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**CEDR Commission on Settlement in International  
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# CEDR Commission on Settlement in International Arbitration

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## **Report of the Commission**

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## 1. Introduction

- 1.1 International arbitration is the default choice of dispute resolution forum for cross-border commercial contracts, largely because it offers neutrality and awards that are enforceable around the world.
- 1.2 The international arbitration community is continuously working to improve its product for the benefit of business users. Papers such as the UNCITRAL Notes on Organising Arbitral Proceedings, the IBA Rules on the Taking of Evidence in International Commercial Arbitration, the IBA Guidelines on Conflicts of Interest in International Arbitration, and the ICC Commission's Techniques on Controlling Time and Cost in Arbitration are all documents aimed at making international arbitration work better.
- 1.3 Although some of these papers refer to the role of the tribunal in encouraging settlement, at present, it is only in certain jurisdictions that tribunals are pro-active in this regard. It is certainly very rare for tribunals to recommend that the parties try using mediation during the course of the arbitral proceedings. Indeed, whilst courts in Europe now generally enforce multi-tier dispute resolution clauses and decline jurisdiction where these are not observed, arbitral tribunals tend to accept jurisdiction and proceed with the arbitration, even where one party has clearly breached an obligation to mediate before commencing arbitral proceedings.
- 1.4 Research<sup>1</sup> has shown that settlement rates in arbitration are significantly lower than they are in many national courts, particularly those courts where judges systematically promote early settlement and the use of ADR techniques such as mediation.
- 1.5 The CEDR Commission was formed to review the current practice regarding the promotion of settlement by international arbitral tribunals and to come up with recommendations to improve this aspect of the process for end-users. A key premise of the Commission's work, which is supported by studies of the attitudes of international business to dispute resolution<sup>2</sup> is that parties generally want their problems solved cost effectively and efficiently and that this will often be best achieved through negotiated settlement.
- 1.6 Attached to this Report<sup>3</sup> are the following documents:
  - 1.6.1 Draft CEDR Rules for the Facilitation of Settlement in International Arbitration (Appendix 1).

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<sup>1</sup>*Bucher*, ASA Bulletin 1995, p. 568 estimates the settlement rate at approximately 50%; many authors agree with this assessment. The second survey conducted by *Bühning-Uhle/Kirchhoff/Scherer in Arbitration and Mediation in International Business* (2<sup>nd</sup> edition 2006) (p. 112) delivered a settlement rate of 43% on average.

<sup>2</sup> See for example the PriceWaterhouseCoopers survey, *International arbitration: Corporate Attitudes and Practice* 2006

<sup>3</sup> Please note that the contents of this report do not necessarily reflect the personal views of individual members of the Commission