



GPC SERIES 2016-17 CORE QUESTIONS FOR COMMERCIAL DISPUTES TO BE USED AT ALL GPC EVENTS

NOTE: Please consider all questions as relating to commercial disputes. For the purposes of the GPC Series, “commercial disputes” includes disputes between business entities, business partners, or business entities and public sector entities, whether arising from contract, tort or any other grounds. They include disputes between individual entrepreneurs, small and medium-size enterprises, multinationals and state-owned enterprises. It is not the intention of this GPC Series to cover family, consumer, criminal or other types of disputes. These types of disputes may be considered in other future projects. Please remember to answer all questions based on the same stakeholder group that you have identified yourself as belonging to.

Section	Profile	Practice Question	Session 1	Session 2	Session 3	Session 4
			<p>ACCESS TO JUSTICE & DISPUTE RESOLUTION SYSTEMS: WHAT DO PARTIES WANT, NEED AND EXPECT?</p> <p>Please answer the following questions based on your selected stakeholder group and personal experience.</p>	<p>HOW IS THE MARKET CURRENTLY ADDRESSING PARTIES' WANTS, NEEDS AND EXPECTATIONS?</p> <p>Please answer the following questions based on your selected stakeholder group and personal experience.</p>	<p>HOW CAN DISPUTE RESOLUTION BE IMPROVED? (OVERCOMING OBSTACLES AND CHALLENGES)</p> <p>Please answer the following questions based on your selected stakeholder group and personal experience.</p>	<p>PROMOTING BETTER ACCESS TO JUSTICE: WHAT ACTION ITEMS SHOULD BE CONSIDERED AND BY WHOM?</p> <p>Please answer the following questions based on your selected stakeholder group and personal experience.</p>
Question 1	<p>Question P1 <i>Which category of stakeholder will you vote as today?</i> (If your regular practice involves several of these options, please select the one in which you have primarily been involved).</p> <ol style="list-style-type: none"> 1. Party (user of dispute resolution services): <ol style="list-style-type: none"> a. A person involved in commercial disputes b. An in-house counsel involved in commercial disputes 2. Advisor: <ol style="list-style-type: none"> a. An external lawyer b. A consultant to a party 3. Adjudicative Provider: <ol style="list-style-type: none"> a. A judge, b. An arbitrator, c. An organisation providing adjudicative services 4. Non-Adjudicative Provider: <ol style="list-style-type: none"> a. A conciliator, b. A mediator or c. An organisation providing non-adjudicative services 5. Influencer: <ol style="list-style-type: none"> a. A researcher, b. An educator, c. An employee/representative of government, d. Any other person not in categories 1-4 above (please specify) 	<p>Practice Question 1 <i>What is your preferred breakfast?</i></p> <p>(Please rank your 3 preferred answers in order of priority: '1'= most preferred, '2'= 2nd most preferred, '3' = 3rd most preferred)</p> <ol style="list-style-type: none"> 1. Cereal 2. Eggs 3. Porridge/Congee 4. Rice with meat and vegetables 5. Toast 6. Other: (please specify) 	<p>Question 1.1 <i>What outcomes do parties most often want before starting a process in commercial dispute resolution?</i></p> <p>(Please rank your 3 preferred answers in order of priority: '1'= most wanted, '2'= 2nd most wanted, '3' = 3rd most wanted.)</p> <ol style="list-style-type: none"> 1. Action-focused (e.g. prevent action or require an action from one of the parties) 2. Financial (e.g. damages, compensation, etc.) 3. Judicial (e.g. setting a legal precedent) 4. Psychological (e.g., vindication, closure, being heard, procedural fairness) 5. Relationship-focused (e.g. terminate or preserve a relationship) 6. Other: (please specify) 	<p>Question 2.1 <i>What outcomes do providers tend to prioritise in commercial dispute resolution?</i></p> <p>(Please rank your 3 preferred answers in order of priority: '1'= highest priority, '2'= 2nd highest priority, '3' = 3rd highest priority)</p> <ol style="list-style-type: none"> 1. Action-focused (e.g. prevent action or require an action from one of the parties) 2. Financial (e.g. damages, compensation, etc.) 3. Judicial (e.g. setting a legal precedent) 4. Psychological (e.g., vindication, closure, being heard, procedural fairness) 5. Relationship-focused (e.g. terminate or preserve a relationship) 6. Other: (please specify) 	<p>Question 3.1 <i>What are the main obstacles or challenges parties face when seeking to resolve commercial disputes?</i></p> <p>(Please rank your 3 preferred answers in order of priority: '1'= greatest obstacle, '2'= 2nd greatest obstacle, '3' = 3rd greatest obstacle)</p> <ol style="list-style-type: none"> 1. Emotional, social, or cultural constraints 2. Financial or time constraints 3. Inadequate range of options available to resolve disputes 4. Insufficient knowledge of options available to resolve disputes 5. Uncertainty (e.g. unpredictable behaviour or lack of confidence in providers) 6. Other: (please specify) 	<p>Question 4.1 <i>Who has the greatest responsibility for taking action to promote better access to justice in commercial dispute resolution?</i></p> <p>(Please rank your 3 preferred answers in order of priority: '1'= most responsible, '2'= 2nd most responsible, '3' = 3rd most responsible etc.)</p> <ol style="list-style-type: none"> 1. Adjudicative Providers: judges and arbitrators or their organisations 2. External lawyers 3. Governments/ministries of justice 4. In-house lawyers 5. Non-Adjudicative Providers: mediators and conciliators or their organisations 6. Parties (non-legal personnel) 7. Other: (please specify)

<p>Question 2</p>	<p>Question P2 <i>Approximately how many times have you been involved in any dispute resolution proceedings (i.e., litigation, arbitration, conciliation and/or mediation)?</i></p> <ol style="list-style-type: none"> 1. 0-10 2. 11-50 3. 51-200 4. 201-500 5. > 501 	<p>Practice Question 2 <i>What is your preferred breakfast? (Word cloud question)</i></p> <p>Word Cloud: What words would you use to describe what you prefer to eat for breakfast? Please write one word per line.</p>	<p>Question 1.2 <i>When <u>parties involved in commercial disputes</u> are choosing the type(s) of dispute resolution process(es) to use, which of the following has the most influence?</i></p> <p>(Please rank your 3 preferred answers in order of priority: '1'= most influential, '2'= 2nd most influential, '3' = 3rd most influential)</p> <ol style="list-style-type: none"> 1. Advice (e.g. from lawyer or other advisor) 2. Confidentiality expectations 3. Efficiency (e.g. time/cost to achieve outcome) 4. Industry practices 5. Predictability of outcome 6. Relationships (e.g. preventing conflict escalation) 7. Other: (please specify) 	<p>Question 2.2 <i>The <u>outcome</u> of a commercial dispute is <u>determined primarily</u> by which of the following?</i></p> <p>(Please rank your 3 preferred answers in order of priority: '1'= most often, '2'= 2nd most often, '3' = 3rd most often)</p> <ol style="list-style-type: none"> 1. <u>Consensus</u>: the parties' subjective interests 2. <u>Culture</u>: based cultural and/or religious norms 3. <u>Equity</u>: general principles of fairness 4. <u>Rule of Law</u>: findings of fact and law or other norms 5. <u>Status</u>: deferring to authority/hierarchies 6. <u>Other</u>: (please specify) 	<p>Question 3.2 <i>To improve the <u>future</u> of commercial dispute resolution, which of the following <u>processes and tools</u> should be prioritised?</i></p> <p>(Please rank your 3 preferred answers in order of priority: 1= highest priority, 2= 2nd highest priority, 3 = 3rd highest priority)</p> <ol style="list-style-type: none"> 1. Adjudicative dispute resolution methods (litigation or arbitration) 2. Combining adjudicative and non-adjudicative processes (e.g. arbitration/litigation with mediation/conciliation) 3. Encouragement by courts, tribunals or other providers to reduce time and/or costs 4. Non-adjudicative dispute resolution methods (mediation or conciliation) 5. Pre-dispute or pre-escalation processes to prevent disputes¹ 6. Technology to enable faster, cheaper procedures, (e.g. Online Dispute Resolution, electronic administration, remote hearings) 7. Other: (please specify) 	<p>Question 4.2 <i>What is the most effective way to improve <u>parties'</u> understanding of their options for resolving commercial disputes?</i></p> <p>(Please rank your 3 preferred answers in order of priority: '1'= most effective, '2'= 2nd most effective, '3' = 3rd most effective etc. Please use '0' to indicate options that are not obstacles)</p> <ol style="list-style-type: none"> 1. Creating collaborative dispute resolution centres or hubs to promote awareness 2. Education in business and/or law schools and the broader business community about adjudicative and non-adjudicative dispute resolution options 3. Procedural requirements for all legal personnel and parties to declare they have <u>considered</u> non-adjudicative dispute resolution options before initiating arbitration or litigation 4. Providing access to experts to guide parties in selecting the most appropriate dispute resolution process(es) 5. Requiring parties to <u>attempt</u> non-adjudicative options (i.e., mediation or conciliation) before initiating litigation or arbitration 6. Other: (please specify)
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¹ GPC January 2016 global feedback

<p>Question 3</p>	<p>Question P3 <i>In what kinds of dispute resolution processes have you had the most experience? (Please select one only)</i></p> <ol style="list-style-type: none"> 1. Litigation 2. Arbitration 3. Conciliation 4. Mediation 5. Adjudicative processes: Litigation & Arbitration 6. Non-adjudicative processes: Conciliation & Mediation 7. Approximately equal amounts of adjudicative and non-adjudicative processes 8. No typical process 9. Other (please specify) 		<p>Question 1.3 <i>When <u>lawyers</u> (whether in-house or external) make recommendations to <u>parties</u> about procedural options for resolving commercial disputes, which of the following has the most influence?</i></p> <p>(Please rank your 3 preferred answers in order of priority: '1'= most influential, '2'= 2nd most influential, '3' = 3rd most influential)</p> <ol style="list-style-type: none"> 1. Familiarity with a particular type of dispute resolution process 2. Industry practices 3. Impact on costs/fees the lawyer can charge 4. The party's relationships with the other party(ies) or stakeholders 5. The type of outcome requested by the party (e.g. money, an injunction, etc.) 6. Other: (please specify) 	<p>Question 2.3 <i>In commercial disputes, what is achieved by participating in a <u>non-adjudicative process</u> (mediation or conciliation) (whether voluntary or involuntary - e.g. court ordered)?</i></p> <p>(Please rank your 3 preferred answers in order of priority: '1'= main achievement, '2'= 2nd achievement, '3' = 3rd achievement).</p> <ol style="list-style-type: none"> 1. Better knowledge of the strengths/weaknesses of the case or likelihood of settlement 2. Compliance (e.g. avoiding cost sanctions, meeting contractual obligations) 3. Improving or restoring relationships 4. Reduced costs and expenses 5. Retaining control over the outcome 6. Tactical/strategic advantage (e.g. delay) 7. Other: (please specify) 	<p>Question 3.3 <i>Which of the following areas would most <u>improve</u> commercial dispute resolution?</i></p> <p>(Please rank your 3 preferred answers in order of priority: 1= highest priority, 2= 2nd highest priority, 3 = 3rd highest priority)</p> <ol style="list-style-type: none"> 1. Accreditation or certification systems for dispute resolution providers² 2. Cost sanctions against parties for failing to try non-adjudicative processes (e.g. mediation or conciliation) before litigation/arbitration. 3. Legislation or conventions that promote recognition and enforcement of settlements, including those reached in mediation 4. Quality control and complaint mechanisms applicable to dispute resolution providers³ 5. Use of protocols promoting non-adjudicative processes before adjudicative processes (e.g. opt-out)⁴ 6. Rules governing third party funding⁵ 7. Other: (please specify) 	<p>Question 4.3 <i>To promote better access to justice for those involved in commercial disputes, where should <u>policy makers, governments and administrators</u> focus their attention?</i></p> <p>(Please rank your 3 preferred answers in order of priority: 1= best focus, 2= 2nd best focus, 3 = 3rd best focus)</p> <ol style="list-style-type: none"> 1. Legislation or conventions promoting recognition and enforcement of settlements including those reached in mediation 2. Making non-adjudicative processes (mediation or conciliation) compulsory and/or a process parties can "opt-out" of before adjudicative processes can be initiated⁶ 3. Pre-dispute or early stage case evaluation or assessment systems using third party advisors who will not be involved in subsequent proceedings⁷ 4. Reducing pressures on the courts to make them more efficient and accessible 5. Use of protocols promoting non-adjudicative processes (mediation or conciliation) before adjudicative processes 6. Other: (please specify)
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² Drawn from expert group (GPC COG)

³ GPC November 2015 survey

⁴ Drawn from expert group (GPC COG)

Drawn from expert group (GPC COG). See also http://www.burfordcapital.com/burford-submits-response-to-us-senators/#_ftn8

⁶ Drawn from expert group (GPC COG)

⁷ GPC January 2016 global feedback

<p>Question 4</p>	<p>Question P4 Within which jurisdiction do you usually work as this stakeholder type? (If your work involves several of these jurisdictions, please select the one in which you are primarily involved, or select the one you wish your votes to be counted towards today).</p> <ol style="list-style-type: none"> 1. Local (domestic): the jurisdiction associated with this current conference 2. Other country (domestic): Drop down menu for all conference locations (by country) 3. International (please specify region/s e.g. Asia, Europe, or multi-region e.g. Americas and Europe) 4. Other (please specify) 		<p>Question 1.4 What role do parties involved in commercial disputes want <u>providers</u> to take in the dispute resolution process?</p> <p>(Please rank your 3 preferred answers in order of priority: '1'= most wanted role, '2'= 2nd most wanted role, '3' = 3rd most wanted role)</p> <ol style="list-style-type: none"> 1. The parties decide how the process is conducted and how the dispute is resolved (the providers just assist) 2. The providers decide on the process and the parties decide how the dispute is resolved 3. The parties decide on the process and the providers decide how the dispute is resolved 4. The providers decide on the process and how the dispute is resolved 5. The parties initially do not have a preference but seek guidance from the providers regarding optimal ways of resolving their dispute 6. Other: (please specify) 	<p>Question 2.4 Who is primarily responsible for ensuring parties involved in commercial disputes understand their process options, and the possible consequences of each process before deciding which one to use?</p> <p>(Please rank your 3 preferred answers in order of priority: '1'= most responsible, '2'= 2nd most responsible, '3' = 3rd most responsible)</p> <ol style="list-style-type: none"> 1. Adjudicative Providers: judges and arbitrators or their organisations 2. External lawyers 3. Governments/ministries of justice 4. In-house lawyers 5. Non-Adjudicative Providers: mediators and conciliators or their organisations 6. Parties (non-legal personnel) 7. Other: (please specify) 	<p>Question 3.4 Which stakeholders are likely to be most resistant to change in commercial dispute resolution practice?</p> <p>(Please rank your 3 preferred answers in order of priority: 1= most resistant, 2= 2nd most resistant, 3 = 3rd most resistant)</p> <ol style="list-style-type: none"> 1. Adjudicative Providers: judges and arbitrators or their organisations 2. External lawyers 3. Governments/ministries of justice 4. In-house lawyers 5. Non-Adjudicative Providers: mediators and conciliators or their organisations 6. Parties (non-legal personnel) 7. Other: (please specify) 	<p>Question 4.4 Which of the following will have the most significant impact on future policy-making in commercial dispute resolution?</p> <p>(Please rank your 3 preferred answers in order of priority: '1'= most significant, '2'= 2nd most significant, '3' = 3rd most significant)</p> <ol style="list-style-type: none"> 1. Demand for certainty and enforceability of outcomes 2. Demand for increased efficiency of dispute resolution processes, including through technology. 3. Demand for increased rights of appeal/oversight of adjudicative providers 4. Demand for increased transparency 5. Demand for increased uniformity and standardisation 6. Demand for processes that allow parties to represent themselves, without lawyers 7. Other: (please specify)
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<p>Question 5</p>	<p>Question P5 How many people work in your organisation?</p> <ol style="list-style-type: none"> 1. 1-10 people 2. 11-50 people 3. 51-150 people 4. 151-500 people 5. 501-1,000 people 6. 1,001-5,000 people 7. 5,001-10,000 people 8. >10,000 people 		<p>Question 1.5 What role do parties involved in commercial disputes typically want <u>lawyers</u> (i.e., in-house or external counsel) to take in the dispute resolution process?</p> <p>(Please rank your 3 preferred answers in order of priority: '1'= most wanted role, '2'= 2nd most wanted role, '3' = 3rd most wanted role)</p> <ol style="list-style-type: none"> 1. Acting as coaches, providing advice but not attending 2. Acting as advisors and accompanying parties but not interacting with other parties or providers 3. Participating in the process by offering expert opinions, not acting on behalf of parties 4. Working collaboratively with parties to navigate the process. May request actions on behalf of a party 5. Speaking for parties and/or advocating on a party's behalf 6. Parties do not normally want lawyers to be involved 7. Other (please specify) 	<p>Question 2.5 Currently, the most <u>effective commercial dispute resolution processes</u> usually involve which of the following?</p> <p>(Please rank your 3 preferred answers in order of priority: '1'= most effective, '2'= 2nd most effective, '3' = 3rd most effective.)</p> <ol style="list-style-type: none"> 1. Adjudicative dispute resolution methods (litigation or arbitration) 2. Combining adjudicative and non-adjudicative processes (e.g. arbitration/litigation with mediation/conciliation) 3. Encouragement by courts, tribunals or other providers to reduce time and/or costs 4. Non-adjudicative dispute resolution methods (mediation or conciliation) 5. Pre-dispute or pre-escalation processes to prevent disputes 6. Technology to enable faster, cheaper procedures, (e.g. Online Dispute Resolution, electronic administration, remote hearings) 7. Other (please specify) 	<p>Question 3.5 Which <u>stakeholders</u> have the potential to be most influential in bringing about <u>change</u> in commercial dispute resolution practice?</p> <p>(Please rank your 3 preferred answers in order of priority: 1= most influential, 2= 2nd most influential, 3 = 3rd most influential)</p> <ol style="list-style-type: none"> 1. Adjudicative Providers: judges and arbitrators or their organisations 2. External lawyers 3. Governments/ministries of justice 4. In-house lawyers 5. Non-Adjudicative Providers: mediators and conciliators or their organisations 6. Parties (non-legal personnel) 7. Other: (please specify) 	<p>Question 4.5 What <u>innovations/trends</u> are going to have the most significant influence on the <u>future</u> of commercial dispute resolution?</p> <p>(Please rank your 3 preferred answers in order of priority: '1'= most significant, '2'= 2nd most significant, '3' = 3rd most significant)</p> <ol style="list-style-type: none"> 1. Changes in corporate attitudes to conflict prevention 2. Enhanced understanding regarding how people behave and resolve conflict (e.g. from brain and social sciences) 3. Greater emphasis on collaborative instead of adversarial processes for resolving disputes 4. Greater emphasis on personal wellbeing and stress reduction of parties 5. Harmonisation of international laws and standards for dispute resolution systems 6. Other (please specify)
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<p>Focus question for discussion</p>	<p>Question P6 What is your gender?</p> <ol style="list-style-type: none"> 1. Male 2. Female 3. Other 		<p>Discussion 1.6: Party needs and expectations in commercial dispute resolution</p> <p>Please use this session to discuss with your neighbours the ways in which parties' wants, needs and expectations change as they become more familiar with commercial dispute resolution processes.</p> <p>Based on these discussions please write at least one (1) point in each box below:</p> <ol style="list-style-type: none"> 1. Describe what inexperienced parties typically want or expect from commercial dispute resolution. 2. Describe what parties typically want or expect when they become more experienced with commercial dispute resolution. 3. Describe what highly experienced/sophisticated parties typically want or expect from commercial dispute resolution. <p>Word Cloud: What words would you use to describe a sophisticated commercial party? Please write one word per line.</p>	<p>Discussion 2.6: Party expectations and current practice in commercial dispute resolution</p> <p>Please use this session to discuss with your neighbours the relationship between parties' expectations and current practices in commercial dispute resolution processes.</p> <p>Based on these discussions please write at least one (1) point in each box below:</p> <ol style="list-style-type: none"> 1. Describe the current commercial dispute resolution practices that fall below party expectations. 2. Describe the current commercial dispute resolution practices that meet party expectations. 3. Describe the current commercial dispute resolution practices that exceed party expectations. <p>Word Cloud: What words would you use to describe what can be done to exceed parties' expectations in commercial dispute resolution? Please write one word per line.</p>	<p>Discussion 3.6: Obstacles and challenges in commercial dispute resolution</p> <p>Please use this session to discuss with your neighbours the types of obstacles or challenges faced in commercial disputes and the extent of change required to address them.</p> <p>Based on these discussions please write at least one (1) point in each box below:</p> <ol style="list-style-type: none"> 1. Describe the things that don't need to change in commercial dispute resolution 2. Describe the obstacles and challenges in commercial dispute resolution 3. that can be overcome easily or with minor changes Describe the obstacles and challenges in commercial dispute resolution that are difficult to change or would require major changes 4. Describe the obstacles and challenges in commercial dispute resolution that appear impossible to change <p>Word Cloud: What words would you use to describe the most common impediments that keep parties from resolving their commercial disputes? Please write one word per line.</p>	<p>Discussion 4.6: Promoting better access to justice in commercial dispute resolution: what action items should be considered and by whom?</p> <p>Please use this session to discuss with your neighbours a vision for the future of commercial dispute resolution, including innovations and reforms that you think are likely to promote and/or improve access to justice</p> <p>Based on these discussions write at least one (1) point in each box below:</p> <ol style="list-style-type: none"> 1. Describe the short term measures for achieving this vision for commercial dispute resolution (1-5 years) 2. Describe the medium term measures for achieving this vision for commercial dispute resolution (6-10 years) 3. Describe the long term measures for achieving this vision for commercial dispute resolution (>10 years) <p>Word Cloud: What words would you use to describe the changes to commercial dispute resolution which should be focused on in the future? Please write one word per line.</p>
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