

IBA GUIDELINES ON PARTY REPRESENTATION PUBLISHED

Introduction

On 25th May 2013, the International Bar Association (“IBA”) published its new *Guidelines on Party Representation in International Arbitration* (“*The Guidelines*”). The IBA has been instrumental in issuing guidance for the International Arbitration process (see, for example – the *IBA Rules on the Taking of Evidence in International Arbitration* (2010), the *IBA Guidelines on Conflicts of Interest in International Arbitration* (2004), and the *IBA Guidelines on Drafting Arbitration Clauses* (2010)).

Background

International arbitral proceedings often involve practitioners, parties and arbitrators from different jurisdictional backgrounds, used to applying different practices and procedures which can cause delay and additional expense. The *Guidelines* have been prepared and published by the Task Force on Counsel Conduct within the Committee of the IBA’s Legal Practice Division.

Summary Overview

The new Guidelines are, according to the IBA:

“...inspired by the principle that party representatives should act with integrity and honesty and should not engage in activities designed to produce unnecessary delay or expense, including tactics aimed at obstructing the arbitration proceedings.”

Importantly, they are not intended to displace otherwise applicable mandatory laws and/or professional norms. As such, they will take effect only by the agreement of parties (Guideline 3), though provision is also made for Arbitral Tribunals to apply them on a discretionary basis after consultation (Guideline 1).

The 26 individual guidelines cover the following substantive areas:

- Party Representation
- Communications with Arbitrators
- Submissions to the Arbitral Tribunal
- Information Exchange and Disclosure
- Witnesses and Experts
- Remedies for Misconduct

Among the more noteworthy guidelines:

- Guideline 5 (Party Representation) stipulates that once an arbitral tribunal has been constituted, a person should not represent a party where a relationship exists between that person and an arbitrator that is liable to create a conflict of interest;
- Guideline 7 (Communication with Arbitrators) lays down a general prohibition on ex parte communication between counsel and arbitrators;
- Guideline 9 (Submissions to the Arbitral Tribunal) prohibits a representative knowingly from making untruthful submissions;
- Guideline 16 (Information Exchange and Disclosure) prohibits a representative from suppressing or concealing material documents; and
- Guidelines 24 and 25 (Witnesses and Experts) lay down the ways in which a witness may be prepared for his/her testimony, and the extent of remuneration they might be given for expenses/loss of time they incur.

Where the *Guidelines* have been adopted but not complied with, Guidelines 26 and 27 (Remedies for Misconduct) allow tribunals to impose sanctions upon representatives and their clients, including admonishing party representatives, drawing adverse evidential inferences, and varying the levels of cost awards.

Concluding Observations

It remains to be seen whether the *Guidelines* will come in time to offer an increasingly important point of reference for parties and arbitrators. It is also a question whether or not, and if so, to what extent, the *Guidelines* will be cited by Courts in the exercise of their supervisory jurisdiction.

The *Guidelines* are available at

http://www.ibanet.org/Publications/publication_IBA_guides_and_free_materials.aspx

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