



## **CPR Technology Advisory Committee – Charter**

### **What is the CPR Technology Advisory Committee’s mission?**

The Committee serves as a forum for convening thought leaders to develop, maintain and disseminate world-class best practices for dispute prevention and resolution in the technology industry. The Committee’s principal areas of focus are: a) disputes arising from transactions between companies in the technology industry (e.g., anti-competition or ownership disputes); b) disputes arising from transactions between technology companies and their business partners (e.g., supply chain, cloud computing, or outsourcing disputes); c) disputes arising from the use of complex or emerging technologies as they may be implemented across industries (e.g., AI, blockchain, smart contracts as well as patent disputes); or d) disputes relating to cybersecurity or data breach incidents. The Committee will develop a specialty panel of neutrals who are versed in the technology industry to prevent, mediate and resolve the kinds of disputes examined by the Committee. The Committee will also examine the use of information technology to prevent and resolve disputes, including online dispute resolution, as well as technology tools and practices designed to address issues related to cybersecurity, data protection and privacy.

### **Who are the Committee’s target members?**

The Committee will be comprised of in-house counsel, leading law firm practitioners, academics, neutrals and other technology or relevant experts with experience in the issues, disputes and technologies examined as part of the Committee’s mission. Recognizing the diversity of areas that may be covered by this Committee, it may want to recruit different constituencies to address different work streams.

### **What are the Committee’s proposed activities?**

To achieve its goals, the Committee will convene regular meetings for its members and host seminars and generate work product of relevance to the Committee’s purpose.

The topics that the Committee will address in its meetings and work products are, among other things, education about the technologies and related legal issues associated with those technologies, issues concerning the impact of the technologies examined on sustainable systems, drafting of effective contracts, dispute prevention mechanisms, efficient resolution of disputes and best practices concerning the use of technology in these areas, including the following potential topics:

- Drafting of effective contracts:
  - The crucial, the useful, and the unhelpful: clauses to include (and avoid) for effective contracts:
    - Dispute resolution clauses, including terms such as scope of the arbitration, arbitrator qualifications, summary adjudication, time limitations, scope of discovery, multi-party or multi-contract scenarios, tiered dispute resolution mechanisms; and

- Other clauses that could be considered include governing law and jurisdiction, ownership and licensing of relevant intellectual property, privacy and data security obligations, liability and warranty limitations, insurance requirements, exclusive remedies, indemnification and defense obligations, confidentiality, payment and milestones, breach, termination and audit rights, *force majeure* and material adverse change.
- Dispute prevention mechanisms:
  - Sharing of best practices of members in identifying the circumstances and issues that give rise to conflict and strategies for resolving early
  - A critical comparison of mechanisms for the prevention of disputes, including how mechanisms may complement each other in a tiered dispute prevention construct.
    - Dispute prevention mechanisms that may be considered include escalation and governance procedures, dedicated referees or deal facilitators, standing neutrals, expert determination and mediation.
  - How global technology companies can use investment treaty arbitration to mitigate the risk of mistreatment by foreign governments or oppose such mistreatment.
  - How technology companies can enforce decisions under the NY Convention.
- Efficient resolution of disputes:
  - Choosing the right forum: mediation, arbitration, litigation, expert determination.
  - When to mediate: before or in parallel with litigation/arbitration and, if in parallel, when?
  - Deciding on binding vs. non-binding dispute resolution mechanisms, and the allocation of costs among participating parties.
  - Potential tools for increasing efficiency in arbitrations to resolve complex technology disputes, including summary adjudication, bifurcation, limitations on the scope of discovery, defining the issues subject to arbitration, the use of arbitrators with expertise in the procedure and underlying subject matter, balancing speed and the parties' rights to present their cases, and alternative forms of arbitration such as baseball arbitration.
  - Settlement strategies
- Use of technology in dispute prevention and resolution:
  - The application of cybersecurity and data protection protocols in technology disputes.
  - Lessons learned from the application of the ICCA-NYC Bar-CPR Protocol on Cybersecurity in International Arbitration.
  - The use of technology (e.g., e-discovery tools, online dispute technology, artificial intelligence, and machine learning) in dispute prevention and resolution.