

Kluwer Arbitration Blog

The new CEDR Rules for the Facilitation of Settlement in International Arbitration – A very useful and welcome tool

Georg von Segesser (von Segesser Law Offices) · Thursday, January 7th, 2010

In international arbitration proceedings in Continental Europe, particularly in Germany but also in Switzerland and other countries, it has become increasingly popular for arbitral tribunals to get involved and even take active steps in facilitating a settlement between the parties during the course of a pending arbitration. This raises a number of issues, and parties from common law jurisdictions in particular sometimes seem to be concerned with arbitrators fostering such negotiations, especially in view of the arbitrators' impartiality.

The Centre for Effective Dispute Resolution (CEDR) recently presented its CEDR Rules for the Facilitation of Settlement in International Arbitration (CEDR Settlement Rules; see www.cedr.com). The Rules are designed to increase the prospects of parties in international arbitration proceedings of amicably settling their disputes during the course of the pending arbitration.

The Rules outline steps which arbitral tribunals can and cannot take with a view to facilitating settlement by the parties. They are intended to supplement the legal provisions and the institutional or ad hoc rules according to which the parties have agreed to conduct their arbitration. They can be incorporated on an ad hoc basis by agreement of the parties, as part of an institution's rules, or within a contract clause providing for arbitration. They can also be incorporated into the Terms of Reference or the Procedural Rules governing an arbitration.

The Rules provide that the arbitral tribunal may – at its discretion – provide the parties with its preliminary views on the issues in dispute in the arbitration, provide the parties with preliminary non-binding findings on law or fact on key issues in the arbitration, offer (where request by the parties in writing) suggested terms of settlement or (again, only where requested by the parties in writing) chair one or more settlement meetings. In turn, the Rules stipulate that the arbitral tribunal shall not take into consideration for the purpose of making the award any substantive matter discussed in the settlement meeting or communication, unless the matter has already been introduced in the arbitration. Nor shall the tribunal judge the credibility of any witness on the basis of anything having been revealed during the settlement negotiations. Finally, the arbitral tribunal is requested not to meet with any party without all other parties being present, nor to obtain information from any party without sharing it with all other parties.

The CEDR Settlement Rules are a very welcome and useful tool for contemporary international arbitration. They manage to strike a good balance between the arbitrators' powers to take proactive steps to assist the parties in achieving a negotiated settlement of part or all of their dispute and their duty to remain impartial. As far as the latter is concerned, the Rules stipulate that the parties agree that the tribunal's facilitation of the settlement shall not be asserted by any party as ground for

disqualifying the arbitral tribunal or for challenging any award rendered by the tribunal. Even where the parties have not explicitly agreed to apply the CEDR Settlement Rules, the Rules are likely to provide guidance to an arbitral tribunal seeking to facilitate a settlement in that the arbitrators can be “inspired” by the provisions of the Rules, as has become common practice for instance with regard to the IBA Rules on the Taking of Evidence in International Commercial Arbitration.

Georg von Segesser / Christopher Boog


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The graphic features a black background with white text and a circular icon. The icon depicts a group of stylized human figures, with a magnifying glass positioned over one of the figures, suggesting a search or analysis function. The text is arranged in a clean, modern layout, with the main title in a large, bold font and the Wolters Kluwer logo at the bottom left.

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