

International Mediation - A Comparative Table of Institutional Mediation Rules

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Comparative Table of Institutional Mediation Rules September 2014	ICC [International Centre for ADR]	WIPO	AAA [The International Centre for Dispute Resolution]	SMC
Mediator Appointment	(5.1) parties may jointly nominate (5.2) where no agreement ICC to consult with parties and either appoint directly or upon request of parties propose a list – if no agreement from list, ICC to appoint (in practice parties to cross-border disputes normally simply request appointment by ICC) (5.3) mediator to sign statement of acceptance, availability, impartiality and independence (5.4) ICC to consider mediator attributes including nationality, language, training, qualifications, experience and availability (5.5) ICC to appoint a mediator having attributes agreed upon by parties, if any – where ICC appoints but is unacceptable, another mediator is appointed (very rare)	(6) parties may agree on the mediator or a procedure for appointment but if none: 1. WIPO proposes a list of candidates 2. parties delete unacceptable names and number the remaining in order of preference 3. WIPO appoints from the list taking into account the preferences and objections. 4. if no common ground WIPO appoints	(4) parties may agree on mediator or a procedure for appointment but if none: 1. ICDR proposes a list of candidates 2. parties delete unacceptable names and number the remaining in order of preference 3. ICDR appoints from among those names mutually approved and in accordance with the order of mutual preference 4. if no mutual approval ICDR appoints from its Panel without the need for further lists	(4) SMC "will appoint a person to act as the mediator" by choosing a mediator "best placed to serve" – if valid objections, SMC to appoint someone else
Process	(7) case management conference required promptly – mediator and parties to discuss "manner in which the mediation shall be conducted" after which the mediator provides a written note advising how it will be conducted. Process to be discussed and is not predefined because of international reach. The mediator is to be "guided by the wishes of	(8) the mediation is to be conducted "in the manner agreed by the parties" and if no agreement the mediator is to determine the process and (11) is free to meet separately with parties on a confidential basis	(7) mediator is to conduct the mediation "based on the principle of party self-determination" and (7.2) is authorized to hold separate or ex parte meetings	(7.1) the mediation is to be conducted: 1. in confidence 2. no transcript/audio-visual or formal record 3. only the mediator, the parties/representatives or advisors permitted 4. (7.3) with consent mediator may obtain expert advice on technical

In the world of international mediation, global providers such as ICC, WIPO and AAA/ICDR dominate the landscape together with various more regionally based institutions such as HKIAC, SMC and CEDR.

Of course, parties who choose to resolve cross-border disputes by way of mediation are free to develop their own bespoke rules of engagement as they might in their domestic mediations via a comprehensive mediation agreement (ad hoc mediation) – however, and although there are cost implications, parties to international mediations usually perceive real benefits in adopting a tried and true process administered by a respected and often global ADR provider (administered mediation).

Many parties arrive at the door of their chosen ADR provider because their contract, about which they are now in dispute, contains a dispute resolution clause containing an agreed dispute process and names a particular institution to administer it. These clauses are well known, for instance the standard ICC multistep clause requiring the parties to refer the dispute to the ICC mediation rules and if it does not settle, to ICC arbitration. Such clauses are inserted into thousands of contracts all around the world.

It is because of the complexity that often accompanies cross-border commercial disputes – usually of higher value and involving more participants in more places and time zones than their domestic counterparts as well as almost always involving cultural and language differences – that institutional administrative support is seen as a vital ingredient to international mediations.

This usually comes in the form of comprehensive case management which, in the case of the best institutions, does not stop when the case is transferred to the appointed neutral.

Institutions also tend to play an important role in the selection of the mediator, especially when the parties disagree over the appropriate person or, more usually, when they simply do not know how to find a suitably qualified neutral.

And there is no doubt that these global institutions are in competition with 2014 seeing a number of ADR providers enhancing their mediation rules to make them more relevant to business and more attractive to users. All of ICC, WIPO, ICDR and CEDR have made significant updates to their mediation rules this year, the highest profile being ICC's 'world tour' taking its new rules on the road where they were unveiled to much applause in the great capitals of the world from Paris to Singapore to New York and Dubai and developing mediation markets including Brazil, Panama, Turkey São Paulo and the Philippines and translated into multiple languages for use in hundreds of countries.

So how do these rules shape up in the important areas of mediator appointment, process, mediator recommendations and decisions, confidentiality, parallel arbitration/litigation, costs and fees?

This Comparative Table looks at the recently updated mediation rules of:

1. International Chamber of Commerce administered by the International Centre for ADR (ICC)
2. World Intellectual Property Organisation (WIPO)
3. American Arbitration Association's International Centre for Dispute Resolution (ICDR)
4. Singapore Mediation Centre (SMC)