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 challenged 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)