

IRP IOT Procedural Issues Agenda

- **Structural Bodies**
 - IRP Provider
 - Standing Panel
- **Pre-Hearing Processes**
 - Emergency/Injunctive Relief
 - Cooperative Engagement Process
- **Filings and Amended Pleadings**
- **Motions**
- **Intervention, Joinder, and Consolidation**
- **The IRP Panel, Choice of Law, and Jurisdiction**
- **Format of Arbitration**
- **Discovery, Evidence, and Witnesses**
- **Settlement and Awards**
- **Appeals and Revisions to Procedures**

Structural Bodies

- **IRP Provider**

- Should the rules specify requirements for the provider's office functions, e.g. online dockets, etc?

- **Standing Panel**

- Application of members
 - Should an application form for members be developed?
 - Should a method of ranking applications be developed?
- Should specific training be required?
- Conflict and impartiality
 - How and when are disclosures made?
 - Annual updating?
 - Term limits?
 - Gift and entertainment rules?
 - Post-employment bars?

Pre-Hearing Processes

- **Emergency/Injunctive Relief**
 - How do parties move for emergency relief?
- **Cooperative Engagement Process (CEP)**
 - Guidelines for CEP
 - How does CEP process get communicated to the IRP panel?

Filings and Amended Pleadings

- **Filings (notice/answer/counterclaims)**

- Formal guidelines for filings
 - What are the page limits and other restrictions for filings?
 - What are the notice requirements and time limits?
 - How is time counted?
 - What are the rules for service?
- How is the process different for counterclaims?

- **Amended Pleadings**

- Can the parties amend or supplement their claims?
- What is the scope of allowed amendment/supplement?
- Formal guidelines for amended pleadings

Motions

- **Motions**

- Are early dispositive motions allowed? How are they treated?
- Can parties move for dismissal or are those decisions solely made sua sponte by the IRP Panel? (based on the factors under 4.2(o)(i))
- What other legal motions are allowed and what are the timing requirements?
- Standard used for further submissions?

Intervention, Joinder, and Consolidation

- **Third Party Practice**
- **Consolidation of Related Claims**
 - Can parties request that the arbitrator consolidate arbitration proceedings?
 - Can parties request that the arbitrator bifurcate arbitration proceedings?
- **Process for intervention**

The IRP Panel, Choice of Law, and Jurisdiction

- **Process for selecting IRP Panel**
- **Makeup of panel**
 - Can the parties challenge an arbitrator's impartiality during arbitration?
 - What are procedures for challenging/replacing an arbitrator?
- **Choice of law and jurisdictional questions**
 - Process for submitting and reviewing evidence against a standard for representation of interests.
 - Can the tribunal rule on its own jurisdiction if objections are raised?
 - Does Foreign law apply?
 - What law applies?
 - For privilege issues
 - For interpretation of agreements
 - Where should hearings take place? What currency for the award?
 - What procedures are in place in case parties cannot agree?
 - Should allowance be made for translation services?

Format of Arbitration

- **What forms of representation are allowed?**
- **Should the parties pay a filing fee or deposit?**
 - Cost shifting
 - ProBono practice rules?
 - Accessibility rules?
- **Can the parties request to keep certain information confidential? (e.g., trade secrets)**
- **How is information communicated and exchanged between parties and the tribunal?**
 - What are the rules for ex parte communications with arbitrators (and how do they work with “default” judgments)
 - Are hearings closed (if possible to be closed and still on the record as required by the bylaws)? In person? Electronic? Telephonic?
- **What are the rules for closing/reopening hearings?**
- **Can issues/rules be waived by a party? How?**

Discovery, Evidence, and Witnesses

- **What are the rules for production/discovery?**
 - Should we use a common law judge or investigating magistrate model?
 - Whether no discovery, some, or full.
 - Whether the panel can conduct its own investigation or must rely solely on the submission of the parties
- **Should there be specialized PTI procedures?**
- **Witnesses**
 - How are they examined? Who must be present (physically/electronically/telephonically)?
 - Use of experts
 - Can the tribunal call experts?
 - Can parties call experts?
 - Can parties question experts?

Settlement and Awards

- **What happens in the case of one party's default?**
- **Procedures for settlement**
- **Award**
 - Must award be written?
 - Are unpublished decisions allowed?
 - Are all cases precedential?
 - Are awards public?
 - Is 2/3 majority agreement sufficient for award?
 - Does dissenter have to write explanation?
 - What parts of an award, if any, are non-binding?
 - Are punitive/exemplary damages allowed?
 - How do parties seek interpretation/correction?
- **How is the Board informed?**
 - Procedures if the Board does not comply
- **Who publishes IRP decisions?**

Appeals and Revisions to Procedures

- **Rules of appellate procedure**
- **Revising these procedures**
 - Should there be periodic review of the procedures? (bylaws say only that the Standing Panel may recommend amendments)