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**[IOT] Replacement of Procedures Officer**

1 message

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**Elizabeth Le** <elizabeth.le@icann.org>  
To: "iot@icann.org" <iot@icann.org>

Mon, Aug 10, 2020 at 1:33 PM

Dear IOT,

On our last call, ICANN org offered to propose some revisions to Rule 7 as it relates to the removal of the Procedures Officer role.

To advance that work, we wanted to provide a couple of means of handling the identification of and scope of work for the neutral that would be responsible for adjudications under Rule 7.

As a reminder, the concept of a "Procedures Officer" was in place, in the event that if a Standing Panel was not in place, to identify the neutral responsible for taking a decision on issues of consolidation, intervention, and participation as an Amicus.

As the Procedures Officer is not defined within the ICDR Rules, there was confusion about the role and execution of the role, that the IOT is considering how to clarify in the next iteration of the supplementary procedures, again in the situation in which the Standing Panel is not seated or available.

**Option 1**

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The IOT could consider giving the ICDR the ability to select an arbitrator for the specific purposes of adjudicating requests under Rule 7 with a light level of detail.

**Option 2**

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The IOT could consider borrowing the concept of a "Consolidation Arbitrator" under Article 8 of the ICDR Rules, set out below, with a possibility of streamlining to reflect the standard of consolidation of IRPs, as opposed to consolidation of separate arbitration proceedings:

## Article 8: Consolidation

1. At the request of a party, the Administrator may appoint a consolidation arbitrator, who will have the power to consolidate two or more arbitrations pending under these Rules, or these and other arbitration rules administered by the AAA or ICDR, into a single arbitration where:

a. the parties have expressly agreed to consolidation; or

- b. all of the claims and counterclaims in the arbitrations are made under the same arbitration agreement; or
- c. the claims, counterclaims, or setoffs in the arbitrations are made under more than one arbitration agreement; the arbitrations involve the same parties; the disputes in the arbitrations arise in connection with the same legal relationship; and the consolidation arbitrator finds the arbitration agreements to be compatible.

2. A consolidation arbitrator shall be appointed as follows:

- a. The Administrator shall notify the parties in writing of its intention to appoint a consolidation arbitrator and invite the parties to agree upon a procedure for the appointment of a consolidation arbitrator.
- b. If the parties have not within 15 days of such notice agreed upon a procedure for appointment of a consolidation arbitrator, the Administrator shall appoint the consolidation arbitrator.
- c. Absent the agreement of all parties, the consolidation arbitrator shall not be an arbitrator who is appointed to any pending arbitration subject to potential consolidation under this Article.
- d. The provisions of Articles 13-15 of these Rules shall apply to the appointment of the consolidation arbitrator.

3. In deciding whether to consolidate, the consolidation arbitrator shall consult the parties and may consult the arbitral tribunal(s) and may take into account all relevant circumstances, including:

- a. applicable law;
- b. whether one or more arbitrators have been appointed in more than one of the arbitrations and, if so, whether the same or different persons have been appointed;
- c. the progress already made in the arbitrations;
- d. whether the arbitrations raise common issues of law and/or facts; and
- e. whether the consolidation of the arbitrations would serve the interests of justice and efficiency.

4. The consolidation arbitrator may order that any or all arbitrations subject to potential consolidation be stayed pending a ruling on a request for consolidation.

5. When arbitrations are consolidated, they shall be consolidated into the arbitration that commenced first, unless otherwise agreed by all parties or the consolidation arbitrator finds otherwise.

6. Where the consolidation arbitrator decides to consolidate an arbitration with one or more other arbitrations, each party in those arbitrations shall be deemed to have waived its right to appoint an arbitrator. The consolidation arbitrator may revoke the appointment of any arbitrators and may select one of the previously-appointed tribunals to serve in the consolidated proceeding. The Administrator shall, as necessary, complete the appointment of the tribunal in the consolidated proceeding. Absent the agreement of all parties, the consolidation arbitrator shall not be appointed in the consolidated proceeding.

7. The decision as to consolidation, which need not include a statement of reasons, shall be rendered within 15 days of the date for final submissions on consolidation.

If the IOT identifies a preferred path forward, we will work this proposal into a new draft for further consideration of the IOT.

Best regards,

Liz

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