that could be improved upon. **Avoid the use of harsh, charged, and judgmental language and make it clear to the Teams that you are expressing your personal perceptions and subjective opinions.** This may be difficult for you to do when you have strong negative reactions to the performance you observed. Therefore, **please take every precaution to filter/edit your remarks before you utter them.** Do not comment on the personal appearances of the Team members.

We want each student to feel that their experience was worth the effort of their participation and journey to Paris. Thank you for the extra effort you give to make the feedback session a positive, constructive experience for all of the students.