ADMINISTERED VERSUS NON-ADMINISTERED ARBITRATION

Peter H. Kaskell[*]

CPR is a Not-For-Profit membership organization with a staff of modest size and panels of arbitrators and mediators second to none. We like to think we punch above our weight. Our hallmark is flexibility. We are rarely accused of being bureaucratic.

No doubt all members of this panel agree: the overriding element in determining whether an arbitration will be successful is the quality and experience of the tribunal, particularly the managerial skill of the chair and his or her determination to conduct an efficient process. CPR's panels consist of about 700 arbitrators and mediators selected with great care, including 80 abroad. All are experienced lawyers. We aim to select *The Best of the Bar.* Knowledgeable practitioners regard the quality of our panels as outstanding.

CPR's international and domestic arbitration rules are captioned *Non-Administered.* Limited Administration or Minimal Administration would be more accurate.

The issue, as we see it, is not *Administered vs. Non-Administered,* of administration is appropriate for the particular case. We believe in unbundling arbitration services, in letting the players in each case choose and pay only for the services they really need from an a la carte menu, rather than offering only a fixed price menu, the same for all cases. We do believe firmly in maximizing party control of the process.

What services are we talking about? What can an organization do?

A. *Before the tribunal is selected:*

1. Provide well thought out rules and contract clauses, drafted by very experienced arbitrators and practitioners;

2. Assist the parties in modifying the rules to suit their dispute;

3. Maintain a roster of high quality arbitrators;

---

* Mr. Kaskell is the Vice President of the CPR Institute for Dispute Resolution based in New York, New York. The Universal Resource Locator for the CPR Institute for Dispute Resolution is www.cpradr.org.

4. Assist parties in selecting well qualified arbitrators, and if necessary, appoint arbitrators, who do not have conflicts of interest and who will be available when needed;

5. Deal with conflict of interest challenges; and

6. Make fee arrangements.

B. *Once the tribunal is in place:*

1. Schedule hearings and send notices;

2. Provide hearing rooms;

3. Distribute documents;

4. Review awards for procedural comments;

5. Pay arbitrators and arrange for advance deposits;

6. Be available for expert advice to parties in the process;

7. Assist in moving the process forward if one party is recalcitrant; and

8. Through the stature of the organization, help gain acceptance for the award and, if necessary, for its enforcement.

CPR's international arbitrators rules were developed by a committee of leading American and European arbitrators

The rules require the expeditious conduct of the proceeding, empowering the arbitrator(s) to establish time limits for each phase of the proceeding (Rule 9.2), and to penalize a party engaging in dilatory tactics (Rule 16.3).

The tribunal may decide challenges to its jurisdiction (Rule 8). This should allow arbitrators to decide all issues, including arbitrability questions, without the necessity for court intervention.

The chairman of the tribunal is assigned responsibility for the organization of conferences and hearings and arrangements with respect to the functioning of the tribunal (Rule 9.1).

The tribunal is required to hold at least one pre-hearing conference to plan and schedule the proceeding (Rule 9.4). Such conference should result in a smooth scheduling of the case, and may aid possible settlement.

The tribunal is given great leeway in matters of procedure. CPR's rosters are on the web at www.cpradr.org. We encourage adversaries to agree on arbitrators without our help, however, we certainly stand ready to consult with parties as to their needs and to nominate candidates after screening them for conflicts and availability.

Thirteen foreign arbitrals or organizations also have agreed to nominate arbitrators under the CPR rules.

The question is, what services are needed once the tribunal has been selected? The answer is, it depends. It depends to a large extent on the experience and sophistication of the players and on the cooperation among them: the clients, the attorneys, and the arbitrators.

When the parties are two substantial companies, they are likely to be represented by advocates experienced in international arbitration and to select arbitrators of high quality. Such advocates are likely to have confidence in each other's integrity and to cooperate to assure a smooth process. In that situation, the need for services of an administrative nature will be much less than if one party is inexperienced or tries to welch on its commitment to arbitrate.

We do believe an international arbitration is best conducted under the aegis of a respected organization but one that is flexible and does not intrude unnecessarily. An award made by prestigious arbitrators under the aegis of a respected organization is more likely to be accepted, and if need be, enforced; however, an award will have the imprimatur of an organization if made by its arbitrators under its rules, regardless of what administrative services the organization provided.

We all know horror stories about international arbitrations that dragged on for years and cost huge sums. The main objective must be to conduct an efficient process at reasonable cost. Most of the practitioners with whom I speak believe the best approach usually will be a no-nonsense chair who will insist on efficiency with a minimum of administrative intervention.

We urge at the first preliminary conference of the tribunal with the advocates, they discuss openly what administrative services they are likely to need and arrange only for those services.

CPR does not charge a filing fee or the like. We receive no part of the arbitrator's fees. When we help select arbitrators we charge a modest fee for that service.

We believe the very flexible CPR approach is likely to result in a relatively speedy process and in significant cost savings.

If your pre-dispute contract clause calls for a less user-friendly process, the parties by agreement are free to opt for a different process once a dispute has arisen.