

ADR Rules

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International Chamber of Commerce

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

E-mail: adr@iccwbo.org

www.iccad.org

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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 75 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 the 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.'

ADR RULES OF THE INTERNATIONAL CHAMBER OF COMMERCE

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

ICC ADR Rules

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

ICC ADR Rules

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

ICC ADR Rules

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;

ICC ADR Rules

- 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.

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.

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