



WIPO Mediation and Arbitration for FinTech Disputes

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In this webinar

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In this webinar

- Why mediation and arbitration for FinTech disputes?
- How to draft efficient dispute resolution clauses for FinTech contracts

Financial Technologies (FinTech) definition

- *“Financial technology describes new technology that is set to improve and automate the delivery and use of financial services. At its core, fintech is utilized to help companies, business owners and consumers better manage their financial operations, processes, and lives by utilizing specialized software and algorithms that are used on computers and, increasingly, smartphones. Fintech, the word, is a combination of “financial technology”.” (Investopedia, 2020, at <https://www.investopedia.com/terms/f/fintech.asp>)*
- *“New entrants that promised to rapidly reshape how financial products were structured, provisioned and consumed.” (World Economic Forum, 2017)*

Notes on the current state of the FinTech industry

- Financial institutions are undergoing important changes to adapt to the digital revolution
- Many players interact with traditional financial institutions
 - E-retailers
 - ICT and large technology companies
 - Social media / Internet platforms
 - Startups
 - Financial infrastructure companies
- Financial institutions are the largest investors in the FinTech landscape

Notes on the current state of the FinTech industry

- Major FinTech startup unicorns in the US and China
- Global movement with different levels according to the market
- Main technologies in demand
 - Data analytics
 - Mobile
 - AI
 - Blockchain
- Growing landscape of FinTech startups collaborating with traditional institutions instead of competing

FinTech Adoption Rates (% population/country) (2017)				
Money Transfer and Payments	Financial Planning	Savings and Investment	Borrowing	Insurance
China 83%	China 22%	China 58%	China 46%	India 47%
India 72%	Brazil 21%	India 39%	India 20%	UK 42%
Brazil 60%	India 20%	Brazil 29%	Brazil 15%	China 38%
Australia 59%	US 15%	US 15%	US 13%	South Africa 32%

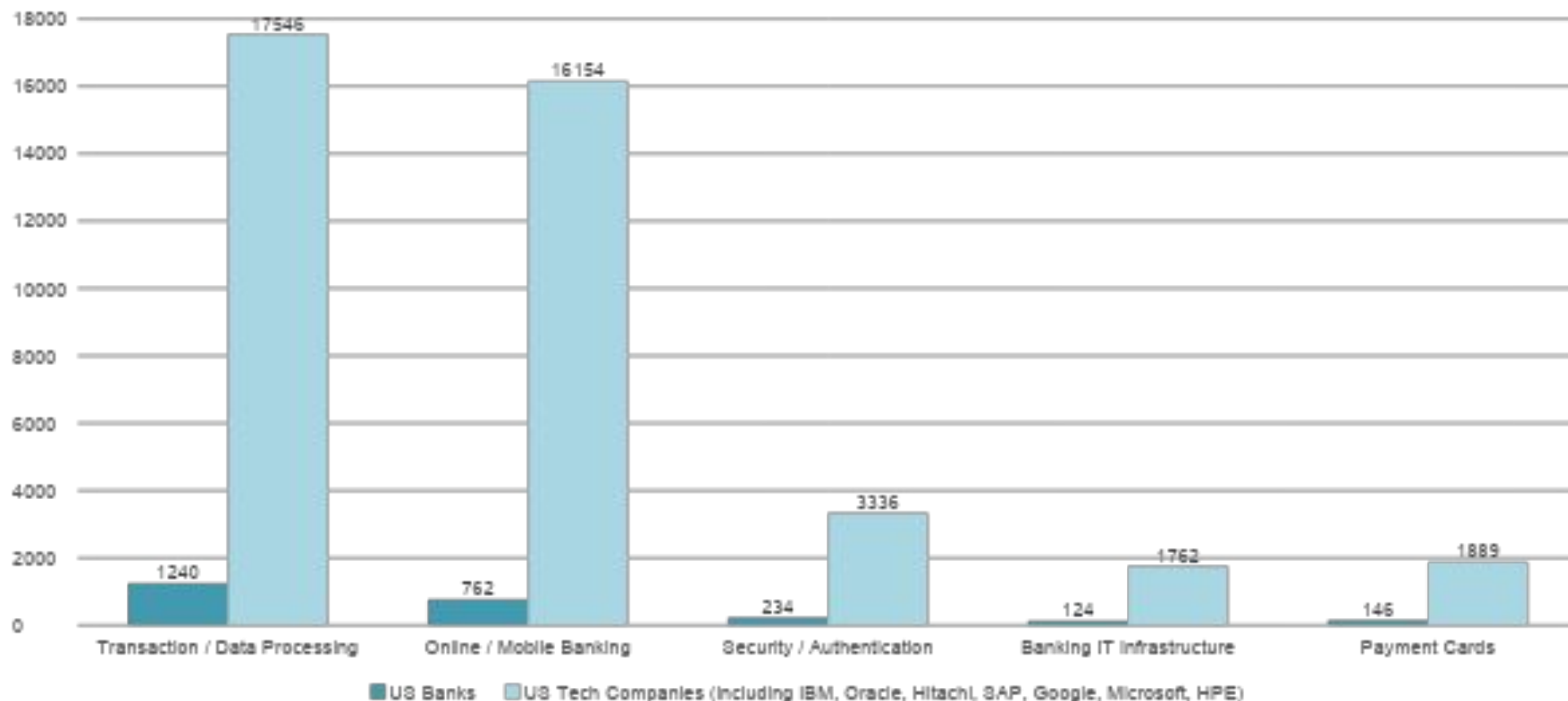
Source: Statista

Notes on the current state of the FinTech industry

- Key issues:
 - Interconnectivity (e.g., APIs)
 - Data
 - **Intellectual Property (IP) Rights**
- Trends
 - Open innovation and need to bring stakeholders and third-parties
 - E.g., Open banking
 - Support of financial institutions into new FinTech initiatives
 - Banking as platform (BaaP)

FinTech and IP

FinTech Patents US Banks vs. US Technology Companies 2018



*Data extracted from CIPHER, 'IP Strategy Report' (2018) CIPHER accessed at:
<https://cipher.ai/wp-content/uploads/Cipher-IP-Strategy-Report-2018-.pdf>

FinTech disputes

- Recurrent interaction between multiple stakeholders in FinTech sector
- Increased possibility of disputes

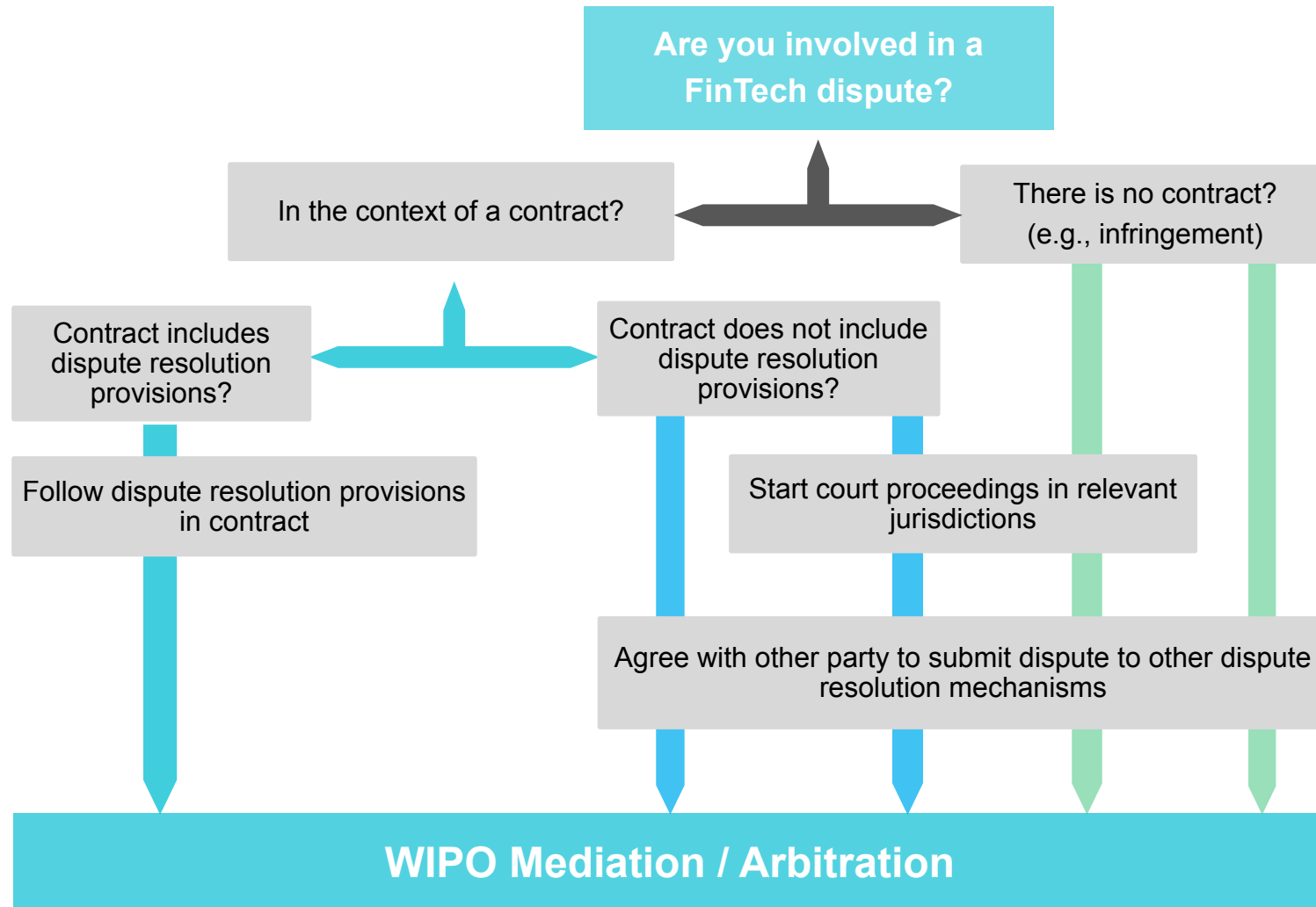
Types of FinTech disputes

- Contractual
 - IP/IT licensing
 - software development agreements
 - software maintenance agreements
 - service level agreements
 - outsourcing
 - joint ventures
 - performance (e.g., payment)
 - terms and conditions
 - data / analytics
 - interconnection issues

Parties to FinTech disputes

- banks, financial institutions (PSP)
- online marketplaces
- start-ups
- software developers and programmers / Dapp developers
- ICT companies
- account servicing payment service providers (ASPSPs)
- third party service providers (TPPs)
 - payment initiation services providers (PISP)
 - account information service providers (AISP)

Dispute resolution process



Mediation

- Informal consensual process
- Neutral intermediary – mediator
 - assists parties in reaching settlement of their dispute
 - based on parties' respective interests
 - cannot impose a decision
- Settlement agreement has force of a contract
- Leaves open court or arbitration options

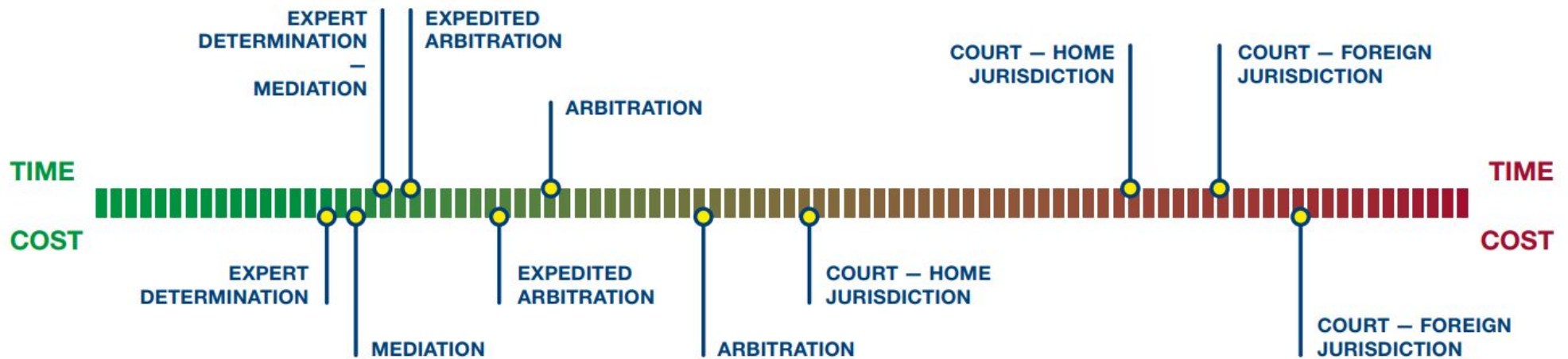
Arbitration

- Consensual procedure
- Parties submit dispute to one or more chosen arbitrators
- Binding and final decision (award)
 - based on parties' rights and obligations
 - enforceable internationally
- Normally forecloses court options

Court litigation vs. Arbitration / Mediation

	Court Litigation	Arbitration	Mediation
Party agreement needed to initiate	✘	✓	✓
Parties can select specialized neutral	✘	✓	✓
Neutral is a decision maker	✓	✓	✘
Confidential	✘	✓	✓
Efficient for international disputes	✘	✓	✓
Parties can shape proceedings	✘	✓	✓
Possibility of appeal	✓	limited	n.a.
International enforcement of outcome	limited	✓	n.a.

Time and cost of IP dispute resolution



Pre-empting and Resolving Technology, Media and Telecoms Disputes

- 75% of organizations surveyed have a dispute resolution policy
 - Mediation is the most encouraged mechanism, followed by arbitration
 - The three most important elements of arbitration are: institution, seat, and confidentiality
- 92% of respondents consider arbitration well suited to TMT disputes
- 82% of respondents foresee an increase in the use of arbitration
- Respondents expect ownership of IP and licensing of technology to continue to be a likely source of disputes, including from “collaboration” and data and system security breaches

World Intellectual Property Organization (WIPO)

- Promotes innovation and creativity
- For the economic, social and cultural development of all countries
- Through a balanced and effective international IP system
- WIPO provides IP services that encourage individuals and businesses to innovate and create
 - Alternative Dispute Resolution (ADR) services to reduce the impact of disputes on innovation and creative processes



WIPO Arbitration and Mediation Center

- Facilitates the resolution of commercial disputes between private parties involving IP, through procedures other than court litigation, including mediation and arbitration
 - Offices in Geneva and Singapore
 - Users around the world
- ADR provider specialized in IP and technology disputes
 - WIPO mediators, arbitrators and experts experienced in IP and technology (including FinTech) - able to deliver informed results efficiently
- International neutrality



What is the WIPO Center's role?

- **WIPO Center is available to**
 - provide information and procedural advice
 - assist parties in considering the referral of a dispute to WIPO proceedings
 - assist parties in the selection of specialized mediators, arbitrators and experts
 - arrange for support services, including meeting rooms and videoconferencing facilities
- **WIPO Center does not**
 - provide legal advice or represent parties in dispute
 - force any party to refer a dispute to or participate in WIPO proceedings

Routes to WIPO ADR

- ADR contract clause
 - WIPO model clauses: www.wipo.int/amc/en/clauses
- ADR submission agreement (e.g., in existing non-contractual disputes)
- Unilateral request for WIPO Mediation by one party (Art. 4 WIPO Mediation Rules)
- Court referrals

WIPO Good Offices

- Disputes where one or both parties consider submitting the dispute to mediation or arbitration
 - No previous agreement on how to resolve the dispute
 - Infringements
 - Cases pending before the courts
- Procedural advice
- No fees at this stage

WIPO mediation and arbitration cases

Copyright

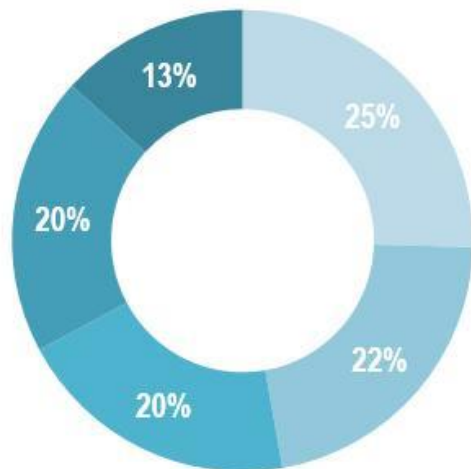
Art
Broadcasting
Collective Management
Entertainment
Film and Media
Infringements
TV Formats

Commercial

Design
Distribution
Energy
Franchising
Marketing
Sports

Trademarks

Coexistence
Infringements
Licenses
Oppositions
Revocations



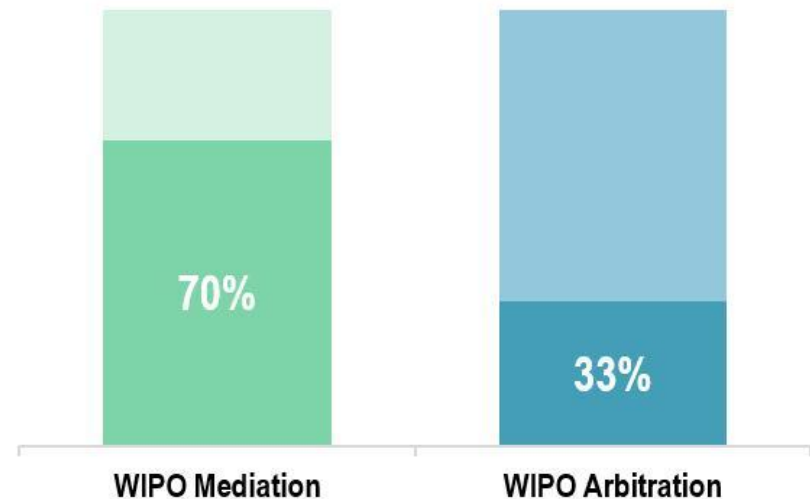
Patents

Cross-licensing
Infringements
Licenses
Ownership
Patent Pools
R&D / Tech
Transfer
Royalty Payment

ICT

Mobile Apps
Outsourcing
Systems Integration
Software Development
Software Licensing
Telecommunications

Settlement rates



WIPO arbitration and mediation for FinTech

- Collaboration with FinTech stakeholders in several jurisdictions
- Information on WIPO ADR for FinTech
 - www.wipo.int/amc/en/center/specific-sectors/ict/fintech

WIPO ADR Rules (2020)

- IP and technology specific elements
 - e.g., confidentiality, technical evidence, interim relief
- Applicable to all commercial disputes
- Flexibility
 - Pre-structure entire proceeding
 - For most part can be modified by arrangement between mediator or arbitrator and parties
- For domestic and international disputes
 - Accommodating different legal/procedural traditions

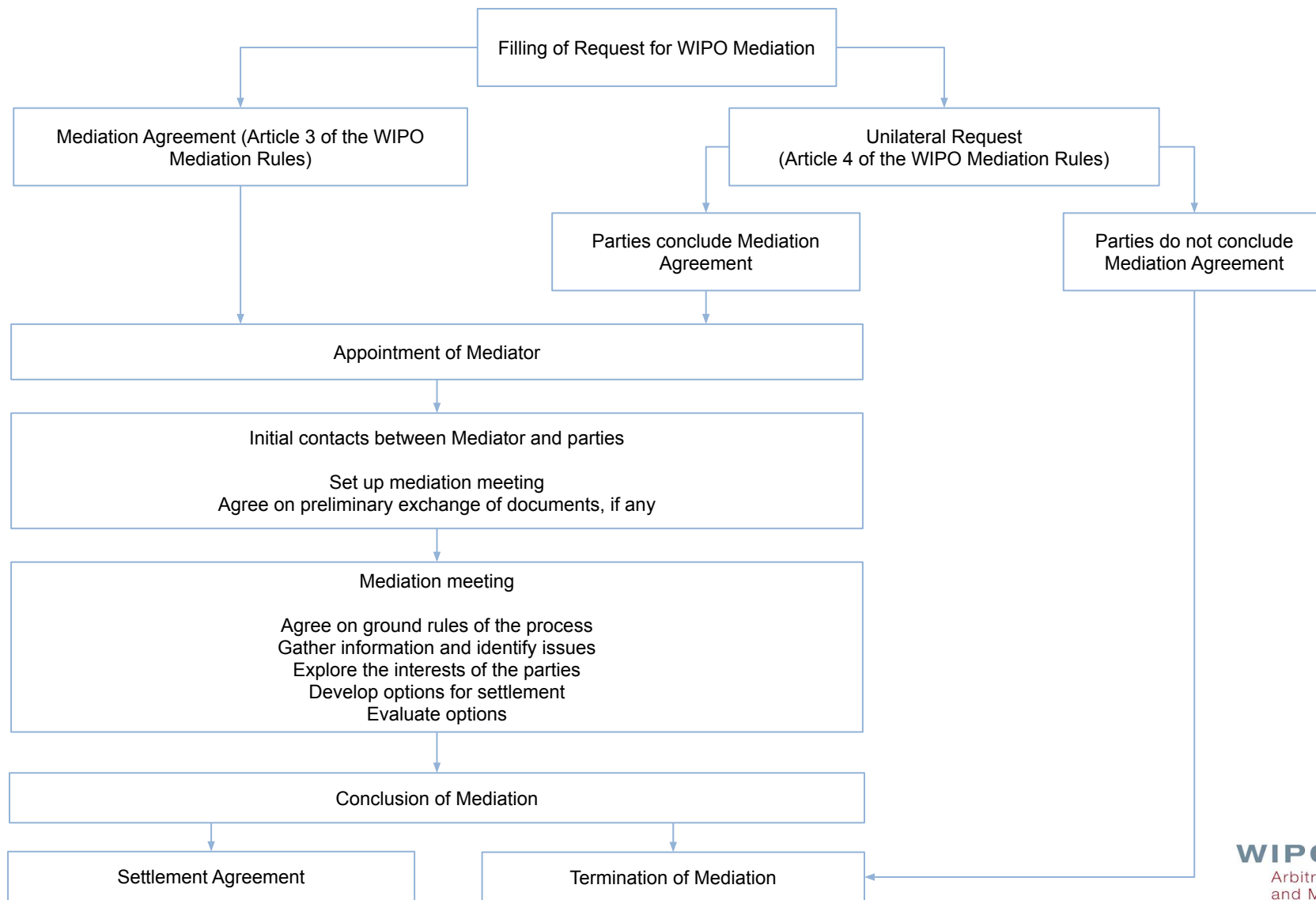
**WIPO Mediation,
Arbitration,
Expedited Arbitration
and Expert
Determination Rules
and Clauses**

Alternative Dispute Resolution

Mediation of FinTech disputes

- For contractual and non-contractual disputes
- Voluntary
- Confidential
- Engage FinTech savvy mediator (facilitator)
- Flexible process
- Preserve business relationships
- Mediation agreements may be enforceable under the Singapore Convention (to enter into effect September 20, 2020)

Principal steps in a WIPO Mediation

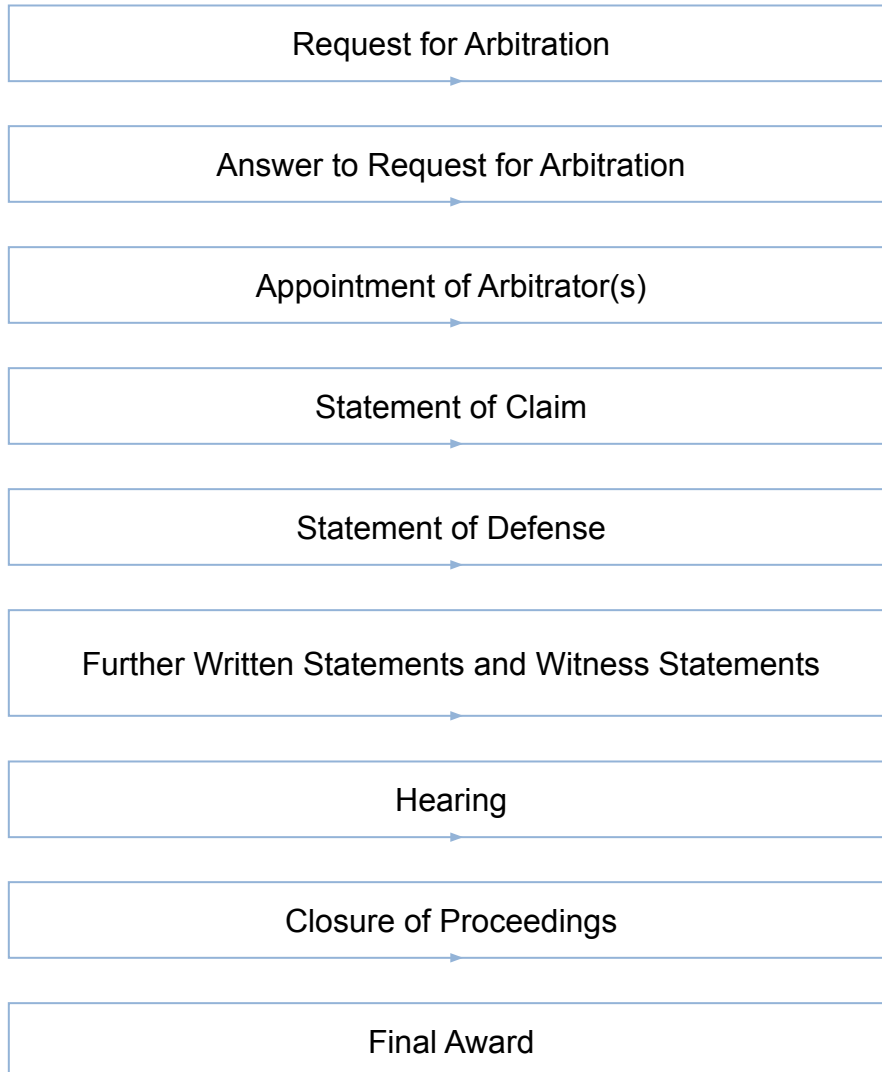


Arbitration of FinTech disputes

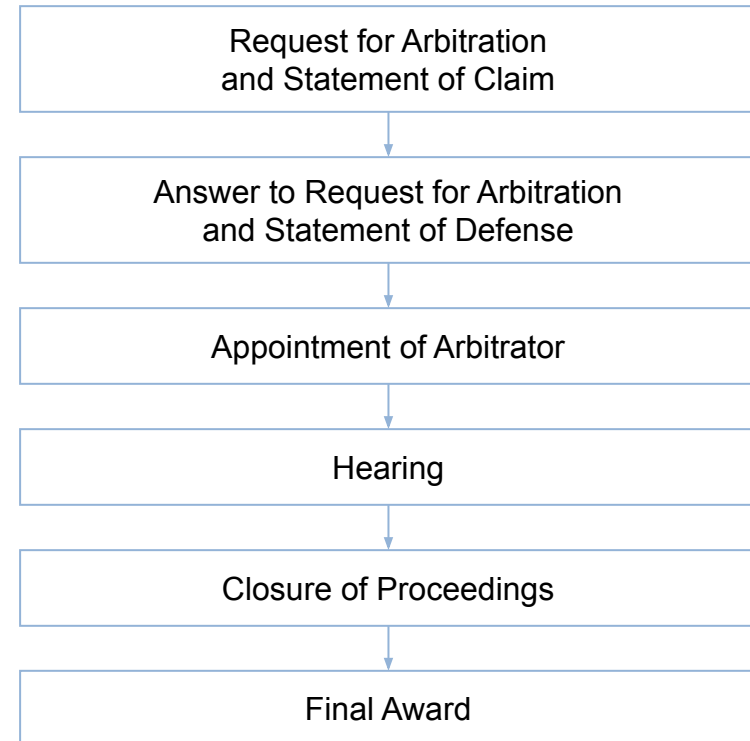
- For contractual and non-contractual disputes
- Voluntary
- Confidential
- Engage FinTech savvy arbitrator(s) (decision maker(s))
- Technical evidence (e.g., preservation of trade secrets and confidential information)
- Final and binding (no appeal)
- Awards enforceable under the New York Convention

Principal steps in a WIPO Arbitration

WIPO Arbitration



WIPO Expedited Arbitration



One exchange of pleadings
 Shorter time limits
 Sole arbitrator
 Shorter hearings
 Fixed fees

Why consider WIPO ADR for FinTech disputes?

- Cost and time of court litigation
 - Short product and market cycles in FinTech
- International FinTech transactions
 - ADR offers cross-border solutions
 - Consolidate disputes in one procedure
- Technical and specialized nature of FinTech
 - Expertise of WIPO mediators and arbitrators
- Confidential nature of FinTech disputes
- Collaborative nature of FinTech development
 - ADR can preserve commercial relations

WIPO Center's case experience in FinTech

- WIPO Mediation of patent and software dispute
 - EU and US Licensee v. German Licensor
 - Whether the German company infringed the patents and software licensed under an agreement for the manufacturing of smart personal identification cards and related software
- WIPO Arbitration of software dispute
 - US AISP v. Asian PSP (financial institution)
 - Dispute to breach of service agreement exclusivity by PSP with the US AISP

Some dispute resolution developments in FinTech

- WIPO ADR for Blockchain
 - First instance juror committee
 - WIPO Expedited Arbitration for contractual disputes (and appeals)
 - De-centralized apps – Open Source
- European case regarding online platforms assisting users create Bitcoin loans between them
 - Contract provisions contain automatic arbitration

Some dispute resolution developments in FinTech

- Codes of Best Practices for Dispute Management System (DMS) in Open Banking between ASPSPs and TPPs
 - Internal DMS followed by mediation or arbitration
- Blockchain Arbitration Forum: WIPO Arbitration and WIPO Expedited Arbitration Clauses, option to request hearings via video conference
<http://blockchainarbitrationforum.org/dispute-resolution/arbitration-clauses/>

WIPO ADR model clauses

Recommended WIPO Contract Clauses and Submission Agreements

Referral to WIPO dispute resolution procedures is consensual. To facilitate party agreement, the WIPO Center provides recommended contract clauses (for the submission of future disputes under a particular contract) and submission agreements (for existing disputes, including those referred by courts).

Recommended WIPO Contract Clauses and Submission Agreements:

- Mediation
- Arbitration
- Expedited Arbitration
- Expert Determination
- Mediation followed, in the absence of a settlement, by [expedited] arbitration
- Mediation followed, in the absence of a settlement, by expert determination
- Mediation followed, in the absence of a settlement, by court litigation
- Expert determination, binding unless followed by [expedited] arbitration

The recommended WIPO contract clauses and submission agreements are also available in Chinese, French, German, Greek, Japanese, Korean, Portuguese and Spanish.

To assist parties in the drafting of clauses and submission agreements, the WIPO Center makes available the [WIPO Clause Generator](#).

WIPO ADR Options

If you need further assistance when drafting your clause, you can contact us by email at arbiter.mail@wipo.int or by phone at +41 22 338 8247.

[WIPO Clause Generator](#)

[Drafting Efficient Dispute Resolution Clauses](#)

www.wipo.int/amc/en/clauses

Clause example for your FinTech contract: mediation followed by expedited arbitration

Any dispute, controversy or claim arising under, out of or relating to this contract and any subsequent amendments of this contract, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, **shall be submitted to mediation in accordance with the WIPO Mediation Rules**. The place of mediation shall be **[specify place]**. The language to be used in the mediation shall be **[specify language]**.

If, and to the extent that, **any such dispute**, controversy or claim **has not been settled pursuant to the mediation within [60][90] days of the commencement of the mediation**, it shall, **upon the filing of a Request for Arbitration by either party, be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules**. Alternatively, if, before the expiration of the said period of [60][90] days, either party fails to participate or to continue to participate in the mediation, the dispute, controversy or claim shall, upon the filing of a Request for Arbitration by the other party, be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules. The place of arbitration shall be **[specify place]**. The language to be used in the arbitral proceedings shall be **[specify language]**. The dispute, controversy or claim referred to arbitration shall be decided in accordance with **[specify jurisdiction]** law.

Some pointers on mediation and arbitration clauses

- Combine options
 - Include mediation
 - Like court cases, mediation and arbitration cases get settled
- If arbitration, consider an expedited version
- ‘Institutional’ or ‘ad hoc’?
 - Hard to agree on procedure once dispute arisen
 - Do you know suitable mediators or arbitrators?
 - Which administering institution?
- Use model clauses as basis and modify/extend only as necessary
 - Do not divide per type of right, remedy, dispute, or party case status
 - Consider expressly excluding discovery and similar mechanisms

WIPO
WORLD INTELLECTUAL PROPERTY ORGANIZATION

Home | IP Services | Alternative Dispute Resolution | WIPO Clause Generator

WIPO | ADR

WIPO Clause Generator

Step 3 – Build your clause: WIPO Mediation followed, in the absence of a settlement, by Arbitration Clause

Mediation

The parties should determine where they want the mediation to take place.

The place of mediation shall be

Core Elements

Place of Mediation

Language of the Mediation

Duration of the Mediation Proceedings

Additional Elements

Qualifications of the Mediator

Conduct of the Mediation

Arbitration

Core Elements

Number of Arbitrators

Place of Arbitration

Language of Arbitration

Substantive Law

Additional Elements

Appointment Procedure

Qualifications of the Arbitrators

ECAF

Evidence

Time Period of Delivery of the Final Award

Appeal

Any dispute, controversy or claim arising under, out of or relating to this contract and any subsequent amendments of this contract, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be submitted to mediation in accordance with the WIPO Mediation Rules.

The place of mediation shall be [specify place].

The language to be used in the mediation shall be [specify language].

If, and to the extent that, any such dispute, controversy or claim has not been settled pursuant to the mediation within [specify timeline] days of the commencement of the mediation, it shall, upon the filing of a Request for Arbitration by either party, be referred to and finally determined by arbitration in accordance with the WIPO Arbitration Rules. Alternatively, if, before the expiration of the said period of [specify timeline] days, either party fails to participate or to continue to participate in the mediation, the dispute, controversy or claim shall, upon the filing of a Request for Arbitration by the other party, be referred to and finally determined by arbitration in accordance with the WIPO Arbitration Rules.

The arbitral tribunal shall consist of [a sole arbitrator][three arbitrators].

The place of arbitration shall be [specify place].


The language to be used in the arbitral proceedings shall be [specify language].

The dispute, controversy or claim shall be decided in accordance with the law of [specify jurisdiction].

Step 4 – Download or copy the final result

Unilateral Request for WIPO Mediation

- Request for WIPO Mediation by one party in the absence of a mediation clause (Art. 4 WIPO Mediation Rules)



Request for WIPO Mediation
(Article 4 of the WIPO Mediation Rules)

Note: The requesting party shall complete sections 1 and 2(a). The other party shall complete section 2(b).

1. Parties

Please provide the following contact information:

Requesting Party	Other Party
Name:	Name:
Country of domicile:	Country of domicile:
Tel:	Tel:
E-mail:	E-mail:
Address:	Address:
Represented by:	Represented by:
Tel:	Tel:
E-mail:	E-mail:
Address:	Address:

2. Dispute

Please provide a brief description of the dispute:

a) The requesting party agrees to submit the above-described dispute to mediation in accordance with the WIPO Mediation Rules.

Please sign this form and submit it to arbitrator.mail@wipo.int and to the other party.

Place and Date: _____

Signature: _____

b) The other party agrees to submit the above-described dispute to mediation in accordance with the WIPO Mediation Rules.

Please sign this form and submit it to arbitrator.mail@wipo.int and to the requesting party.

Place and Date: _____

Signature: _____

WIPO Mediation Pledge for IP and Technology Disputes

The World Intellectual Property Organization (WIPO) through its Arbitration and Mediation Center contributes to awareness of alternative dispute resolution (ADR) options for resolving IP and technology disputes.

Without binding parties, the WIPO Mediation Pledge for IP and Technology Disputes seeks to encourage the use of mediation to reduce the impact of disputes in innovation and creative processes.

As a signatory of this Pledge, we recognize that mediation may offer a more collaborative, time- and cost-efficient manner of resolving commercial disputes related to IP and technology than court litigation.

In light of this, to the extent we consider this appropriate:

Companies, Universities, R&D Centers, and Individuals

- We are prepared to explore the inclusion of mediation clauses in contracts and agreements we are party to;
- In the absence of such clauses, we are prepared to explore the resolution of existing disputes through mediation.

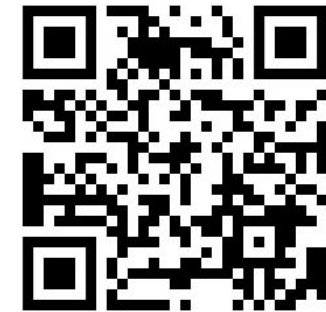
Lawyers and Law Firms

So that clients can make informed choices:

- We are prepared to explore with clients the inclusion of mediation clauses in contracts and agreements they are party to;
- In the absence of such clauses, we are prepared to explore with clients the resolution of existing disputes through mediation.



**400+ signatories
from
90+ countries**



Join the Pledge!

www.wipo.int/amc/en/mediation/pledge.html

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Center

Contact us

- Queries: arbiter.mail@wipo.int
- Further information: www.wipo.int/amc
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 - Singapore, Singapore
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 - Rio de Janeiro, Brazil
 - Beijing, China
 - Tokyo, Japan
 - Abuja, Nigeria
 - Moscow, Russia
 - Singapore, Singapore

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