

# IRP IOT Procedural Issues Agenda

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- **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

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- **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

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- **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

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- **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

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- **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

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- **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

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- **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

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- **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

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- **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

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- **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

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- **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)