

Amicable means to resolve disputes –
how the ICC ADR Rules work

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Shortly after its foundation in 1919, the International Chamber of Commerce (ICC) offered the international business community dispute resolution services in the form of arbitration and conciliation. Consistent with its tradition of providing solutions for varied needs of business, in the past decades ICC has increased the diversity of mechanisms available to companies to resolve their disputes. Indeed, ICC has recently revised its Rules for Expertise first published in 1976, as well as its rules that govern ICC's role when acting as appointing authority, first published in 1984 as the "ICC as appointing authority under the UNCITRAL arbitration rules"; last revised its reputed Rules of Arbitration in 1998; published the Rules for Pre-arbitral Referee in 1990; and created a special set of rules for disputes concerning documentary credits governed by ICC uniform rules in 1997 (known as the "DOCDEX Rules").

As shown, ICC revises its rules from time to time to reflect the evolution of the relevant mechanisms. The latest revision of the ICC Rules of Optional Conciliation led to their being replaced by the ICC ADR Rules² on 1 July 2001. This modification was followed by a change in the internal structure of the Secretariat of the International Court of Arbitration: all cases received under the ADR Rules would be handled by a new team that would report directly to the Secretary General of the International Court of Arbitration, independent of the teams that manage the arbitration cases. This team would also administer cases coming under the responsibility of the ICC International Centre for Expertise (i.e., those governed by the Rules for Expertise and the DOCDEX Rules). The present note will concentrate on the ICC ADR Rules only.

It is important to note that the ICC ADR Rules are meant for "amicable dispute resolution", meaning mechanisms where a third party helps the parties find a solution to their dispute that is enforceable as a matter of contract, instead of a decision that is enforceable at law, such as an arbitral award under international conventions, such as the New York Convention of 1958. The Rules apply only to business disputes, whether they are of an international character or not.³ The ICC ADR Rules are unique in that parties can apply the technique – or a combination thereof – of amicable dispute settlement that suits their needs in the context of a particular dispute, as they do not regulate only one mode of ADR⁴.

The ICC publication that contains the ADR Rules includes four suggested dispute resolution clauses that can be incorporated into the parties' contracts, as well as a layman's guide to the Rules. The present article will discuss (A) the dispute resolution clauses suggested by ICC, and (B) the way the ADR Rules work in practice, drawing from examples of cases handled by ICC.⁵

A. ADR⁶ clauses

Litigators understand that the language chosen in the dispute resolution clause of a contract is extremely important. Indeed, when a highly disputed case arises, a poorly drafted clause can render the

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² ICC publication No. 809. Text found in www.iccadr.org in the English, French, Spanish, Portuguese, and Russian languages. Hereinafter, 'ICC ADR Rules', 'ADR Rules' or 'Rules'.

³ ICC ADR Rules, art. 1.

⁴ As will be explained below, the technique by default is mediation.

⁵ For an explanation of the ICC ADR Rules, see Peter M. Wolrich, *ICC ADR Rules: The Latest Addition to ICC's Dispute Resolution Services*, BULL. CIARB. CCI, SPECIAL SUPPLEMENT (2001), at 7.

⁶ The acronym ADR in this paper does not include arbitration; it refers to dispute resolution mechanisms that lead to results of voluntary enforcement.

process difficult whereas a well thought-out clause can provide an opportunity for, at the very least, a smooth start. It is not uncommon to hear a litigator who has been a victim of an allegedly badly drafted clause blame “whoever wrote this clause” for whatever terrible consequences. It would appear, nonetheless, that the lawyers who draft these clauses are increasingly paying attention to the language they chose, often asking for advice from their colleagues. Among the reasons for this, one can think of the growing complexity of contracts (and therefore the need for more diligence in their drafting), as well as companies’ efforts to reduce litigation costs (and therefore the need for tailoring creative dispute resolution mechanisms for each case).

But what is a poorly drafted clause? Does the ideal clause exist? The answers to these questions will of course depend on the contract at hand, the relationship between the parties, the cultures of the parties, the importance of the clause during the negotiation of the contract, the meeting of the minds (or not) as to the basics⁷, among other things. Some has been written on this subject - especially regarding arbitration clauses⁸ -, and institutions such as ICC contribute to this issue by providing drafters with model, suggested, or standard clauses.

ICC suggests four different ADR clauses, the first of which leaves the option open for the parties to seek a settlement of their dispute using the ICC ADR Rules, “*without prejudice to any other proceedings*”. Although this possibility exists even without the clause, the fact that the clause refers to the ICC ADR Rules already gives the parties a framework as to how to go about the settlement process, should they prefer this option. Additionally, choosing the ICC Rules as opposed to other sets of rules will allow them to select the amicable settlement technique best suited for the specific dispute. Nonetheless, parties may want to modify the suggested clause by agreeing upfront on a specific ADR technique.

The second clause suggested by ICC entails an obligation on the part of the parties to “*discuss and consider*” whether they will submit their dispute to the ICC ADR Rules. Also, according to the clause they must discuss and consider this “*in the first instance*”. Including such a clause in a contract will help a party to propose an amicable settlement to the other(s) without ‘loosing face’. This clause is particularly useful if it has become part of a company’s policy to seek – at least in the first instance - negotiated settlements for its disputes, for example.

The third clause contains an obligation (“*the parties agree*”), not to consider, but rather to actually “*submit the matter to settlement proceedings under the ICC ADR Rules*”. If the dispute is not settled within a time-limit of 45 days - or any other time-limit agreed by the parties - after the date of the filing of a Request for ADR, this obligation expires, freeing the parties from any obligation under the clause.

The fourth clause suggested by ICC is a multi-tiered clause. Multi-tiered clauses, often found in complex contracts, are those that provide several stages of dispute resolution⁹: a first “amicable” stage where parties are to seek a negotiated settlement to their dispute, followed by a second “final” stage whereby the parties will submit to a third party’s final and enforceable decision, failing resolution within the first stage. Is it a good idea to include multi-tiered clauses in your contracts? It is possible

⁷ By “the basics”, we mean the wish to resort to ADR, dispute boards, expertise, or arbitration and, if so, whether the mechanism chosen should be ad hoc or institutional. In the case of litigation, whether the parties have agreed as to the forum.

⁸ E.g., ROGER PH. BUDIN, LES CLAUSES INTERNATIONALES BIPARTITES, MULTIPARTITES ET SPÉCIALES DE L’ARBITRAGE “AD HOC” ET INSTITUTIONNEL (Payot Lausanne ed., 1993); PAUL D. FRIEDLAND, ARBITRATION CLAUSES FOR INTERNATIONAL CONTRACTS (Juris ed., 2000); RUFUS V. RHOADES ET AL., PRACTITIONER’S HANDBOOK ON INTERNATIONAL ARBITRATION AND MEDIATION, at Ch. I.2 and Ch. II.1 §1.07 (Juris ed., 2002).

⁹ The most common multi-tiered clauses contain two stages, as explained in this note, but one finds clauses with more tiers. We do not include clauses in construction contracts submitted to special conditions, which usually provide for three stages. Although the ‘amicable’ phase in contract disputes (such as dispute boards) could be submitted to the ICC ADR Rules, the Rules were not designed for that. ICC is currently working on tools specifically designed for those cases.

that there is no answer to this question, as only in retrospect will it be revealed whether the initiative was worth the while. Nonetheless, the following questions, among others, can be borne in mind when deciding whether to include a multi-tiered dispute resolution clause in a contract: (i) should the first tier of the clause be obligatory (“shall”) or should it be left to the parties to decide whether they wish to explore ADR (“may”) until the dispute arises? (ii) if the former is the choice, do(es) the relevant jurisdiction(s) enforce the first tier of the clause in case of non-compliance? (iii) what kind of ADR technique should be provided for in the first tier?, and (iv) should a time-limit be included for the obligation under the first tier to elapse?¹⁰

The text of the multi-tiered clause suggested by ICC is the following:

“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.”

This clause is composed of the third clause explained above followed by the standard ICC arbitration clause. This kind of clause encourages parties to use the period of 45 days (or as otherwise agreed), which must anyway elapse before submitting the case to arbitration, by attempting to settle their dispute under the ICC ADR Rules. ICC suggests, nonetheless, that the expiration period begin on the day of the filing of the Request for ADR instead of on the day of the commencement of the proceedings. This is a wise choice, as opposed to having the period run from the date of the commencement of the proceedings, as there are cases where the non-requesting party does not appear in the proceedings altogether.¹¹

How would a state court resolve if it were faced with allegations from defendant that claimant has submitted its claim prematurely because of the non-compliance with a clause such as the third clause suggested by ICC? It is important to underline that *“the enforceability of mandatory ADR clauses may vary in different jurisdictions.”*¹² For example, the French *Cour de cassation* was recently faced with this issue. In one case¹³, parties had agreed in a clause that before being able to file a lawsuit, they had to try to settle the case by using conciliation. Claimant filed a lawsuit and defendant opposed an objection to the admissibility of the claim, as the conciliation phase had not been exhausted. The *Cour de cassation* decided that the case would not be heard by the court until the parties had participated in a conciliation, dismissing the case and ordering the parties to participate in conciliation proceedings. The Commercial court of London was also faced with a similar situation but decided rather to stay the proceedings while the parties attempted a mediation.¹⁴ Different jurisdictions, therefore, give different answers to the question, and it is thus advisable to know the possible consequences of bringing suit when faced with a clause like the third suggested ICC ADR clause.

What have arbitral tribunals done in similar cases, where a clause like the fourth suggested ICC ADR clause is present?¹⁵ Examples can be found in the ICC arbitration practice, where it appears that, in the

¹⁰ Other questions should be borne in mind in deciding whether mediation itself is proper, in the event there is that option in the clause. See e.g., HENRY BROWN & ARTHUR MARRIOTT, *ADR PRINCIPLES AND PRACTICE* 416-420 (Sweet & Maxwell ed., 2d ed. 2002) (1999).

¹¹ See below at p. 4.

¹² *Supra* note 5, at 12.

¹³ Arrêt de la Cour de cassation du 14 février 2003.

¹⁴ *Cable & Wireless PLC v. IBM United Kingdom Ltd.* [2002] EWHC 2059 (Comm).

¹⁵ See Dyalá Jiménez-Figueres, *Multi-tiered dispute resolution clauses in ICC arbitration: Introduction and commentary*, 14 BULL. CIARB. CCIN° 1 (2003). As indicated in that commentary, cases where the FIDIC general conditions applied were not included in the study. There were indeed instances where tribunals found they had no jurisdiction to hear the case because it was not submitted to the Engineer prior to arbitration. See

past, arbitral tribunals acting under the ICC Rules of Arbitration in cases where this was an issue generally concluded that the obligation to try to reach an amicable settlement was complied with by the relevant parties. It is worth noting that there have been relatively few cases where the language in the clauses made it mandatory to seek an amicable settlement; most clauses left that possibility as an option. And the clauses that did provide for mandatory ADR referred to general obligations of seeking an amicable solution. To our knowledge, the third and fourth clauses suggested by ICC have not been under scrutiny yet.

We have reviewed the basic clauses suggested by ICC from which parties may choose, as they are or by adapting them to their needs. We will now see how the Rules themselves have been implemented up to date.

B. The ICC ADR Rules in practice

Over two years have gone by since the ICC ADR Rules entered into force on 1 July 2003. We will explain the way they work and give examples of how they have been applied in some cases.

I. *Commencing the ADR proceedings*

ADR Requests have been submitted to ICC under three different circumstances: (i) a Request for ADR jointly submitted by the parties to the dispute, on the basis of a written agreement to do so, (ii) a Request submitted by one of the parties to the dispute, on the basis of an ICC dispute resolution clause not referring specifically to the ICC ADR Rules, or (iii) a Request submitted by one of the parties to the dispute without an underlying agreement whatsoever. The first situation is foreseen under Article 2(A) of the Rules, and the second and third situations are governed by Article 2(B).

During the first year following the release of the Rules, most Requests were submitted under the latter article, whereby one party unilaterally submitted a Request, prompting ICC to invite the other(s) to participate in the proceedings. With the growing awareness of the Rules, however, Requests are increasingly being submitted to the ICC ADR Rules jointly by parties with the basis of a written agreement to do so. As would be expected at this stage, there have been no Requests submitted where there was a ICC ADR clause included in the contract itself.

Under the Rules, when a Request is submitted only by one party, if the other party(ies) does(do) not respond within 15 days or respond in the negative, proceedings will not be commenced.

The Request for ADR must contain the identification of the parties to the dispute, a description of the dispute, including “*if possible*” an assessment of its value, and the registration fee, currently fixed at US\$ 1500.¹⁶ If the Request is presented pursuant to an existing ICC ADR agreement, it must also include a copy of said agreement and any designation or comment regarding the qualities of the Neutral. This latter element is optional when the Request is not submitted on the basis of an agreement. In most cases, however, parties include their views on the Neutral in the Request.

II. *Selection of the Neutral*

Once there is an agreement to participate in the ADR proceedings on the part of all parties to the dispute, the next task is to select the Neutral. The word “Neutral” is itself neutral, in that it refers to the third party in any kind of ADR proceedings who will assist the parties in their efforts to find a settlement to their dispute. Since the ICC ADR Rules are applicable to a variety of ADR techniques, the term “Neutral” was chosen to cover all roles of the third party (mediator, conciliator, evaluator, etc).

also, Emmanuel Jolivet, *La jurisprudence arbitrale de la CCI et la lex mercatoria*, LES CAHIERS DE L'ARBITRAGE N° 2001/1 (2001) 36.

¹⁶ *Supra* note 3, arts. 2(A)1 and 2(B)1.

The Neutral can be jointly designated by the parties or appointed by ICC. Even if the Neutral is selected by the parties, who sometimes add that the Neutral has accepted the mission, it is ICC's role to invite the Neutral to complete a declaration of independence. If the Neutral discloses a circumstance that in the eyes of the parties calls into question his/her independence, ICC will give parties 15 days to object to the designation of the Neutral. It suffices for one party to object for ICC to appoint the Neutral.¹⁷

If the parties do not agree on the identity of the Neutral, they will give indications as to the desired qualifications and attributes of the Neutral. Indeed, even in cases where they are not required to do so (those submitted under Article 2(B)), parties will provide comments as to the basic qualifications of the Neutral, such as language capacities and professional background. ICC will also contact the parties or their counsel to discuss further the profile of the Neutral if it feels it needs more information. At this point, ICC will also be able to suggest that more than one Neutral be appointed for the particular case, pursuant to Article 3.4 of the Rules. This has been done in one case only, where the subject matter was complex and the parties' conditions were hard to meet by one person only. In that case, however, the parties wished that only one Neutral be selected.

Parties may also agree on a selection process different from what is indicated in the Rules. For example, parties in one case requested ICC to provide them with a list of three potential candidates who specialized in a particular field and had specific language capabilities. The parties then selected one of the three to act as Neutral. If you chose this type of selection process, it is important to think about a default solution in case the parties do not reach an agreement as to the identity of the Neutral.

After ICC has all the elements necessary to choose the Neutral, it is free to do so in any manner it deems appropriate. For example, ICC has the source of its national committees in more than 80 countries. Once it has identified one or several candidates, ICC will contact them to be satisfied that it will appoint the person that is suitable for the particular case, in terms of availability, language capacities, absence of conflicts of interest, skills requested by the parties, among other things such as cultural background. It is interesting to note that all cases that have been submitted to the ICC ADR Rules so far involve parties from different countries.

When ICC appoints the Neutral, it will usually inform the parties of the Neutral's fees at that time. This is essential for the next step, which is to fix the deposit to be paid by the parties.

III. Costs

According to the Rules,¹⁸ *“following the receipt of Request for ADR”*, ICC must request the parties to pay a deposit fixed in an amount likely to cover (i) the Neutral's fees, (ii) the Neutral's expenses, and (iii) the ICC administrative expenses. The registration fee is attributed to the ICC administrative expenses, and a case cannot proceed without the payment thereof.¹⁹

In order to fix the deposit, ICC needs to ask the Neutral to estimate the hourly rate²⁰ and the number of hours to be spent on the matter so that the parties can comment thereon. Thus, in practice the deposit is not fixed immediately after the receipt of Request for ADR, although strictly speaking it is indeed fixed *“following”* receipt of the Request. In any case, following the spirit of cooperation and good faith that guide amicable settlement initiatives, *“legalistic battles over the meaning and application of the Rules should have no place in ADR”*.²¹

¹⁷ *Id.* art. 3.3.

¹⁸ *Id.* art. 4.2.

¹⁹ *Id.* at Appendix (A).

²⁰ *Id.* at Appendix (C).

²¹ *Supra* note 5, at 22.

As was mentioned, ICC must hear the parties on the question of fees before fixing the deposit (although it is not bound by the parties' comments). There have been no cases where parties objected to or disagreed with the hourly rate proposed by the Neutral. ICC will add to the Neutral's estimate an estimate on expenses, including air travel, lodging, booking for rooms, etc, as well as an estimate of ICC administrative expenses. The deposit must be paid in equal shares between the parties, unless they agree otherwise "in writing".²²

The deposit may be readjusted during the course of the proceedings. In complex cases, this is foreseeable, as the Neutral will have just a vague idea of the time he will dedicate to the case at the outset, so the deposit will be fixed before the picture is clear.

At the end of the proceedings, ICC will settle the total costs and reimburse the parties any excess paid or request the parties for the balance required, as the case may be. In fixing the total costs, ICC cannot fix its administrative expenses in excess of US\$ 10 000. This cap helps limit the costs for an ADR proceeding. In doing so, ICC will take into account its involvement in both the selection of the Neutral and the administration of the case in terms of logistics, among other things.

As soon as ICC receives payment of the deposit, it will instruct the Neutral and the parties that the proceedings may go forward, as per Article 4.2, and invite them to hold a first discussion regarding the conduct of the ADR procedure.²³

IV. Conduct of the ADR procedure

According to the Rules, it is not necessary for the parties to have agreed, up to this point, on the ADR technique that they will apply. It will be during the first discussion mentioned above where the parties and the Neutral will discuss and determine the settlement technique to be used. If no agreement is reached, mediation will be used. The goal of this provision is to allow the parties maximum flexibility in shaping their ADR procedure, with the help of the Neutral, who is an outsider to the dispute and will have valuable insights to share with the parties.

Practice to date has shown, however, that parties will determine the technique before this point, when they decide to submit their dispute to ICC ADR Rules. Indeed, in all cases that have gone forward, the parties had determined the technique, and in all cases but one the technique chosen was mediation. The one case where mediation was not the technique, the parties chose neutral evaluation in combination with mediation. This case was unusual, as a debate as to this issue between the parties and the Neutral occurred before the case went forward, with the participation of ICC. The lack of agreement led to the withdrawal of the case. It is our view that had the parties and the Neutral waited to discuss this amongst themselves in accordance with the Rules (at a later stage), a solution regarding the procedure to be followed would have been found.²⁴ It is possible that the underlying reason for the failure to move forward was the lack of willingness to reach an amicable settlement on the part of one of the parties. This underlines the spirit of cooperation and good faith mentioned above that is required for ADR to work.

During the first discussion, it will be common for the place of the actual sessions to be determined, the deadlines for filing submissions, if any, and the general pace of the procedure. If language is an issue and the parties have not agreed as to the language(s) to be used, the Neutral will define it.²⁵ It will be common also for the Neutral to advance the need for the signing of a mediation agreement. Indeed, although it can be said that by reference the ICC ADR Rules are a contract among the parties and the

²² *Supra* note 3, art. 4.5.

²³ *Id.*, art. 5.1.

²⁴ Indeed, the agreement almost reached was that the Neutral would give an evaluation of the main issues first. After that, the parties and the Neutral would discuss whether there was a need for a mediation and, if so, as to the possibility of having another Neutral do the mediation.

²⁵ *Supra* note 3, art. 5.4.

Neutral, neutrals often draft their own agreement to cover specific liability issues and procedural questions, including confidentiality and the law applicable to their engagement, for example.

During this time, ICC's role is generally passive, unless the parties or the Neutral wish to raise issues that concern ICC or where ICC intervention can be of help. However, documents exchanged between the parties and the Neutral need not be addressed to ICC. ICC will become more important when the proceedings come to an end.

V. *Termination of the proceedings*

Pursuant to the Rules,²⁶ the ADR proceedings can end under one of the following seven circumstances:

(i) the signing by the parties of a settlement agreement. This agreement will have the binding force that the applicable law gives it.

(ii) the decision of one of the parties to no longer pursue the proceedings. If it has accepted to participate in the proceedings, a party should only be able to 'walk out' of them after the first discussion foreseen in Article 5.1 explained above. The idea behind this is to make the parties abide by their decision and act in good faith towards an amicable settlement.

(iii) the completion of the procedure without arriving at a settlement agreement.

(iv) the decision by the Neutral, as notified in writing to the parties, that the ADR proceedings will not resolve the dispute between the parties. The purpose of this provision is to avoid having one party boycott the proceedings, although other circumstances could be envisaged.

(v) the expiration of the time-limit agreed by the parties for the ADR proceedings, if it has not been extended by the parties. If submitting a dispute based on a clause similar to the fourth suggested ICC ADR clause, parties should bear in mind that the period will begin to elapse as soon as the Request for ADR is filed. Ideally, one could think of a tacit good faith extension if all parties have decided to continue with the ADR proceedings without filing an arbitration or litigation claim. It is the Neutral, under the Rules, the one in charge of notifying such expiration to the parties.

(vi) the expiration of the time-limit for the parties to make payment of any balance of the deposit, as notified by ICC to the parties and the Neutral.

(vii) in cases where the deposit has been paid and ICC has not appointed a Neutral, the notification by ICC that it has not been reasonably possible to appoint a Neutral. This situation has not arisen to date.

Most cases that have commenced under the Rules are pending. So far, we have seen proceedings terminate by settlement agreement and by common agreement of the parties that the proceedings will not produce a settlement agreement. The other situations have not yet presented themselves.

In cases where a settlement agreement is reached, the Neutral is not to send such an agreement to ICC, as it is confidential.²⁷ Confidentiality is essential for the ADR proceedings to work.

VI. *Confidentiality*

If parties are to engage in an ADR process it is crucial that they feel free to disclose documents and arguments that will help settle the case. Often times, the contrary is needed in a litigation or arbitration, where information that may weaken a party's case is kept out of the process, especially in

²⁶ *Id.*, art. 6.1.

²⁷ *Id.*, arts. 6.2 and 7.1.

cases where there is no discovery. There will be times where parties do not wish to disclose that they are engaged in an ADR process altogether or when they will keep the settlement agreement for themselves.

There are several ways to secure confidentiality in ADR. Among them, we can think of the following (i) by a confidentiality clause in the ADR agreement, with or without a penalty clause, (ii) by statute, such as the Uniform Mediation Act of the United States,²⁸ (iii) by only revealing documents and arguments to the Neutral in caucus, and (iv) by incorporating by reference a set of rules into your contract.

The ICC ADR Rules set out provisions to protect confidentiality.²⁹ Protection of confidentiality in the Rules knows two general exceptions: the agreement of the parties and requirements of the applicable law due to, for example, the nature of the parties involved (if government entities subject to duties of disclosure, for instance) or the matter. One case administered by ICC involved a party that had the obligation of disclosing certain aspects of the ADR proceedings, for example. Otherwise, the confidentiality provision in the Rules covers the process itself and the settlement agreement, with the exception of the need to produce it for implementation or enforcement purposes.³⁰

A party is also barred from producing in court or arbitral proceedings documents submitted by the other party which cannot otherwise be obtained, the views or suggestions put forward by the other party or the Neutral, or any admission or statement by the other party whereby it was ready to settle the case.³¹ An additional protection provided for by the Rules is the fact that the Neutral cannot give testimony in court or arbitral proceedings as to any aspect of the ADR proceedings.³²

VII. Med-arb and other combinations – conflicts of interest

The subject of combining mediation and arbitration (med-arb) or ADR techniques with other techniques gives room for another (very rich) discussion. We would like to only note that Article 7.3 of the Rules provides that, unless otherwise agreed by all of the parties in writing, this combination is not possible.³³ Indeed, the mentioned provision bars a Neutral from acting (in the past or in the future) as a judge, an arbitrator, or an expert, or as a representative or advisor of a party in proceedings relating to the dispute subject of the ADR proceedings. The Rules therefore would allow an arbitrator acting under the ICC Rules of Arbitration to act a Neutral in the same case under the ICC ADR Rules, for example, if all parties agree thereto in writing. This provision protects the Neutral and the parties from situations that can be damaging to either or both proceedings.

As we have seen, the Rules are designed in a way that allows ample flexibility but also contain safety breaks and guidance to protect the process and, therefore, the parties and the Neutral. In the words of the chair of the working party that drafted the ICC ADR Rules, Peter M. Wolrich, it is our hope that these Rules “...will provide the international business community with an effective tool for resolving their disputes and differences in a rapid, creative and relatively inexpensive manner.”³⁴ If and when they do not, it will be time to think of revising them!

²⁸ Uniform Mediation Act (2001). This Act protects the process by using the notion of privilege, thereby adding significant weight to the protection.

²⁹ *Supra* note 3, arts. 7.1, 7.2, 7.4.

³⁰ *Id.*, art. 7.1.

³¹ *Id.*, art. 7.2.

³² *Id.*, art. 7.4.

³³ This circumstance should be distinguished from the possibility of combining several ADR techniques; the latter possibility being allowed under the ICC ADR Rules, as mentioned earlier.

³⁴ *Supra* note 5, at 22.