



**International Chamber of Commerce**

*The world business organization*

## **ICC Dispute Resolution Services – ADR**

Paris, 28 September 2007

### **TO ALL INTERESTED UNIVERSITIES**

Dear Professors,

As you know, the ICC is organizing in Paris from 15 to 18 February 2008 the 3<sup>rd</sup> ICC International Commercial Mediation Competition.

We are pleased to provide you with additional information regarding the above event. Please find enclosed:

- the Competition Rules and Instructions,
- the Competition Application Package including a form to be completed and returned by 16 November 2007 and
- the ICC ADR Rules.

As you will see from the Competition Rules and Instructions, the teams are judged on the effective use of advocacy, cooperative problem-solving skills and approach to the mediation process.

We will be recruiting experienced mediators and lawyers from different regions of the world to serve as mediators and judges for the Competition.

Please be reminded that for this second Competition, a maximum of **thirty** (30) schools from different regions of the world can be accepted.

The registration fee is EUR 500. Each team is to pay its own expenses (travel, lodging, etc.). The selected schools will be provided with a list of hotels and restaurants that are located near the ICC headquarters.

We are looking forward to receiving your reply **on or before 16 November 2007** by e-mail at [iccmediationcompetition@iccwbo.org](mailto:iccmediationcompetition@iccwbo.org) or by fax at +33 1 49 53 29 29.

Yours faithfully,

Organizing Committee  
ICC International Commercial Mediation Competition  
Tel.: 33 1 49 53 30 19

Encl.: as stated above

**ICC Dispute Resolution Services – ADR**

38 Cours Albert 1er, 75008 Paris - France  
Fax: +33 1 49 53 29 29  
E-mail: [iccmediationcompetition@iccwbo.org](mailto:iccmediationcompetition@iccwbo.org)



**International Chamber of Commerce**

*The world business organization*

**ICC Dispute Resolution Services – ADR**

## **3<sup>rd</sup> ICC INTERNATIONAL COMMERCIAL MEDIATION COMPETITION**

### **COMPETITION RULES AND INSTRUCTIONS**

Friday 15 February to Monday 18 February 2008

38 Cours Albert 1<sup>er</sup>

**Paris, France**

**With the support of the Dispute Resolution Section of the American Bar  
Association and The Chartered Institute of Arbitrators**

# TABLE OF CONTENTS

<b><u>I. COMPETITION RULES</u></b> .....	p. 4
Rule 0.0 Definitions.....	p. 4
Rule 1.0 Organization of the Competition.....	p. 5
Rule 1.1 Introduction.....	p. 5
Rule 1.2 Language .....	p. 6
Rule 1.3 Format.....	p. 6
Rule 1.4 Interpretation of Rules.....	p. 6
Rule 2.0 Mediation Session Procedure .....	p. 7
Rule 2.1 General Procedure.....	p. 7
Rule 2.2 Assignment of Teams.....	p. 7
Rule 2.3 Judging Criteria .....	p. 7
Rule 2.4 Mediators and Judges.....	p. 8
Rule 2.5 Timekeeping.....	p. 8
Rule 2.6 Caucuses.....	p. 9
Rule 2.7 Controlling Law .....	p. 9
Rule 2.8 Exhibits and Props.....	p. 9
Rule 2.9 Permissible Assistance.....	p. 9
Rule 2.10 Outside Assistance to Teams.....	p. 10
Rule 2.11 Observers .....	p. 10
Rule 2.12 Judges' Feedback.....	p. 11
Rule 2.13 Scoring .....	p. 12
Rule 2.14 Tie-break Procedure in Mediation Sessions.....	p. 12
Rule 2.15 Winning a Round .....	p. 13
Rule 2.16 Ranking of Teams .....	p. 13
Rule 2.17 Scores and Ranking Provided to the Teams.....	p. 13
Rule 3.0 ICC ADR Rule Article 5(1).....	p. 13
Rule 3.1 Rule 5(1) Analysis.....	p. 13
Rule 4.0 Competition Problems.....	p. 14
Rule 4.1 Problems .....	p. 14
Rule 4.2 Clarifications and Interpretation of the problems.....	p. 14
Rule 4.3 Staying Within Record .....	p. 15
Rule 5.0 Participation and Eligibility .....	p. 15
Rule 5.1 Participation .....	p. 15
Rule 5.2 Team Composition .....	p. 15
Rule 5.3 Team Eligibility .....	p. 15
Rule 5.4 Team Selection Process .....	p. 16
Rule 6.0 Team Registration .....	p. 16
Rule 6.1 Team Registration Form and Team Contact .....	p. 16
Rule 7.0 Judges.....	p. 16
Rule 7.1 Statement of Independence.....	p. 16
Rule 7.2 Faculty Advisors and Coaches.....	p. 17
Rule 7.3 Confidential Information .....	p. 17
Rule 8.0 Penalties .....	p. 17
Rule 8.1 Application of Penalties .....	p. 17
Rule 9.0 Awards .....	p. 17
Rule 9.1 Awards .....	p. 17
Rule 10.0 ICC Organizing Committee .....	p. 17

Rule 10.1 Power to Promulgate Additional Measures ..... p. 17

**II. SCHEDULE**..... p. 18

**III. INSTRUCTIONS FOR PARTICIPANTS**..... p. 28

**IV. INSTRUCTIONS FOR MEDIATORS**..... p. 25

**V. INSTRUCTIONS FOR JUDGES**..... p. 27

**VI. SAMPLE OF JUDGES' SCORE SHEET**..... p. 30

## **I. COMPETITION RULES**

### **RULE 0.0 DEFINITIONS**

The following terms have the corresponding meanings:

“ADR” means Amicable Dispute Resolution, as provided by the ICC.

“Final Rounds” means, with respect to the Competition, the Quarter-Finals, the Semi-Finals and the Final.

“Caucus” means a separate meeting between the Mediator and a Team.

“Claimant” and “Respondent” mean the Team (or the members of a Team) which argues on behalf of the Claimant party or Respondent party respectively at any given point in the Competition.

“Confidential Information” means the background factual information for the Competition Problem and from each of the parties for the exclusive use of the corresponding party, the Competition judges and the Mediator in case of a tie.

“Competition” means the 2008 ICC International Commercial Mediation Competition.

“Competition Problems” means the official Problems distributed for the Competition as supplemented or corrected by any Problem Clarifications or corrections provided by the Drafting Committee during the Orientation Session.

“Counsel” and “Client” refer to the roles to be played by two members of the Team during the Mediation Session.

“Drafting Committee” refers to the group in charge of drafting the Competition Problems and the Confidential Information.

“ICC” means the International Chamber of Commerce headquartered in Paris.

“Judge” with respect to the Competition, means a professional in charge of the scoring.

“Neutral” with respect to the Competition, means the Mediator.

“Rules” mean these Rules of the Competition.

“Organizing Committee” means the official ICC group in charge of the organization of the Competition.

“Penalties” means Raw Points deducted for any Rule violation pursuant to Rule 8.1.

“Preliminary Rounds” means, with respect to the Competition, the eliminatory phase prior to the Final Rounds.

“Problem Clarifications” means the official clarifications or corrections of the Competition Problem and of these Rules, as published pursuant to Rule 4.2.

“Representation Plan” means the written plan of action of each Team, written and submitted to the judges prior to the session and pursuant to these Rules.

“ADR Rules” means the ICC ADR Rules.

“Mediation Session” means a single contest of oral presentation between two Teams, one representing Claimant and one representing Respondent, as described in Rule 2.1.

“Team” means a Team of eligible students recognized by the ICC Organizing Committee which participates in the Competition, pursuant to Rules 5.1, 5.2, 5.3 and 5.4.

## **RULE 1.0 ORGANIZATION OF THE COMPETITION**

### ***Rule 1.1 Introduction***

The International Chamber of Commerce has over eight decades of 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. Amicable settlement is a desirable solution for business disputes and differences. It can occur before or during the litigation or arbitration of a dispute and can often be facilitated through the aid of a third party (a "Neutral") acting in accordance with simple rules. The parties can agree to submit to such rules in their underlying contract or at any other time.

ICC sets out these amicable dispute resolution rules, entitled the ICC ADR Rules, which permit the parties to agree upon whatever 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 Rules, in the absence of an agreement of the parties on a settlement technique, mediation, the most common form of ADR, is the settlement

technique used under the Rules.

This competition assumes that the parties could not agree on a settlement technique, and mediation was chosen under ICC's Rules. 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. As well, the problem-solving approach to mediation is one such approach. 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 phase will be in English only.

***Rule 1.3 Format***

The competition will first consist of four (4) Preliminary Rounds on the first two days of the Competition. Each Team will participate twice in each day (once in the morning and once in the afternoon), on four (4) different problems. Then, the Final Rounds will be held on the last two days of the Competition on a single problem containing sub-issues (the Quarter-Finals in the morning of the third day, the Semi-Finals in the afternoon of the third day and the Final in the afternoon of the fourth day).

A Mediation Session will be performed by two (2) Teams, with two (2) Team members on each side representing Claimant and Respondent, the Mediator, and two judges. In the event of a tie, the Mediator, having reviewed the parties' representation plan and the confidential information, will have the final word.

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

**Rule 1.4      *Interpretation of Rules***

The Organizing Committee shall serve as final arbiter of the implementation and interpretation of these Rules.

**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 student acting as the Counsel and the other acting as the Client. The students on each Team are to determine between themselves who will act in which role. Each Mediation Session will run for a total of 105 minutes, 85 minutes of which will be the actual mediation and 20 minutes of which will be the judges' evaluation of the teams (10 minutes per Team).

Each Team may take one break of no more than three 3 minutes during the Mediation Session. Each Team as well as the Mediator will have the right to call for a one not more than five (5) minute Caucus when considered necessary (Rule 2.4). Taking a break or making use of the Caucus does not suspend time on the overall 105-minute Mediation Session; time continues to run. If a Team calls for a break, both Teams must leave the room during the break.

**Rule 2.2      *Assignment of Teams***

The Organizing Committee will randomly match opposing Teams in advance for each Mediation Session. The Organizing Committee will also designate in advance which Team in each pairing is to assume the role of which adversary (claimant or respondent) in the problem for that round. Teams who represent Claimant in round one will represent Respondent in round two. Every attempt will be made so that no two Teams will compete against each other more than once in 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. The problem-solving approach is defined as one in which negotiators learn about each other's interests and BATNA (Best Alternative To A Negotiated Agreement), brainstorm options, and create a solution that meets their interests. Participants are not expected to sacrifice their Client's interests in order to be collaborative. Participants are expected to make use as much as possible of the Mediator, in order to avoid the session becoming negotiation session rather than a mediation session.

#### ***Rule 2.4 Mediators and Judges***

In each Mediation Session, an experienced mediator will serve as the facilitative mediator, and two judges will observe and evaluate. The Mediator will act as a third judge and decide in case of a tie as stated in Rule 2.14. The judges will evaluate the performance of the student participants according to the standards and criteria provided. (See attached sample Judge's Score Sheet.) 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 recruiting, as far as possible, judges who are experienced and knowledgeable in problem-solving negotiation and mediation as well as with different legal backgrounds. 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 student participants for timekeeping and adherence to the allotted time periods for Mediation Sessions, caucuses and breaks. Only if resources and volunteers are available will timekeepers and/or timekeeping devices be provided. However, no individual identified with a participant may act as a timekeeper in a mediation involving that participant. **Abuse of time limits may result in a penalty** (Rule 8.1). Decisions of the judges with respect to elapsed times are final.

Responsibility for timekeeping during the feedback session rests jointly with the participants and judges, each having the responsibility to adhere to the time limits. If a timekeeper is available, the timekeeper should inform the student participants and

judges of time, but it is ultimately up to the student participants and judges to adhere to the time limits of the competition during that feedback session.

**Rule 2.6      *Caucuses***

Caucusing is optional for each Team. If one Team takes a Caucus, the other Team may take a Caucus immediately following, or may choose to wait until a later time, or may elect not take a Caucus. The Team which requests a Caucus will stay in the room with the Mediator and the other competing Team members will leave the room. Each Team will have the right to have one (1) Caucus, which should last **no more than five (5) minutes**.

The Mediator may also request two (2) Caucuses (one for each side), which should last no more than five (5) minutes. If the Mediator has called one party for a Caucus, she/he is not obliged to call the other party for a Caucus.

The members of a Team or the Mediator may also request for Crossed Caucus (i.e. the Mediator with the lawyers of both sides or the Mediator with the Clients of both sides), unless there is an objection raised by one of the parties.

**Rule 2.7      *Controlling Law***

Although the mediation exercises may refer to actual places, for purposes of this competition, assume that there is no controlling law, and that the jurisdiction applies general principles of uniform international commercial law. Any exceptions will be explicitly stated in the common facts and Orientation Session.

**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 exhibit, limited to one A4 format (21/29.7cm) page with print in 12 point font for each round. Teams are allowed to write on this exhibit during the course of the Mediation Session. Teams are prohibited from using video, computers, or other technology or displays.

**Rule 2.9      *Permissible Assistance***

**No one, including the Team coach AND/OR faculty adviser, may give advice or**

**instructions to, or attempt to communicate with, any of the participants, in any way, during the period from commencement of the Mediation Session through to completion of the Mediation Session.** Coaches may provide advice to their Team in advance of the individual rounds, including the quarter-final, semi-final and final rounds, but may not provide any such assistance once the mediation round has commenced.

**The mere act of communication, receipt of information, or proscribed attendance will constitute a violation, 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.

#### ***Rule 2.10 Outside Assistance to Teams***

The Team coach and/or faculty adviser may advise the Team in its planning and preparation for the competition, including 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. Competitors may seek guidance from faculty advisors and coaches, regarding the general substance of the law; however, Teams shall not receive assistance regarding the possible options or solutions to the legal issues presented in the problems. Coaches may, however, tell their Teams that they need to be more flexible or need to create more options, but may not help the Team come up with those options.

Any Team which receives inappropriate assistance as proscribed in Rules 2.6 and 2.7 will be disqualified from the Competition.

#### ***Rule 2.11 Observers***

(a) No competition student, Team coach or faculty adviser or other person affiliated with a Team may attend a Mediation Session of a Team against which it knows in advance it will be competing. The Organizing Committee will give instructions with regard to access to the sessions.

(b) No Competition student, Team coach or faculty adviser or other person affiliated with a Team may attend a Mediation Session in which the Competition Problem discussed in that Mediation Session has not been acted out by the Team.

(c) In order to avoid the appearance or possibility of coaching, the Team members who are not participating in the session and the coach and/or faculty adviser observing the session must sit out of view of their participating Team members as far as possible.

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

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

### ***Rule 2.12 Judges' Feedback***

Following the 85-minute mediation session, the Team members and the audience will leave the room and the judges will rate the performance of each Team (see Rule 2.13 Scoring). While the judges are rating the Teams, the Mediator will be invited to stay in the room and will be invited to read the parties' representation plans and the confidential information, in case there is a tie. The judges and the Mediator will not be allowed to talk among themselves. The judges, after having rated the Teams will hand their scoring sheet to the Time Keeper or Organizing Committee. If there is a tie between the teams, the Mediator will be invited, in light of the representation plans, the confidential information and the team's performance to make the casting vote.

Thereafter, the Time Keeper or Organizing Committee will invite the Team members and the audience to enter the room. The judges will then provide feedback to each Team for no more than 10 minutes each. The Claimant Team will be provided with feedback first.

Feedback will be based on each Team's performance and the ICC ADR Rule 5.1 Analysis (Rules 3.1 and 3.2). During the feedback session the students will be

allowed to comment on their performance but not on the opposing Teams' performance.

Judges must ensure that their feedback is consistent and fair, and that they do not show favouritism towards one team. Judges must not reveal to any Team the results of their individual determinations or the Team's Scores, nor may they provide any substantive feedback that would reveal their individual determinations or contents of the Confidential Information.

The mediator may also provide feedback during the feedback session, after the judges' feedback, if some time remains.

***Rule 2.13 Scoring***

Each judge must rate the performance of each Team on certain relevant criteria, with a maximum of 70 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 Judge's Score Sheet. A failure of 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 regarding bad faith is final.

Judges must independently score each Team and are not allowed to confer with the other judge before 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 and should circle the word "Lose" at the bottom of the score sheet for the Team that received fewer points. If the judge has given both Teams the same number of points, the judge must either adjust the scores for the Teams to give one Team more points than the other or designate one Team as the winner. Judges must give the Time Keeper or the Organizing Committee the score sheets before the feedback session.

If the judges do not agree with respect to the winning Team and there is a tie

between both Teams, Rule 2.14 will be applicable.

***Rule 2.14 Tie-Breaking Procedure in Mediation Sessions***

If the Teams are tied after application of Rule 2.13, the Mediator shall decide which Team shall be the winner, based upon the Teams' performances and mediation skills. The Mediator will also be provided with the Teams' representation plans and the confidential information for his/her consideration. The decision of the Mediator is final.

***Rule 2.15 Winning the preliminary Rounds***

The Team winning the most number of individual ballots (score sheets designating a "Win") per round will be the winner of that round. Consequently, number of ballots won will trump overall Team point totals for the purpose of determining the Rounds winner. A Team wins with a majority of the judges casting ballots in its favour. For example, if a tally of the total Team points would result in one overall round winner but the number of winning ballots would result in a different manner, the Team with the most winning ballots will win the round. The goal of this rule is to even the round if one judge scores substantially higher or lower than the other.

***Rule 2.16 Ranking of Teams***

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

1. Win/Loss Record;
2. Total Number of Ballots; and
3. 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 at the end of the competition, as well as their final ranking.

**RULE 3.0 ICC ADR RULE ARTICLE 5(1)**

***Rule 3.1 ICC ADR Rule 5(1) 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. The Teams are therefore asked to include in their Representation Plan a thorough ICC ADR Rule Article 5(1) Analysis, in which they describe the ADR technique most appropriate to settle the dispute, taking into consideration Article 5 of the Guide to the ICC ADR Rules.

### **RULE 4.0 COMPETITION PROBLEMS**

#### ***Rule 4.1 Problems***

Five (5) problems will be sent to all accepted universities before the competition. Each mediation problem will consist of general information for all participants and confidential information for each party and their Counsel. Each university will be invited to prepare representation plans on each problem in advance. The assignment of problems and roles (claimant or respondent) will be made before the competition. Confidential information and assignment of roles for the Final Rounds will be provided during the actual Competition.

Judges will receive all general and confidential information provided to the Teams. Mediators will receive the general information only, and the confidential information and the Team's representation plan at the end of the mediation session in case there is a tie.

#### ***Rule 4.2 Clarifications and Interpretation of the Problems***

Every effort will be made to ensure that the rules and problems are clear. The Organizing Committee will hold an Orientation Session prior to the competition. Each Team may submit on or before **28 January 2008** a maximum of 2 written requests for clarifications of the Competition Problems 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 related 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***

While Teams may draw reasonable inferences from the facts provided, they are cautioned to stay within this reasonable sphere. An inference is not reasonable if it results in an advantage to a Team's case. 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 Participation***

The Organizing Committee will determine the exact number of Teams participating in the International Competition and the manner in which they are chosen.

***Rule 5.2 Team Composition***

(a) A Team is composed of two (2) to four (4) members. In order to be eligible, the students must satisfy the requirements of Rule 5.3.

(b) Each university may enter a coach and/or faculty adviser in the competition.

***Rule 5.3 Team Eligibility***

(a) The Competition is open to all full and part-time law students enrolled in law universities during the semester the competition is held.

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

(c) Each university may enter only one Team.

(d) No student who is licensed or certified to practise law or to conduct mediations in

any jurisdiction may participate in the competition.

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

(e) No student can participate more than twice in this competition.

***Rule 5.4 Team Selection Process***

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

**RULE 6.0 TEAM REGISTRATION**

***Rule 6.1 Team Registration Form and Team Contact***

Upon selection of the participating teams by the Organizing Committee, each Team must complete a registration form and pay the appropriate registration fee by the registration deadline as indicated by the Organizing Committee. 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 universities selected to participate in the competition. The Organizing Committee may disqualify a judge from judging or a Mediator from mediating a Team if she/he has a personal or professional relationship with that university or someone affiliated with that Team. The Organizing Committee may not disqualify a judge from judging or a Mediator from mediating a round merely because she/he has an acquaintance with a Team member or other affiliation or relationship with the university.

**Rule 7.2 Faculty Advisors and Coaches**

Team faculty advisors or coaches, or other persons directly affiliated with a Team, may not act as judges or mediators in any Mediation Session unless the Team has been eliminated from the Competition.

Judges and Mediators may not act as Team faculty advisors or coaches at any time of 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 is a tie).

**RULE 8.0 PENALTIES**

**Rule 8.1 Application of Penalties**

If a violation of the Competition 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.

**RULE 9.0 AWARDS**

**Rule 9.1 Awards**

In each Competition, the Organizing Committee shall make arrangements for appropriate recognition of Teams that achieve 1<sup>st</sup> Place, 2<sup>nd</sup> 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.

## II. Schedule

# 3<sup>rd</sup> ICC International Commercial Mediation Competition

February 14, Thursday

17:45 Welcoming Cocktail Reception and Orientation Session  
... and Valentine's Day !

\* \* \*

<b>Preliminary Rounds</b>
---------------------------

February 15, Friday

8:00 Check-in for participants at ICC; room assignments are made available (*Croissants, pains au chocolat*, coffee, and juice)

8:00 – 8:15 Check-in for judges and mediators

8:15 – 8:25 Judges move to their assigned mediation rooms where participants give representation plan to their judges to read

8:25 – 8:30 Mediators and participants move to their assigned mediation rooms

8:30 – 9:55 Mediation sessions: 8 Teams act as Claimants and 8 teams act as Respondents

9:55 – 10:10 Judges work on score sheets

10:10 – 10:30 Feedback from Judges (10 minutes for each team)

**10:30 – 11:00 Break**

11:00 – 11:10 Judges move to their assigned mediation rooms where participants give representation plan to their judges to read

11:10 – 11:15 Mediators and participants move to their assigned mediation rooms

11:15 – 12:40	Mediation sessions: 7 Teams act as Claimants and 7 teams act as Respondents
12:40 – 12:55	Judges work on score sheets
12:55 – 13:15	Feedback from Judges (10 minutes for each team)
<b>13:15 – 14:00</b>	<b>Lunch time</b>
14:00 – 14:10	Judges move to their assigned mediation rooms where participants give representation plan to their judges to read
14:10 – 14:15	Mediators and participants move to their assigned mediation rooms
14:15 – 15:40	Mediation sessions: 8 Teams act as Claimants and 8 teams act as Respondents
15:40 – 15:55	Judges work on score sheets
15:55 – 16:15	Feedback from Judges (10 minutes for each team)
<b>16:15 – 16:30</b>	<b>Break</b>
16:30 – 16:40	Judges move to their assigned mediation rooms where participants give representation plan to their judges to read
16:40 – 16:45	Mediators and participants move to their assigned mediation rooms
16:45 – 18:10	Mediation sessions: 7 Teams act as Claimants and 7 teams act as Respondents
18:10 – 18:25	Judges work on score sheets
18:25 – 18:45	Feedback from Judges (10 minutes for each team)

\* \* \*

## February 16, Saturday

8:00	Check-in for participants at ICC; room assignments are made available ( <i>Croissants, pains au chocolat, coffee, and juice</i> )
8:00 – 8:15	Check-in for judges and mediators
8:15 – 8:25	Judges move to their assigned mediation rooms where participants give representation plan to their judges to read
8:25 – 8:30	Mediators and participants move to their assigned mediation rooms
8:30 – 9:55	Mediation sessions: 8 Teams act as Claimants and 8 teams act as Respondents
9:55 – 10:10	Judges work on score sheets
10:10 – 10:30	Feedback from Judges (10 minutes for each team)
<b>10:30 – 11:00</b>	<b>Break</b>
11:00 – 11:10	Judges move to their assigned mediation rooms where participants give representation plan to their judges to read
11:10 – 11:15	Mediators and participants move to their assigned mediation rooms
11:15 – 12:40	Mediation sessions: 7 Teams act as Claimants and 7 teams act as Respondents
12:40 – 12:55	Judges work on score sheets
12:55 – 13:15	Feedback from Judges (10 minutes for each team)
<b>13:15 – 14:00</b>	<b>Lunch time</b>
14:00 – 14:10	Judges move to their assigned mediation rooms where participants give representation plan to their judges to read
14:10 – 14:15	Mediators and participants move to their assigned mediation rooms
14:15 – 15:40	Mediation sessions: 8 Teams act as Claimants and 8 teams act as Respondents

15:40 – 15:55 Judges work on score sheets

15:55 – 16:15 Feedback from Judges (10 minutes for each team)

**16:15 – 16:30 Break**

16:30 – 16:40 Judges move to their assigned mediation rooms where participants give representation plan to their judges to read

16:40 – 16:45 Mediators and participants move to their assigned mediation rooms

16:45 – 18:10 Mediation sessions: 7 Teams act as Claimants and 7 teams act as Respondents

18:10 – 18:25 Judges work on score sheets

18:25 – 18:45 Feedback from Judges (10 minutes for each team)

**19:00 Cocktail Reception**

**19:15 Winner of the Preliminary Rounds announced (8 teams remain)**

\* \* \*

<b>Final Rounds</b>
---------------------

**February 17, Sunday**

**Quarter Finals**

- |               |   |
|---------------|---|
| 8:00          | Check-in for participants at ICC; room assignments are made available ( <i>Croissants, pains au chocolat, coffee, and juice</i> ) |
| 8:00 – 8:15   | Check-in for judges and mediators   |
| 8:15 – 8:25   | Judges move to their assigned mediation rooms where participants give representation plan to their judges to read                 |
| 8:25 – 8:30   | Mediators and participants move to their assigned mediation rooms   |
| 8:30 – 9:55   | Mediation sessions: 4 Teams act as Claimants and 4 teams act as Respondents   |
| 9:55 – 10:10  | Judges work on score sheets   |
| 10:10 – 10:30 | Feedback from Judges (10 minutes for each team)   |
| 10:30 – 10:45 | Winners of the quarter-final sessions announced   |

**10:45 – 15:15      Break / Lunch time**

**Semi Finals**

- |               |   |
|---------------|---|
| 15:15 – 15:25 | Judges move to their assigned mediation rooms where participants give representation plan to their judges to read |
| 15:25 – 15:30 | Mediators and participants move to their assigned mediation rooms   |
| 15:30 – 16:55 | Mediation sessions: 2 Teams act as Claimants and 2 teams act as Respondents                                       |
| 16:55 – 17:10 | Judges work on score sheets   |
| 17:10 – 17:30 | Feedback from Judges (10 minutes for each team)   |

\*           \*           \*

## **February 18, Monday**

### **Final**

- 14:00 – 14:10 Judges move to their assigned mediation rooms where participants give representation plan to their judges to read
- 14:10 – 14:15 Mediators and participants move to their assigned mediation rooms
- 14:15 – 15:40 Mediation session: 1 Team act as Claimant and 1 team act as Respondent
- 15:70 – 15:55 Judges work on score sheets
- 15:55 – 16:15 Feedback from Judges (10 minutes for each team)
- 16:15 Proclamation of the winner – Cocktail Reception**

### **III. INSTRUCTIONS FOR PARTICIPANTS**

#### **1. Competition Rules**

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

#### **2. Representation Plan**

Each Team must provide a A4 format (21/29.7cm) page, 12 pt. font “representation plan” to each judge prior to the competition (at the beginning of each round). A copy of the representation plan will be provided to the Mediator while the Judges are scoring the teams. Accordingly, students should plan to have 4 copies of each plan available at the start of each round including one for the time Keeper or the Organizing Committee.

The plan should consist of an outline with a brief description under each of the six headings:

- (1) “ICC ADR Rule Article 5(1) Analysis” – describe which ADR technique you believe to be the most appropriate to settle the dispute;
- (2) “Responsibility Sharing” – explain *how* you plan to share responsibilities between the Counsel and the Client in the mediation session;
- (3) “Allocation Strategy” – explain *why* your Team chose the particular allocation strategy;
- (4) “Your Side’s Interests” – describe the interests that your side plans to advance in the mediation session;
- (5) “Other Side’s Interests” – describe the likely interests of the other side; and
- (6) “Negotiating Strategy” – your negotiation strategy in light of the four 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 side’s representation plan to help the judges *interpret* what they are observing. For the quarter-final, semi-final and final rounds, where there may be limited time to prepare for the round, the representation plan may be in the form of a hand-written or typed outline.

A room with a computer and printer will be available for teams who do not have any facilities in their hotel.

#### **3. Feedback Session**

The Feedback Session is a time for the exchange of information amongst the students, the judges and the mediator. Under no circumstances, should this time should be use to denigrate and / or criticize the opposing Team.

## **IV. INSTRUCTIONS FOR MEDIATORS**

It is essential that the mediators participating in the competition adopt a consistent and uniform approach to the mediation session. With this in mind, please conduct your mediation session within 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 uppermost 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 exercise.
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. To avoid the appearance of partiality or lack of independence, please refrain from having side discussions, meetings, or the like with the students and/or their coaches or faculty advisors about the Mediation Problems at any stage during the competition. 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.
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**.

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 and to implement their negotiation plan 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 be calculated as far as possible to promote the students' participation in creative problem solving and development of settlement options. **Please do not suggest options for settlement. Please refrain from being directive.** Remember that the mediation session is short and only lasts for 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 presence guiding the communication process.

8. Caucusing is optional for the students. It is important to provide the student advocates with the opportunity to strategically decide the need for a caucus and to request such interventions by the mediator. If one Team takes a caucus with you, the other Team may take a caucus immediately following, or may choose to wait until a later time, or elect not to use a caucus. 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. Each caucus should last **no more than 5 (five) minutes**.

You are also allowed to invite the parties for a 5 (five) minute caucus if you consider it necessary. The mediator may request two (2) caucuses (one for each side or crossed caucus) in accordance with Rule 2.6

9. If the Teams are tied, the Mediator will decide which teams win in accordance with Rule 2.14.
10. You may be willing to provide comments to the students during the Judges' feedback session if some time remains.

## V. Instructions for Judges

### 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 **give measured, balanced and constructive feedback** in a manner calculated to empower the law students and increase their learning from this experience.
2. **All judges must read the Competition Rules, the problems and the confidential information prior to the competition date.**
3. To avoid the appearance of partiality or lack of independence, please refrain from having side discussions, meetings, or the like with the students and/or their coaches or faculty advisors about the Mediation Problems or scoring during the Competition.
4. All judges must read each Team's representation plan before the mediation process begins. Each representation plan provides essential background information that will help the judges *interpret* what they are observing.

Each plan describes briefly (1) "ICC ADR Rule Article 5(1) Analysis" – describe which ADR technique you believe to be the most appropriate to settle the dispute; (2) "Responsibility Sharing" – *how* the Team plans to share responsibilities between the Counsel and the Client in the mediation session; (3) "Allocation Strategy" – *why* the Team chose the particular allocation strategy; (4) "The Team's Interests" – the interests that the Team's side plans to advance in the mediation session; (5) "The Other Side's Interests" – the likely interests of the other side; and (6) "Negotiating Strategy" – the Team's negotiation strategy in light of the four preceding factors.

### Study Criteria

5. 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). You must use these criteria to evaluate the students even if the criteria do not conform to your concept of best practice.

### Timekeeper

6. Although the student participants are primarily responsible for time-keeping, please choose one judge to also act as timekeeper before the session begins. The entire mediation, from start to finish, is **85 minutes**. If caucusing is used, be sure each caucus is limited to 5 minutes. Limit any breaks to 3 minutes.

### Scoring

7. 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.

Judges must independently score each Team. Do not confer with the other judges or discuss any of the performances.

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

- The mid-point score of '4' should be the starting point for evaluating each Team's performance for each criterion. A **'4' 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 **"somewhat good," the score is '5'**. If the performance is **"good," the score is '6'**. And if the performance is exceptional, the score is **"very good" or '7'**.
- If the Team's performance is just below adequate or **"somewhat poor," the score is '3'**. If the performance is **poor, the score is '2'**. And, if the performance is **"very poor," the score is '1'**.
- Please note that criteria called "Using Opportunities in the Mediation Process" will be scored between 1 and 14.

After completing the scoring, circle the Team with the most points as the winner. If you have assigned the same number of points to both Teams, either alter your scoring or select one of the Teams as the winner.

Your Score Sheets will be collected from you after each mediation session and before the feedback session.

## **Feedback**

8. You should provide feedback to each Team after the mediation session. Coaches for all Teams must remain in the room through the entire process, including the feedback sessions for both Teams.

### **PLEASE PAY CAREFUL ATTENTION TO THE FOLLOWING:**

During the scheduled feedback time, please give **measured, balanced 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** in critiquing the students' work and keep in mind that the students have invested significant extra-curricular time to participate in this event. They are in a vulnerable state when receiving feedback from you under 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).

You should be both rigorous and careful in your comments. It is very important that you tell the law 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 judging language.** 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 travel to Paris. Thank you for the extra effort you give to make the feedback session a positive, constructive experience for all the law students.

## VI. SAMPLE JUDGES' SCORE SHEET

### 3<sup>rd</sup> ICC International Commercial Mediation Competition

*Please return this completed sheet to the Timekeeper or the Organising Committee after the session and before the feedback. This sheet will be provided to the Teams.*

Name: \_\_\_\_\_

Round: Preliminary / Quarter Finals / Semi Finals / Finals (circle the appropriate round)

Day (specify morning or afternoon and 1<sup>st</sup> or 2<sup>nd</sup> session): \_\_\_\_\_

Name of the Team: \_\_\_\_\_

- 1= very poor
- 2= poor
- 3= somewhat poor
- 4= adequate
- 5= somewhat good
- 6= good
- 7= very good

**Please note that criteria called “Using Opportunities in the Mediation Process” will be scored between 1 and 14**

CRITERIA	SCORE (1 – 7)
<b>Presentation of Case in Opening Statements and Throughout</b> <ul style="list-style-type: none"><li>•Presented facts and law in a way that could be heard productively by other side.</li><li>•Offered proposals in a way that reflected careful planning and skilful implementation.</li><li>•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).</li></ul>	

<p><b>Teamwork Between Counsel and Client</b> (Both Counsel and Client will participate in session)</p> <ul style="list-style-type: none"> <li>•Effectively divided responsibilities in light of Client's strengths and vulnerabilities.</li> <li>•Communicated effectively with each other.</li> <li>•Worked together as a coordinated Team.</li> <li>•Counsel ensured that Client was able to make informed choice about settlement possibilities.</li> </ul>	
<p><b>Problem-Solving Relationship Building</b></p> <ul style="list-style-type: none"> <li>•Established a problem-solving relationship with other side, if possible.</li> <li>•Recognized other side's interests, including those resulting from their cultural background, and tried to satisfy them when possible given Client's interests.</li> <li>•Took initiatives to convert other Team into problem-solvers.</li> </ul>	
<p><b>Information Gathering and Communications with Other Side</b></p> <ul style="list-style-type: none"> <li>•Used active listening skills to promote communications.</li> <li>•Used appropriate questioning techniques to gather information.</li> <li>•Tested assumptions and collected necessary information at appropriate times.</li> <li>•Sensitively used techniques to ensure effective communication when one side or both sides do not speak English as a first language.</li> </ul>	
<p><b>Generating and Selecting Creative Options</b></p> <ul style="list-style-type: none"> <li>•Generated range of legal and non-legal options to meet Client's interests, as well as interests of other side.</li> <li>•Evaluated and selected options based on interests and, where appropriate, objective criteria.</li> <li>•Actively encouraged the development of creative ideas.</li> <li>•Effectively managed distributive features of dispute (effectively bridged any final gaps).</li> <li>•Adopted practical and realistic solutions to problems, took into account financial considerations.</li> </ul>	

<p><b>Using Opportunities in the Mediation Process (score 1 – 14)</b></p> <ul style="list-style-type: none"> <li>•Responded appropriately to the mediator’s style.</li> <li>•Used power of mediator over process to help break impasses including those caused by cultural differences and move toward resolution.</li> <li>•Chose intelligently whether and when to use a caucus; if caucus used, used caucus effectively.</li> <li>•Responded appropriately to developments that occurred during mediation, especially new information and unforeseen moves by other side.</li> </ul>	
<p><b>Advocating Client’s Interests – PART A</b></p> <ul style="list-style-type: none"> <li>•Understood and advanced Client’s legal and non-legal interests throughout the mediation process.</li> </ul>	
<p><b>Advocating Client’s Interests – PART B</b></p> <ul style="list-style-type: none"> <li>•Did not sacrifice Client’s interests in order to be collaborative.</li> <li>•Did not sacrifice Client’s interests in order to seek competitive advantage.</li> </ul>	
<p><b>Quality of ICC ADR Rule Article 5(1) Analysis</b></p> <ul style="list-style-type: none"> <li>• Evaluated the suitability of different ADR settlement techniques to settle the dispute.</li> <li>• Incorporated features of dispute in assessing the different ADR settlement techniques.</li> </ul>	
<p><b>RULE 2.5 -- TIME PENALTY:</b> Deduct up to 5 points if the Team continually abused the time limits (in consultation with the Organizing Committee).</p>	
<p><b>RULES 2.11-- TIME PENALTY:</b> Deduct up to 5 points if the Team continually abused the time limits (in consultation with the Organizing Committee).</p>	
<p><b>RULE 4.3 -- FAILURE TO STAY WITHIN THE RECORD PENALTY:</b> Deduct up to 5 points if the Team strayed from the record as prohibited in the Rules.</p>	
<p><b>Discretionary bonus:</b> 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;"><b>Total Team Score:</b></p>	<b>/70</b>
<p><i>Please designate this Team as Win or Lose, in accordance with Rule 2.13:</i></p>	<p><b>Win</b></p> <p><b>Lose</b> (circle one)</p>

**REMARKS / NOTES:**



**International Chamber of Commerce**

*The world business organization*

**ICC Dispute Resolution Services- ADR**

**3<sup>RD</sup> ICC INTERNATIONAL COMMERCIAL  
MEDIATION COMPETITION**

\*\*\*

**15 -18 FEBRUARY 2008**

\*\*\*

**Organized by**

**ICC DISPUTE RESOLUTION SERVICES - ADR**

---

**COMPETITION APPLICATION PACKAGE**

---

- I. Overview
- II. Social Events
- III. General Schedule
- IV. Form to be returned on or before 16 November 2007

---

## I. OVERVIEW

---

This package is designed to help the Universities who wish to participate in the 3<sup>rd</sup> ICC International Commercial Mediation Competition, which will be held at ICC headquarters in Paris from 15 to 18 February 2008.

The Competition will welcome Universities selected from different regions of the world. The students will be evaluated on their capacity to deal with cultural diversity and different approaches to the mediation process.

The Universities wishing to apply to this Competition are requested to return the Form included in Part II of this Package **on or before 16 November 2007**. This form will enable the Organizing Committee to select the Universities that will participate in the Competition.

Each team consists of two (2) to four (4) students. Students can be accompanied by a coach and/or a faculty adviser.

The Organizing Committee will contact all Universities to inform them on whether they have been selected to participate in the competition.

The selected Universities will then receive five (5) mediation problems prepared by a Drafting Committee. They will also be informed of the side assigned to each university and receive corresponding confidential information for the preliminary rounds. We will also send information regarding accommodation and places to dine in Paris.

Prior to the Competition in February 2008, the Universities will be asked to study each problem and to prepare a Representation Plan, which will be handed to the judges before each mediation session (see Instructions for Participants in the “Rules and Instructions”).

On Thursday 14 February 2008, the Competition will commence with a Welcome Cocktail, during which (1) the Organizing Committee will provide information and instructions to Universities with regard to the Competition and (2) an Orientation Session will take place.

During the Competition, each University will have one (1) student acting as counsel and one (1) student acting as client in each session. The team is free to change the students who will act as counsel or client in different sessions. The Competition is designed to measure how well students prepare for and represent a client as well as perform as client in mediation. As indicated in the “Rules and Instructions,” only teams are rated and not the students individually.

Teams should bear in mind that the Competition is a Mediation Competition under the ICC ADR Rules, conducted by a Mediator, as opposed to a negotiation which only involves the parties. Therefore, the teams should try to make the best possible use of the Mediator.

The oral part of the Competition will consist of four (4) Preliminary Rounds on four (4) different problems on Friday 15 and Saturday 16 February 2008.

- The 1st Round scheduled on Friday morning is composed of 2 sessions – one at 8:30 and one at 11:15.
- The 2<sup>nd</sup> Round scheduled on Friday afternoon is composed of 2 sessions – one at 14:15 and one at 16:45.
- The 3<sup>rd</sup> Round scheduled on Saturday morning is composed of 2 sessions – one at 8:30 and one at 11:15.
- The 4<sup>th</sup> Round scheduled on Saturday afternoon is composed of 2 sessions – one at 14:15 and one at 16:45.

Each team will participate in one session each round.

The Final Rounds will start on Sunday 17 February 2008. For the Final Rounds (Quarter Finals, Semi Finals and Finals), the problems submitted to the teams will be three sub-issues arising out of the facts set forth in the fifth problem.

- The Quarter Finals will take place at 8:30.
- The Semi-Finals will take place at 15:30.

The Final will take place on Monday 18 February 2008 at 14:15.

At the end of the Preliminary Rounds (Saturday afternoon), the quarter-finalists will be announced. They will be assigned a side to represent; and confidential information regarding the 5<sup>th</sup> problem will be distributed accordingly.

At the end of the quarter-finals, the semi-finalists will be announced. They will be assigned a side to represent; and different confidential information still regarding the 5<sup>th</sup> problem will be distributed accordingly.

At the end of the semi-finals, the finalists will be announced. They will be assigned a side to represent; and different confidential information still regarding the 5<sup>th</sup> problem will be distributed accordingly.

These above-mentioned explanations contain only general elements on the Rules. We therefore invite the Universities to carefully read the “Rules and Instructions” of the Competition.

A Conference on ADR will be held at the ICC before the Final on Monday 18 February 2008.

Finally, if you have any questions, please do not hesitate to contact:

**ICC ADR Service**

38, Cours Albert 1er

75008 Paris

FRANCE

Tel: + 33 1 49 53 30 19

Fax: + 33 1 49 53 29 29

[iccmediationcompetition@iccwbo.org](mailto:iccmediationcompetition@iccwbo.org)

---

## II. SOCIAL EVENTS

---

This Competition is not only an exercise in international commercial mediation; it is also an opportunity for students from different parts of the world to meet each other and professionals experienced in this field.

Accordingly, the following different social events will take place:

- Thursday 14 February 2008:  
a **WELCOME COCKTAIL** with all students, the Drafting Committee, professionals and the Organizing Committee.
- Saturday 16 February 2008  
a **COCKTAIL** with all students, the Drafting Committee and the Organizing Committee.
- Sunday 17 February 2008:  
a **DINNER** with all students, the Drafting Committee and the Organizing Committee.
- Monday 18 February 2008 (morning):  
a **CONFERENCE** on Amicable Dispute Resolution.
- Monday 18 February 2008 (after the announcement of the winner):  
a **COCKTAIL** with all students, professionals, the Drafting Committee and the Organizing Committee.

---

### **III. GENERAL SCHEDULE**

---

**Thursday 14 February 2008:**

Welcome Cocktail

**Friday 15 February**

1<sup>st</sup> Round of the Competition (two sessions)  
2<sup>nd</sup> Round of the Competition (two sessions)

**Saturday 16 February**

3<sup>rd</sup> Round of the Competition (two sessions)  
4<sup>th</sup> Round of the Competition (two sessions)

Cocktail

**Sunday 17 February**

Quarter Finals  
Semi Finals  
Dinner

**Monday 18 February 2008**

Conference on Amicable Dispute Resolution  
Final

Cocktail

---

**IV. FORM TO BE RETURNED ON OR BEFORE 16 NOVEMBER 2007**

---

**Name of the University:**

**Postal Address:**

**Contact Person for the team:**

**Contact Person's email:**

**Name and e-mail address of the Coach (if any and if different from the Contact Person):**

**Name and e-mail address of the head of the university department in charge (if any and if different from the Contact Person):**

**Does your academic program include mediation or any other dispute resolution course? If so, please indicate the title of these courses, the number of hours and include a detailed course description.**

**The registration fee for this Competition is EUR 500. By signing this document, the University is committing to pay this registration fee if selected.**

**Date:**

---

**SIGNATURE OF THE CONTACT PERSON, THE COACH, OR HEAD OF THE UNIVERSITY DEPARTMENT:**

**Dispute Resolution Services**

---

## **ADR Rules**

in force as from 1 July 2001

---

## **Guide to ICC ADR**



**International Chamber of Commerce**

*The world business organization*

Of the various languages in which the ICC ADR Rules and the Guide to ICC ADR may be published, the English and French versions are the only official texts.

ICC, the ICC logo, CCI, the CCI logo, International Chamber of Commerce, World Business Organization, WBO, International Court of Arbitration, ICC International Court of Arbitration (including Spanish, French, German and Arabic translations) are all trademarks of ICC, registered in several countries.

First published June 2001

Reprinted September 2001, December 2002, November 2003, November 2004, August 2005, January 2006, September 2006

© **International Chamber of Commerce (ICC) 2001**

All rights reserved. No part of this publication may be reproduced by whatever means, or translated, without the prior permission in writing of the publisher.

**ICC Publication 809**

ISBN 92-842-1303-7

**International Chamber of Commerce**

38, Cours Albert 1er

75008 Paris - France

Dépôt légal octobre 2006

Printed in France in September 2006 by

Goubault Imprimeur SA, 44240 La Chapelle/Erdre.

# ADR Rules

in force as from 1 July 2001

---

## Guide to ICC ADR

## TABLE OF CONTENTS

page

<b>Foreword</b>	<b>3</b>
<b>Suggested ICC ADR Clauses</b>	<b>4</b>
<b>Standard ICC Arbitration Clause</b>	<b>5</b>
<b>ICC ADR Rules</b>	<b>6</b>
Preamble .....	6
Article 1: Scope of the ICC ADR Rules .....	6
Article 2: Commencement of the ADR Proceedings ....	6
Article 3: Selection of the Neutral .....	8
Article 4: Fees and Costs .....	9
Article 5: Conduct of the ADR Procedure .....	10
Article 6: Termination of the ADR Proceedings .....	11
Article 7: General Provisions .....	12
<b>Appendix: Schedule of ADR Costs</b>	<b>14</b>
<b>Guide to ICC ADR</b>	<b>15</b>
<i>PART 1: INTRODUCTION</i>	<i>15</i>
Characteristics of ICC ADR .....	15
Overview of the Rules .....	16
<i>PART 2: ANALYSIS OF THE ICC ADR RULES</i>	<i>18</i>
Preamble .....	18
Article 1: Scope of the ICC ADR Rules .....	18
Article 2: Commencement of the ADR Proceedings .....	18
Article 3: Selection of the Neutral .....	21
Article 4: Fees and Costs .....	22
Article 5: Conduct of the ADR Procedure .....	23
Article 6: Termination of the ADR Proceedings .....	26
Article 7: General Provisions .....	29
<i>PART 3: ANALYSIS OF THE SUGGESTED ICC ADR CLAUSES</i>	<i>30</i>

## FOREWORD

ICC has over eight decades of experience in devising rules to govern and facilitate the conduct of international business. These include those designed to resolve the conflicts that inevitably arise in trading relations.

The ICC ADR Rules are the result of discussions between dispute resolution experts and representatives of the business community from seventy-five countries. Their purpose is to offer business partners a means of resolving disputes amicably, in the way best suited to their needs. A distinctive feature of these rules is the freedom the parties are given to choose the technique they consider most conducive to settlement. Failing agreement on the method to be adopted, the fallback shall be mediation.

As an amicable method of dispute resolution, ICC ADR should be distinguished from ICC arbitration. They are two alternative means of resolving disputes, although in certain circumstances they may be complementary. For instance, it is possible for parties to provide for ICC arbitration in the event of failure to reach an amicable settlement. Similarly, parties engaged in an arbitration may turn to ICC ADR if their dispute seems to warrant a different, more consensual approach. The two services remain distinct, however, each administered by a separate secretariat based at ICC headquarters in Paris.

The ICC ADR Rules, which replace the 1988 ICC Rules of Optional Conciliation, may be used in domestic as well as international contexts.

## **SUGGESTED ICC ADR CLAUSES**

### **OPTIONAL ADR**

‘The parties may at any time, without prejudice to any other proceedings, seek to settle any dispute arising out of or in connection with the present contract in accordance with the ICC ADR Rules.’

### **OBLIGATION TO CONSIDER ADR**

‘In the event of any dispute arising out of or in connection with the present contract, the parties agree in the first instance to discuss and consider submitting the matter to settlement proceedings under the ICC ADR Rules.’

### **OBLIGATION TO SUBMIT DISPUTE TO ADR WITH AN AUTOMATIC EXPIRATION MECHANISM**

‘In the event of any dispute arising out of or in connection with the present contract, the parties agree to submit the matter to settlement proceedings under the ICC ADR Rules. If the dispute has not been settled pursuant to the said Rules within 45 days following the filing of a Request for ADR or within such other period as the parties may agree in writing, the parties shall have no further obligations under this paragraph.’

### **OBLIGATION TO SUBMIT DISPUTE TO ADR, FOLLOWED BY ICC ARBITRATION AS REQUIRED**

‘In the event of any dispute arising out of or in connection with the present contract, the parties agree to submit the matter to settlement proceedings under the ICC ADR Rules. If the dispute has not been settled pursuant to the said Rules within 45 days following the filing of a Request for ADR or within such other period as the parties may agree in writing, such dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules of Arbitration.’

## **STANDARD ICC ARBITRATION CLAUSE**

‘All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.’

# ICC ADR RULES

## Preamble

---

Amicable settlement is a desirable solution for business disputes and differences. It can occur before or during the litigation or arbitration of a dispute and can often be facilitated through the aid of a third party (the ‘Neutral’) acting in accordance with simple rules. The parties can agree to submit to such rules in their underlying contract or at any other time.

The International Chamber of Commerce (‘ICC’) sets out these amicable dispute resolution rules, entitled the ICC ADR Rules (the ‘Rules’), which permit the parties to agree upon whatever settlement technique they believe to be appropriate to help them settle their dispute. In the absence of an agreement of the parties on a settlement technique, mediation shall be the settlement technique used under the Rules. The Guide to ICC ADR, which does not form part of the Rules, provides an explanation of the Rules and of various settlement techniques which can be used pursuant to the Rules.

## Article 1

### Scope of the ICC ADR Rules

---

All business disputes, whether or not of an international character, may be referred to ADR proceedings pursuant to these Rules. The provisions of these Rules may be modified by agreement of all of the parties, subject to the approval of ICC.

## Article 2

### Commencement of the ADR Proceedings

---

#### **A Where there is an agreement to refer to the Rules**

1

Where there is an agreement between the parties to refer their dispute to the ICC ADR Rules, any party or

parties wishing to commence ADR proceedings pursuant to the Rules shall send to ICC a written Request for ADR, which shall include:

- a) the names, addresses, telephone and facsimile numbers and e-mail addresses of the parties to the dispute and their authorized representatives, if any;
- b) a description of the dispute including, if possible, an assessment of its value;
- c) any joint designation by all of the parties of a Neutral or any agreement of all of the parties upon the qualifications of a Neutral to be appointed by ICC where no joint designation has been made;
- d) a copy of any written agreement under which the Request for ADR is made; and
- e) the registration fee of the ADR proceedings, as set out in the Appendix hereto.

2

Where the Request for ADR is not filed jointly by all of the parties, the party or parties filing the Request shall simultaneously send the Request to the other party or parties. Such Request may include any proposal regarding the qualifications of a Neutral or any proposal of one or more Neutrals to be designated by all of the parties. Thereafter, all of the parties may jointly designate a Neutral or may agree upon the qualifications of a Neutral to be appointed by ICC. In either case, the parties shall promptly notify ICC thereof.

3

ICC shall promptly acknowledge receipt of the Request for ADR in writing to the parties.

## **B Where there is no agreement to refer to the Rules**

1

Where there is no agreement between the parties to refer their dispute to the ICC ADR Rules, any party or parties wishing to commence ADR proceedings pursuant

to the Rules shall send to ICC a written Request for ADR, which shall include:

- a) the names, addresses, telephone and facsimile numbers and e-mail addresses of the parties to the dispute and their authorized representatives, if any;
- b) a description of the dispute including, if possible, an assessment of its value; and
- c) the registration fee of the ADR proceedings, as set out in the Appendix hereto.

The Request for ADR may also include any proposal regarding the qualifications of a Neutral or any proposal of one or more Neutrals to be designated by all of the parties.

2

ICC shall promptly inform the other party or parties in writing of the Request for ADR. Such party or parties shall be asked to inform ICC in writing, within 15 days of receipt of the Request for ADR, as to whether they agree or decline to participate in the ADR proceedings. In the former case, they may provide any proposal regarding the qualifications of a Neutral and may propose one or more Neutrals to be designated by the parties. Thereafter, all of the parties may jointly designate a Neutral or may agree upon the qualifications of a Neutral to be appointed by ICC. In either case, the parties shall promptly notify ICC thereof.

In the absence of any reply within such 15-day period, or in the case of a negative reply, the Request for ADR shall be deemed to have been declined and ADR proceedings shall not be commenced. ICC shall promptly so inform in writing the party or parties which filed the Request for ADR.

### **Article 3**

#### **Selection of the Neutral**

---

1

Where all of the parties have jointly designated a Neutral, ICC shall take note of that designation, and such person,

upon notifying ICC of his or her agreement to serve, shall act as the Neutral in the ADR proceedings. Where a Neutral has not been designated by all of the parties, or where the designated Neutral does not agree to serve, ICC shall promptly appoint a Neutral, either through an ICC National Committee or otherwise, and notify the parties thereof. ICC shall make all reasonable efforts to appoint a Neutral having the qualifications, if any, which have been agreed upon by all of the parties.

2

Every prospective Neutral shall promptly provide ICC with a *curriculum vitae* and a statement of independence, both duly signed and dated. The prospective Neutral shall disclose to ICC in the statement of independence any facts or circumstances which might be of such a nature as to call into question his or her independence in the eyes of the parties. ICC shall provide such information to the parties in writing.

3

If any party objects to the Neutral appointed by ICC and notifies ICC and the other party or parties thereof in writing, stating the reasons for such objection, within 15 days of receipt of notification of the appointment, ICC shall promptly appoint another Neutral.

4

Upon agreement of all of the parties, the parties may designate more than one Neutral or request ICC to appoint more than one Neutral, in accordance with the provisions of these Rules. In appropriate circumstances, ICC may propose the appointment of more than one Neutral to the parties.

## **Article 4**

### **Fees and Costs**

---

1

The party or parties filing a Request for ADR shall include with the Request a non-refundable registration fee, as set out in the Appendix hereto. No Request for ADR shall

be processed unless accompanied by the requisite payment.

2

Following the receipt of a Request for ADR, ICC shall request the parties to pay a deposit in an amount likely to cover the administrative expenses of ICC and the fees and expenses of the Neutral for the ADR proceedings, as set out in the Appendix hereto. The ADR proceedings shall not go forward until payment of such deposit has been received by ICC.

3

In any case where ICC considers that the deposit is not likely to cover the total costs of the ADR proceedings, the amount of such deposit may be subject to readjustment. ICC may stay the ADR proceedings until the corresponding payments are made by the parties.

4

Upon termination of the ADR proceedings, ICC shall settle the total costs of the proceedings and shall, as the case may be, reimburse the parties for any excess payment or bill the parties for any balance required pursuant to these Rules.

5

All above deposits and costs shall be borne in equal shares by the parties, unless they agree otherwise in writing. However, any party shall be free to pay the unpaid balance of such deposits and costs should another party fail to pay its share.

6

A party's other expenditure shall remain the responsibility of that party.

## **Article 5**

### **Conduct of the ADR Procedure**

---

1

The Neutral and the parties shall promptly discuss, and seek to reach agreement upon, the settlement technique

to be used, and shall discuss the specific ADR procedure to be followed.

2

In the absence of an agreement of the parties on the settlement technique to be used, mediation shall be used.

3

The Neutral shall conduct the procedure in such manner as the Neutral sees fit. In all cases the Neutral shall be guided by the principles of fairness and impartiality and by the wishes of the parties.

4

In the absence of an agreement of the parties, the Neutral shall determine the language or languages of the proceedings and the place of any meetings to be held.

5

Each party shall cooperate in good faith with the Neutral.

## **Article 6**

### **Termination of the ADR Proceedings**

---

1

ADR proceedings which have been commenced pursuant to these Rules shall terminate upon the earlier of:

- a) the signing by the parties of a settlement agreement;
- b) the notification in writing to the Neutral by one or more parties, at any time after the discussion referred to in Article 5(1) has occurred, of a decision no longer to pursue the ADR proceedings;
- c) the completion of the procedure established pursuant to Article 5 and the notification in writing thereof by the Neutral to the parties;
- d) the notification in writing by the Neutral to the parties that the ADR proceedings will not, in the Neutral's opinion, resolve the dispute between the parties;
- e) the expiration of any time limit set for the ADR proceedings, if not extended by all of the parties, such expiration to be notified in writing by the Neutral to the parties;

- f) the notification in writing by ICC to the parties and the Neutral, not less than 15 days after the due date for any payment by one or more parties pursuant to these Rules, stating that such payment has not been made; or
- g) the notification in writing by ICC to the parties stating, in the judgment of ICC, that there has been a failure to designate a Neutral or that it has not been reasonably possible to appoint a Neutral.

2

The Neutral, upon any termination of the ADR proceedings pursuant to Article 6(1), (a)–(e), shall promptly notify ICC of the termination of the ADR proceedings and shall provide ICC with a copy of any notification referred to in Article 6(1), (b)–(e). In all cases ICC shall confirm in writing the termination of the ADR proceedings to the parties and the Neutral, if a Neutral has already been designated or appointed.

## **Article 7**

### **General Provisions**

---

1

In the absence of any agreement of the parties to the contrary and unless prohibited by applicable law, the ADR proceedings, including their outcome, are private and confidential. Any settlement agreement between the parties shall similarly be kept confidential except that a party shall have the right to disclose it to the extent that such disclosure is required by applicable law or necessary for purposes of its implementation or enforcement.

2

Unless required to do so by applicable law and in the absence of any agreement of the parties to the contrary, a party shall not in any manner produce as evidence in any judicial, arbitration or similar proceedings:

- a) any documents, statements or communications which are submitted by another party or by the Neutral in the ADR proceedings, unless they can be obtained independently by the party seeking to

produce them in the judicial, arbitration or similar proceedings;

- b) any views expressed or suggestions made by any party within the ADR proceedings with regard to the possible settlement of the dispute;
- c) any admissions made by another party within the ADR proceedings;
- d) any views or proposals put forward by the Neutral;  
or
- e) the fact that any party had indicated within the ADR proceedings that it was ready to accept a proposal for a settlement.

3

Unless all of the parties agree otherwise in writing, a Neutral shall not act nor shall have acted in any judicial, arbitration or similar proceedings relating to the dispute which is or was the subject of the ADR proceedings, whether as a judge, as an arbitrator, as an expert or as a representative or advisor of a party.

4

The Neutral, unless required by applicable law or unless all of the parties agree otherwise in writing, shall not give testimony in any judicial, arbitration or similar proceedings concerning any aspect of the ADR proceedings.

5

Neither the Neutral, nor ICC and its employees, nor the ICC National Committees shall be liable to any person for any act or omission in connection with the ADR proceedings.

## **APPENDIX SCHEDULE OF ADR COSTS**

### **A**

The party or parties filing a Request for ADR shall include with the Request a non-refundable registration fee of US\$ 1,500 to cover the costs of processing the Request for ADR. No Request for ADR shall be processed unless accompanied by the requisite payment.

### **B**

The administrative expenses of ICC for the ADR proceedings shall be fixed at ICC's discretion depending on the tasks carried out by ICC. Such administrative expenses shall not exceed the maximum sum of US\$ 10,000.

### **C**

The fees of the Neutral shall be calculated on the basis of the time reasonably spent by the Neutral in the ADR proceedings, at an hourly rate fixed for such proceedings by ICC in consultation with the Neutral and the parties. Such hourly rate shall be reasonable in amount and shall be determined in light of the complexity of the dispute and any other relevant circumstances. The amount of reasonable expenses of the Neutral shall be fixed by ICC.

### **D**

Amounts paid to the Neutral do not include any possible value added taxes (VAT) or other taxes or charges and imposts applicable to the Neutral's fees. Parties have a duty to pay any such taxes or charges; however, the recovery of any such taxes or charges is a matter solely between the Neutral and the parties.

# GUIDE TO ICC ADR

## PART 1 INTRODUCTION

The International Chamber of Commerce has issued the ICC ADR Rules (the ‘Rules’) for the use of parties who wish to settle their disputes or differences amicably with the assistance of a third party, the Neutral, within an institutional framework. It is because of the amicable nature of ICC ADR that ICC has chosen to refer to ‘ADR’ as ‘amicable dispute resolution’ rather than ‘alternative dispute resolution’, which has been more commonly used in the past. ‘ADR’, as used by ICC, therefore does not include arbitration but only proceedings which do not result in a decision or award of the Neutral which can be enforced at law.

The Rules replace the ICC Rules of Optional Conciliation in force as from 1 January 1988. Thus, upon receipt by ICC of any request for conciliation based upon the old conciliation rules, ICC will ask the parties to reformulate their Request in accordance with the new Rules.

### **Characteristics of ICC ADR**

---

The essential characteristics of ICC ADR are the following:

- 1) ICC ADR proceedings are flexible and party-controlled to the greatest extent possible.
- 2) ADR proceedings under the Rules are intended to be rapid and therefore relatively inexpensive. They permit the parties to seek an amicable solution to their disputes using a minimum of time and resources.
- 3) ICC ADR proceedings allow the parties themselves to choose whichever settlement technique is best suited to help them resolve their particular dispute with the assistance of an experienced Neutral. In the absence of an agreement of the parties upon a settlement technique, mediation will be used. The proceedings can lead to a settlement agreement between the parties which ends

their dispute and is binding upon them in accordance with the law that applies to that agreement. The outcome of the ICC ADR proceedings can also be, for example, a non-binding opinion or evaluation of the Neutral, if neutral evaluation is the chosen settlement technique.

4) ICC ADR proceedings are confidential. The Rules put in place maximum safeguards to that effect.

ICC ADR thus differs from arbitration and judicial proceedings in that ICC ADR does not lead to a decision or award which can be enforced at law. In reality, however, ICC ADR and arbitration are complementary. If the parties do not succeed in resolving their dispute through ICC ADR, they can refer it to arbitration. Moreover, ICC ADR proceedings can occur during the course of an arbitration.

In addition, the parties are free to agree in writing that they will comply with a recommendation or decision of the Neutral, even though it is itself unenforceable. In that case their agreement is binding upon them in accordance with the law applicable to that agreement.

Finally, it should be noted that the Rules also apply to multiparty disputes.

## **Overview of the Rules**

---

ICC ADR proceedings, as that term is used in the Rules, refer to the entire ICC ADR process from the filing of the Request for ADR until the ADR's termination. Before ICC ADR proceedings can take place, the parties must agree to submit their dispute to the Rules. Such agreement can occur:

- in a prior agreement of the parties to submit their disputes to the Rules, either in their underlying contract or in a later agreement; or
- through a Request for ADR submitted by one party to ICC and accepted by the other party.

In all cases, a Request for ADR must be submitted to ICC.

The Neutral is selected, either by designation by all of the parties, or by appointment by ICC. In the latter case,

the parties may agree upon any desired qualifications or attributes of the Neutral to be appointed, and ICC will make all reasonable efforts to appoint a Neutral having those characteristics. ICC can also take into consideration the suggestions of any party concerning the qualifications or attributes of the Neutral to be appointed.

The ADR procedure, as that term is used in the Rules, is a part of the proceedings and consists of the operational phase of the ICC ADR during which the Neutral provides his or her assistance. It begins with a discussion among the Neutral and the parties in order to determine the ADR settlement technique to be used and the specific procedure to be followed. The Rules enable the parties to choose the ADR settlement technique which they believe to be the most appropriate for their dispute. In the absence of such a choice, mediation, the most common ADR technique, will be used (see the discussion of Article 5 below).

The Rules provide for the different ways in which the ICC ADR proceedings can terminate (see the discussion of Article 6 below). In particular, any party can terminate the ICC ADR proceedings at any time after the discussion with the Neutral provided for in Article 5(1).

The cost of the ICC ADR is composed of three elements: ICC administrative expenses, which have an established ceiling; the fees of the Neutral, which are fixed on the basis of an hourly rate set by ICC in consultation with the Neutral and the parties; and the reasonable expenses of the Neutral, which are fixed by ICC.

Finally the Rules contain provisions establishing the confidentiality of the ICC ADR proceedings (see the discussion of Article 7 below).

This Guide is intended to be a brief commentary on the Rules, in simple language, for the benefit of users of ICC ADR. An article-by-article analysis of the Rules is provided below as well as a brief explanation of the four alternative clauses suggested by ICC for inclusion by parties in their contracts.

## PART 2 ANALYSIS OF THE ICC ADR RULES

### **Preamble**

---

The preamble concisely summarizes certain aspects of the Rules discussed above. It provides that the Rules are intended for parties seeking an amicable settlement of their ‘disputes and differences’. This means that the Rules can be used not only for the settlement of disputes which could be litigated in arbitration or in national courts, but also for simple disagreements concerning, for example, the interpretation of a contractual provision. It should be noted that, throughout the body of the Rules, the term ‘disputes’ should be understood as including ‘differences’ as well.

Finally, the preamble makes reference to this Guide, indicating that it does not form a part of the Rules.

### **Article 1 Scope of the ICC ADR Rules**

---

The Rules apply exclusively to business disputes. This means, for example, that they cannot be used for the resolution of family or labour disputes. They can be used for international as well as domestic business disputes.

In the spirit of ICC ADR, which seeks to maximize party control of the proceedings, Article 1 permits the parties to modify the Rules by common agreement subject to the approval of ICC, whose consent is necessary in order to uphold the integrity of the Rules.

### **Article 2 Commencement of the ADR Proceedings**

---

An agreement of the parties to submit to the Rules is a prerequisite to the commencement of ICC ADR proceedings. Such an agreement can result from:

- an ICC ADR clause in the underlying contract between the parties;
- in the absence of such a clause, a subsequent agreement of the parties in writing, at any time they

desire, to seek an amicable settlement of their dispute under the Rules; or

- in the absence of any prior agreement, the Request for ADR filed with ICC by a party who wishes to submit the dispute to the Rules, followed by the agreement of the other party to participate in the ICC ADR proceedings.

The ICC ADR proceedings are commenced pursuant to Article 2.A in the first two cases and pursuant to Article 2.B in the third. In all cases, the first step in ICC ADR proceedings is the submission to ICC, either jointly or unilaterally, of a written Request for ADR.

### **Article 2.A Where there is an agreement to refer to the Rules**

Given the amicable nature of ICC ADR, when the parties have agreed to submit their dispute to the Rules, the most appropriate manner to begin the proceedings is for the parties to file a joint Request for ADR. However, when such a joint Request is not made, any party may unilaterally file with ICC a Request for ADR, a copy of which should be addressed to the other party.

When there is an agreement to submit the dispute to the Rules, the parties may not withdraw from the proceedings prior to the first discussion with the Neutral, as provided for in Article 5(1). This provision preserves the parties' intention to agree to ICC ADR, by obligating them to evaluate the potential of the ICC ADR proceedings together with the Neutral.

The written Request for ADR should be filed by mail, fax or e-mail and addressed to:

International Chamber of Commerce  
ICC Dispute Resolution Services - ADR  
38, Cours Albert 1<sup>er</sup>  
75008 Paris - France  
Fax: +33 1 49 53 29 29  
E-mail: [adr@iccwbo.org](mailto:adr@iccwbo.org)

The description of the dispute in the Request should be very succinct and limited to matters allowing:

- (i) the Neutral to obtain sufficient information to determine his or her ability to act in the particular

ICC ADR proceedings and usefully to prepare for the discussion with the parties provided for in Article 5(1);

- (ii) ICC, if it is called upon to appoint the Neutral, to determine the appropriate profile of the Neutral to be appointed; and
- (iii) the other party, when the Request for ADR is filed unilaterally, to understand the nature of the dispute.

The Rules do not prevent a party from requesting or proposing the settlement technique which it believes to be the most appropriate for the resolution of the dispute.

In light of the amicable nature of the proceedings, it is preferable that the parties jointly designate the Neutral; however, if they cannot or do not wish to do so, it remains desirable for them to agree upon the qualifications or attributes of the Neutral to be appointed by ICC. In any event, ICC is available to the parties if they desire it to select the Neutral.

Article 2.A(2) contains provisions that are applicable when the Request is not jointly filed by the parties. In that case, and consistent with the pre-existing agreement of the parties, the party filing its Request with ICC must simultaneously send a copy to the other party. Article 2.A(2) also allows the parties jointly to designate the Neutral or agree upon the desired qualifications or attributes of the Neutral to be appointed by ICC.

## **Article 2.B When there is no agreement to refer to the Rules**

Article 2.B is a modified version of Article 2.A to cover the situation in which there is no prior agreement of the parties to refer to the Rules.

In such cases, a party unilaterally files a Request for ADR pursuant to Article 2.B. ICC sends it to the other party, which party can accept or decline to participate in the ICC ADR proceedings. If it declines to participate, or does not respond to the Request within 15 days, the proceedings shall not be commenced. If it accepts to participate in the ICC ADR proceedings, the

participation of the parties therein is obligatory, as under Article 2.A, and neither party may withdraw from the proceedings prior to the first discussion with the Neutral provided for in Article 5(1).

Article 2.B provides for a mechanism which allows the parties jointly to designate a Neutral or agree upon the qualifications or attributes of the Neutral to be appointed by ICC.

### **Article 3**

#### **Selection of the Neutral**

---

The success of ICC ADR proceedings depends in large part upon the abilities of the Neutral.

The parties should seek to ensure that the Neutral:

- has the professional capabilities and experience needed to understand the various aspects of the dispute between the parties;
- has the human qualities needed to create an atmosphere of trust between the parties and encourage constructive discussions.

According to Article 3, the Neutral can be selected in the following ways:

- by joint designation by all of the parties;
- by agreement of the parties on the qualifications or attributes of the Neutral and appointment of the Neutral by ICC;
- by appointment by ICC when there is no joint designation by the parties or agreement of the parties concerning the qualifications or attributes of the Neutral;
- by appointment by ICC when the Neutral designated by the parties does not accept his or her mission.

Neutrals designated by the parties are not approved or appointed by ICC. ICC simply takes note of the parties' choice of the Neutral.

Every prospective Neutral, whether designated by the parties or appointed by ICC, must file a *curriculum vitae* and declaration of independence with ICC, prior to the taking effect of his or her designation or appointment.

ICC must transmit those documents to the parties in accordance with Article 3(2). It is desirable that parties who jointly designate the Neutral also verify that the Neutral has the necessary qualifications or attributes.

ICC carefully verifies the independence of each Neutral that it appoints. Any such Neutral must remain independent of the parties from the time of the Neutral's appointment until the termination of his or her duties. The parties may designate by common agreement a non-independent Neutral, so long as their choice has been made in full knowledge of the facts and, in particular, in light of the declaration filed by the Neutral before the designation takes effect.

In order to ensure the rapid appointment of the best qualified Neutral, ICC may appoint the Neutral directly or may do so after consulting a National Committee.

In accordance with Article 3(3), any party may object to a Neutral appointed by ICC within 15 days from the date of receipt of the notification of the Neutral's appointment. A party who so objects must state the reason for the objection. If the parties do not have an objection and if they wish to accelerate the process, it is in their interest to notify ICC of the absence of any objection as soon as possible. This will permit the Neutral to commence the procedure rapidly, provided that the deposit referred to in Article 4(2) has been paid.

Article 3(4) allows the parties to designate more than one Neutral and ICC to propose that more than one Neutral be appointed. It may indeed be appropriate, depending upon the situation, to have more than one Neutral in the ICC ADR proceedings. For example, the Neutrals can have different professional backgrounds and thus complement each other, which may lead to a more rapid and effective settlement of the dispute.

## **Article 4**

### **Fees and Costs**

---

The cost of the ICC ADR proceedings comprises (i) ICC administrative expenses and (ii) the remuneration of the Neutral.

ICC administrative expenses comprise the following:

- a non-refundable registration fee accompanying the Request for ADR in the amount of US\$ 1,500 (see Article 4(1) and Appendix, § A);
- administrative expenses capped at a maximum of US\$ 10,000 (see Article 4(2) and Appendix, § B).

The remuneration of the Neutral is calculated as follows:

- fees based upon an hourly rate fixed by ICC in consultation with the Neutral and the parties (see Article 4(2) and Appendix, § C);
- reasonable expenses fixed by ICC (see Article 4(2) and Appendix, § C).

This system permits ICC to control the cost of the ICC ADR proceedings and to ensure compliance with any established deadlines. Moreover, it saves the parties having to discuss fees directly with the Neutral.

It should be noted that, in accordance with Article 4(2), ICC ADR proceedings will not go forward until payment of the deposit has been received.

Article 4(3), which concerns readjustment of the initial deposit, must be read together with the Appendix, § C. Readjustments are typically based on the time spent by the Neutral.

Given the consensual nature of ICC ADR, the parties bear the costs equally, unless they agree otherwise.

## **Article 5**

### **Conduct of the ADR Procedure**

---

Article 5(1) provides that after the Neutral has been selected and the provisions of Article 4 have been complied with, a first discussion must rapidly take place between the Neutral and the parties in order (i) to seek an agreement on the settlement technique to be used for the resolution of the dispute and (ii) to define the specific procedure to be followed.

While it is usually preferable that the discussion take place via a meeting among the parties and the Neutral, it can also occur via telephone conference, videoconference, or any other suitable means.

A wide range of ADR settlement techniques can be used pursuant to these Rules. It should be noted, however, that Dispute Review Boards (DRBs) and Dispute Adjudication Boards (DABs) are typically established through extensive contractual provisions which contain the rules to be followed for those proceedings. Thus, in principle, the Rules are not conceived for use in connection with DRBs or DABs. The ADR settlement techniques that can be used under the Rules include the following:

- 1) mediation;
- 2) neutral evaluation;
- 3) mini-trial;
- 4) any other settlement technique; or
- 5) a combination of settlement techniques.

The above list is, by its very nature, neither limiting nor exhaustive. It is important, however, that the parties have the same approach to the settlement technique to be used.

### **1) Mediation**

For purposes of the Rules, mediation is the settlement technique in which the Neutral acts as a facilitator to help the parties try to arrive at a negotiated settlement of their dispute. The Neutral is not requested to provide any opinion as to the merits of the dispute.

To facilitate an amicable settlement, the Neutral generally holds joint meetings with all of the parties present and may also hold separate meetings, often called caucuses, with each of the parties alone. These meetings permit the Neutral to create an atmosphere appropriate for negotiations, obtain useful information, identify the interests of each party and help the parties find common ground for the resolution of their dispute. Any oral statements or written documents provided to the Neutral by one party during a separate meeting or otherwise will not be conveyed to the other party unless the first party has explicitly authorized the Neutral to do so.

## **2) Neutral evaluation**

In accordance with this settlement technique, the parties ask the Neutral to provide a non-binding opinion or evaluation concerning one or more matters, such as:

- . an issue of fact;
- . a technical issue of any kind;
- . an issue of law;
- . an issue concerning the application of the law to the facts;
- . an issue concerning the interpretation of a contractual provision;
- . an issue concerning the modification of a contract.

## **3) Mini-trial**

Mini-trial is the settlement technique in which a panel is constituted comprising the Neutral, as a facilitator, and a manager of each of the parties to the dispute. Each manager should in principle have the authority to bind the party which selected him or her and should not have been directly involved in the dispute. Each party presents its position to the panel in a concise and brief manner, after which, depending upon the situation, the panel seeks a solution acceptable to all of the parties or expresses an opinion on the positions of each side.

## **4) Any other settlement technique**

The parties, in consultation with the Neutral and within the framework of Article 5(1), may agree upon any appropriate ADR settlement technique that would help them resolve their dispute amicably.

## **5) Combination of settlement techniques**

It may be useful to conduct ICC ADR proceedings using a combination of settlement techniques. For example, the Neutral could be asked to give his or her opinion on a specific issue in the course of a mediation.

Regardless of the settlement technique chosen, the Neutral cannot bind the parties. However, the parties may agree contractually to abide by the Neutral's opinion, evaluation or recommendation.

During the first discussion, the parties should also seek to agree upon the most appropriate procedure to be followed. The specific procedure can include any of the following elements:

- . procedural calendar;
- . exchange of documents;
- . production of memoranda;
- . identification of persons taking part in the proceedings;
- . meetings between the parties and the Neutral;
- . other means to ensure the smooth execution of the procedure.

It should be recalled that the term ‘proceedings’ covers the entire ICC ADR process which includes the specific procedure described above.

Article 5(2) provides that if the parties cannot agree upon an ADR settlement technique, mediation will be used. While Article 5(1) allows the parties themselves to select the most appropriate settlement technique, the mediation fallback provision in Article 5(2) fills the gap when the parties do not agree on another technique.

Article 5(3) provides that the Neutral, in conducting the procedure, must take into account the wishes of the parties – which is of fundamental importance given the consensual nature of ICC ADR – while being guided by principles of fairness and impartiality.

Article 5(4) stipulates that, in the absence of an agreement by the parties, the Neutral chooses the appropriate language(s) and the place of any meetings to be held.

To encourage cooperation and the smooth running of the proceedings, Article 5(5) emphasizes that the parties must exercise good faith in their interactions with the Neutral.

## **Article 6**

### **Termination of the ADR Proceedings**

---

Article 6 lists the events that terminate ICC ADR proceedings which were commenced in accordance with the Rules:

a) The signing by the parties of a settlement agreement which puts an end to their dispute.

Such an agreement is binding upon the parties in accordance with applicable law, which may be chosen by the parties in the agreement.

b) Written notification to the Neutral by one or more of the parties that it does not wish to pursue the ICC ADR proceedings; it should be noted that this notification can be made only after the first discussion among the parties and the Neutral pursuant to Article 5(1).

The obligation to participate in the first discussion stems from the agreement of the parties to submit their dispute to the Rules. Since ICC ADR proceedings are amicable and consensual, each party has the right to terminate them after the first discussion provided for in Article 5(1). The provision making this discussion obligatory is designed to ensure that the ICC ADR will have the maximum chance of success. Indeed, it is difficult for the parties to evaluate the full potentiality of the procedure, without this first discussion with the Neutral.

c) Written notification by the Neutral to the parties that the procedure which was agreed upon during the first discussion or thereafter has been completed.

This provision deals with the case in which the ICC ADR proceedings do not result in the signature of a settlement agreement between the parties. For example, if the parties have simply agreed to obtain an opinion from the Neutral pursuant to a neutral evaluation, the ICC ADR proceedings will end upon the Neutral's presentation of that opinion and the Neutral's written notification thereof.

d) Written notification by the neutral to the parties that, in his or her opinion, the ICC ADR proceedings will not result in an amicable resolution of the dispute between the parties.

This provision allows the Neutral to end the proceedings at any time, if the Neutral considers that it is not possible for the parties to arrive at an amicable

resolution of their dispute within the ICC ADR proceedings.

e) The expiration of any time period set for the ICC ADR proceedings.

The parties can agree in their underlying contract or in a later agreement that the ICC ADR proceedings will terminate at the end of a fixed period of time. It can be very useful to limit the duration of the proceedings. It permits the parties to know with certainty when the proceedings will end and encourages their rapidity. The parties may of course extend the deadline if they wish to continue the procedure. At the end of the time period, the proceedings come to an end, and the Neutral notifies the parties thereof.

f) Written notification by ICC that payments due by one or more parties pursuant to the Rules have not been made. This provision can be applied when the parties do not comply with their obligations under Article 4 of the Rules. ICC may not terminate the proceedings under this provision until at least 15 days after the due date of the payment in question.

g) Written notification by ICC that, in its opinion, (i) the designation of the Neutral was not possible or (ii) it was not reasonably possible to appoint a Neutral.

This provision can be applied, for example, if one of the parties continually objects to the Neutrals appointed by ICC.

Article 6(2) also assures that ICC, the Neutral and the parties are effectively notified of the termination of the proceedings. It stipulates that the Neutral must inform ICC when the proceedings have ended pursuant to Article 6(1), (a) to (e). The Neutral must also provide ICC with copies of the notifications made by him or her or by one or more of the parties pursuant to Article 6(1), (b) to (e). It should be noted that any settlement agreement between the parties, as referred to in Article 6(1), (a), is never communicated to ICC, in order to preserve its confidentiality.

## **Article 7**

### **General Provisions**

---

Confidentiality is an important, if not essential, aspect of ICC ADR proceedings and permits the parties to participate therein with complete confidence. Thus, Article 7 sets out the general rule that the ICC ADR proceedings and related materials are confidential.

Article 7(1) provides that ICC ADR proceedings are private and confidential, starting from the filing of the Request for ADR. Only two exceptions are provided. First, the parties may agree that all or part of the proceedings will not be confidential, and, second, a party may disclose any given element of the ICC ADR proceedings if it is required to do so by applicable law. Any settlement agreement between the parties must also remain confidential, subject to the same two exceptions mentioned above. In addition, a party may disclose the settlement agreement if such disclosure is required for its implementation or enforcement.

Article 7(2), in application of the general rule established in Article 7(1), contains a list of what a party may not produce, relative to ICC ADR proceedings, as an element of proof in judicial, arbitral, or similar proceedings. As under Article 7(1), the parties may agree to waive this confidentiality obligation. In addition, a party will not be bound by this obligation insofar as applicable law requires it to produce one or more of the listed elements.

Article 7(3) deals with whether the Neutral may act as a judge, arbitrator, expert or representative of a party in other proceedings related to the dispute submitted to the ICC ADR proceedings. It provides that it is entirely permissible for a Neutral to act in such capacities if all of the parties to the ICC ADR proceedings agree thereto in writing. However, it is not permissible without such an agreement.

Article 7(4) forbids the Neutral to act as a witness in any other proceedings related to the dispute submitted to the ICC ADR proceedings, unless all of the parties agree otherwise or applicable law requires him or her to do so. This article once again is designed to ensure the confidentiality of the ICC ADR proceedings.

Article 7(5) excludes the liability of ICC, its personnel and the ICC National Committees for any act or omission in connection with the ICC ADR proceedings. This provision is similar to Article 34 of the ICC Rules of Arbitration.

### PART 3 ANALYSIS OF THE SUGGESTED ICC ADR CLAUSES

Four alternative ICC ADR clauses which may be inserted by parties in their contracts are annexed to the Rules. They do not constitute model clauses but simply suggestions that can be adapted to the needs of the parties. The parties and their counsel are invited to evaluate their enforceability under the law applicable to the contract. The four clauses are presented in order of increasing obligations on the parties to submit to ICC ADR.

The first clause provides simply for the possibility, without any obligation, for the parties to submit their dispute to the Rules. It is therefore purely optional. It is designed to encourage submission to ICC ADR and to provide a basis for one party to propose ICC ADR to the other.

The second clause obligates the parties to consider submitting their dispute to the Rules. This clause is therefore not purely optional. It requires the parties to discuss the possibility of commencing ICC ADR proceedings. However, the parties retain the right not to do so after their discussion.

The third clause obligates the parties to submit to the Rules any dispute arising in connection with their underlying contract. The clause further provides that after 45 days from the filing of the Request for ADR the parties are no longer obligated to continue the ICC ADR. This time period can be extended by the written agreement of the parties. It is indeed important to provide an automatic expiration mechanism for ADR proceedings in an ADR clause of this type. It allows the parties to know

precisely when they are no longer obligated to continue the proceedings. The parties are of course expected to apply this clause in good faith. The clause does not provide for another dispute resolution mechanism in case the ICC ADR fails to resolve the dispute. In that case, the parties are free to agree to submit their dispute to arbitration, or a party may bring an action before a competent court.

The fourth clause is identical to the third, except that it expressly provides that the dispute will be submitted to ICC arbitration if it has not been resolved within 45 days after the filing of the Request for ADR, unless such time period has been extended. In that case, it is up to the claimant to file a Request for Arbitration with the Secretariat of the ICC International Court of Arbitration in accordance with the ICC Rules of Arbitration.

## **THE INTERNATIONAL CHAMBER OF COMMERCE**

ICC is the world business organization, a representative body that speaks with authority on behalf of enterprises from all sectors in every part of the world.

The fundamental mission of ICC is to promote trade and investment across frontiers and help business corporations meet the challenges and opportunities of globalization. Its conviction that trade is a powerful force for peace and prosperity dates from the organization's origins early in the last century. The small group of far-sighted business leaders who founded ICC called themselves 'merchants of peace'.

Because its member companies and associations are themselves engaged in international business, ICC has unrivalled authority in making rules that govern the conduct of business across borders. Although these rules are voluntary, they are observed in countless thousands of transactions every day and have become part of the fabric of international trade.

ICC also provides essential services, foremost among them the ICC International Court of Arbitration, the world's leading arbitral institution. Another service is the World Chambers Federation, ICC's worldwide network of chambers of commerce, fostering interaction and exchange of chamber best practice.

Within a year of the creation of the United Nations, ICC was granted consultative status at the highest level with the UN and its specialized agencies.

Business leaders and experts drawn from ICC's membership establish the business stance on broad issues of trade and investment policy as well as on vital technical and sectoral subjects. These include financial services, information technologies, telecommunications, marketing ethics, the environment, transportation, competition law and intellectual property, among others.

ICC was founded in 1919. Today it groups thousands of member companies and associations from over 130 countries. National committees work with their members to address the concerns of business in their countries and convey to their governments the business views formulated by ICC.

**[www.iccwbo.org](http://www.iccwbo.org)**

## ICC NATIONAL COMMITTEES AND GROUPS

	<i>Founded</i>		<i>Founded</i>
Algeria	2000	Kuwait	1978
Argentina	1947	Lebanon	1973
Australia	1927	Lithuania	1994
Austria	1921	Luxembourg	1921
Bahrain	1999	Madagascar	2004
Bangladesh	1994	Malaysia	2003
Belgium	1920	Mexico	1945
Brazil	1967	Monaco	2001
Burkino Faso	1976	Morocco	1957
Cameroon	1981	Nepal	2001
Canada	1945	Netherlands	1921
Caribbean	1999	New Zealand	1998
Chile	1993	Nigeria	1979
China	1994	Norway	1922
Chinese Taipei 1966		Pakistan	1955
Colombia	1961	Panama	2003
Costa Rica	2002	Philippines	1998
Croatia	2003	Poland	1999
Cuba	2000	Portugal	1934
Cyprus	1980	Qatar	2001
Czech Republic	1999	Romania	2001
Denmark	1920	Russia	2000
Dominican Republic	2005	Saudi Arabia	1975
Ecuador	1987	Senegal	1975
Egypt	1974	Serbia & Montenegro	1927
El Salvador	2003	Singapore	1978
Finland	1927	Slovakia	2000
France	1920	Slovenia	2001
Georgia	2002	South Africa	1958
Germany	1925	Spain	1922
Ghana	1999	Sri Lanka	1955
Greece	1926	Sweden	1921
Guatemala	2005	Switzerland	1922
Hong Kong, China	1998	Syria	1988
Hungary	1996	Tanzania	2000
Iceland	1983	Thailand	1999
India	1929	Togo	1977
Indonesia	1955	Tunisia	1974
Iran	1963	Turkey	1934
Ireland	1979	Ukraine	1998
Israel	1959	United Arab Emirates	2003
Italy	1920	United Kingdom	1920
Japan	1923	United States	1920
Jordan	1975	Uruguay	1952
Korea	1959	Venezuela	1939

ICC ADR is one of the array of dispute resolution services offered by the International Chamber of Commerce. Based on mutual goodwill and consent, ICC ADR provides international and domestic business partners with a framework for resolving their differences amicably and in the way most befitting their needs.

This publication contains the ICC ADR Rules in force as of July 2001, together with the Guide to ICC ADR, which contains an introduction to ICC ADR and an article-by-article commentary on the Rules.

**ICC Publication 809**

ISBN 92-842-1303-7

Anglais



**Dispute Resolution Services - ADR**

38, Cours Albert 1er, 75008 Paris, France

Tel. +33 1 49 53 30 53 Fax +33 1 49 53 29 29

Email: [adr@iccwbo.org](mailto:adr@iccwbo.org)

**[www.iccadr.org](http://www.iccadr.org)**