

Kluwer Mediation Blog

What's 'new' in the new ICC Mediation Rules?

Rafal Morek (DWF LLP) · Monday, December 9th, 2013

On December 4, 2013, the ICC launched [the new Mediation Rules](#) which will replace the 2001 ADR Rules as from January 1, 2014. In the words of Hannah Tuempel, Manager of the ICC International Centre for ADR, *“there’s no earth-shaking new change to the rules”*. At the global launch event last Wednesday, ‘simple’ and ‘flexible’ were most often repeated as the two main features of the new Rules.

The most obvious and visible change is the new name. When the ICC ADR Rules were drafted thirteen years ago, they were tailored to fit all ADR techniques, including mediation, conciliation and other techniques. Now, with more than 90% of the ICC’s cases filed since 2001 reverting to mediation, the new Rules set mediation as the default option, while still allowing the parties to use other dispute resolution techniques, should they prefer ([Article 1\(3\)](#)).

The second important change is – a bit paradoxically – “external” to the rules as such, and related to the fact that they are now accompanied by the [ICC Mediation Guidance Notes](#). As noted by Chris Newmark, the incoming Chair of the ICC Commission on Arbitration and ADR, the Notes are meant to give *“practical guidance, enabling users and their advisers to see how ICC mediation proceedings can be organized and conducted so as to maximize the chances of a successful resolution of the parties’ dispute.”* They consist of 41 points divided into separate sections: “What is mediation?”, “Why mediation?”, “Mediation sessions”, “Preparation for mediation sessions”, “Authority”, “Case summaries and documents”, “Relation between mediation and arbitration proceedings” and “Miscellaneous”.

Certainly, the ICC’s modified approach to the relationship between mediation and arbitration is notable. The Centre observes that in an increasing number of cases mediation is conducted in parallel to arbitration. While this is certainly not the most effective option in terms of costs, it has some advantages. The Rules relate to such a parallel conduct of the two proceedings in [Article 10\(2\)](#), and the [new model mediation clause \(Option C\)](#) explicitly stipulates the obligation to refer a dispute to the ICC Mediation Rules while permitting parallel arbitration proceedings if required. In addition, the Guidance Notes suggest that the decision of whether to *“build a mediation window into the timetable for the arbitration proceedings”* should be discussed by the parties and the arbitral tribunal at the case management conference conducted pursuant to [Article 24](#) of the [ICC Arbitration Rules](#). Finally, [Article 4](#) of the [Appendix – Fees and Costs](#) provides that the filing fee for a prior ICC arbitration proceeding shall be credited to the administrative expenses of the mediation.

Certainly, the efficient collaboration between arbitration and ADR “divisions” of the ICC is crucial for the potential future success of ICC mediation. As a top provider of high quality arbitration services worldwide, the ICC is in a privileged position to seek to “copy” its own success in the broader field of ADR.

Without discussing here the detailed regulations, generally the new ICC Mediation Rules strengthen the role of the ICC International Centre for ADR. The Centre will now more actively help disputing parties to consider using mediation as an efficient way to settle their disputes ([Article 3 – Commencement where there is No Prior Agreement to Refer to the Rules](#)), and “support them in overcoming procedural hurdles before they reach the table”. This includes setting the language and place of the mediation meeting, even without previous agreement ([Article 4](#)), and proposing or appointing a mediator ([Article 5](#)).

Since 2001, the ICC International Centre for ADR has mediated cases worldwide involving more than 70 nationalities. Over 75% of the cases transferred to the mediator concluded with a settlement. It expects that the demand for mediation and other ADR will continue to grow.

The ICC clearly demonstrated that it believes it can “expand the pie”. Mediation is no enemy or competitor to arbitration. Both services can perfectly coexist and develop together – in a truly “win-win” paradigm.

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