THE IBA ARBITRATION GUIDELINES AND RULES SUBCOMMITTEE

REPORT ON THE RECEPTION OF THE IBA ARBITRATION SOFT LAW PRODUCTS

16 September 2016

INDEX

I. INTRODUCTION

1. In June 2015, the IBA Arbitration Committee organised the IBA Arbitration Guidelines and Rules Subcommittee (the "**Subcommittee**") to conduct a worldwide survey on the use of the IBA arbitration practice guidelines and rules. The survey concerns the use of three practice guidelines and rules: (i) the IBA Rules on the Taking of Evidence in International Arbitration, 2010 (the "**Rules on Evidence**"), (ii) the IBA Guidelines on Conflicts of Interest in International Arbitration, 2014 (the "**Conflicts of Interest Guidelines**"),[1] and (iii) the IBA Guidelines on Party Representation in International Arbitration, 2013 (the "**Party Representation Guidelines**") (collectively, the "**IBA Rules and Guidelines**").

2. The Subcommittee is comprised of 120 members, including a Chair, two Secretaries, 16 Steering Group Members (from 11 different countries), and 77 Reporters covering 57 jurisdictions around the world.

3. The survey was conducted in five phases: Preparation, Development, Data Collection, Data Analysis, and Report. The Subcommittee sets out its analysis and recommendations in this Report on the Reception of the IBA Arbitration Soft Law Products (the "**Report**").

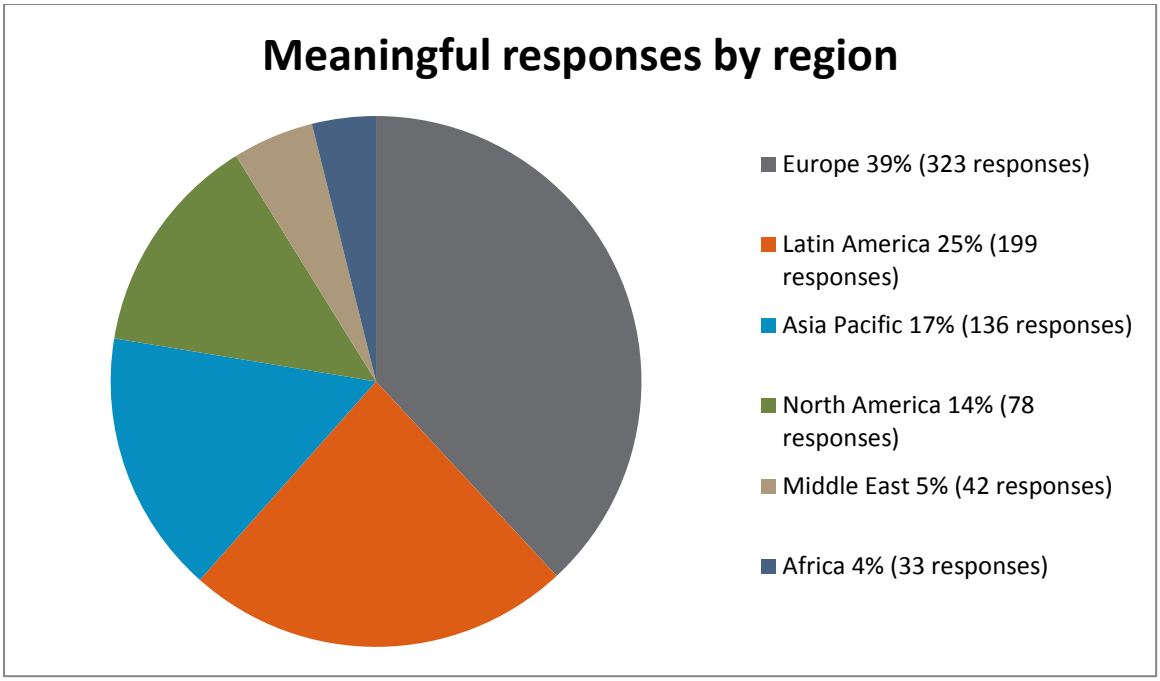
4. This Report first outlines the reception of each of the IBA Rules and Guidelines in arbitral practice, case law, and legal publications. Subsequently, it provides a comprehensive analysis of the survey results based on which it identifies a series of recommendations for the future.

5. To inform its work, the Subcommittee developed and distributed a survey questionnaire intended to solicit opinion and any other related information from those who use the IBA Rules and Guidelines in their practice. This survey questionnaire consisted of thirty-five questions. The Subcommittee received 845 Meaningful Responses, which in the Subcommittee's view represents statistically a reasonable collection of data from which to draw observations.

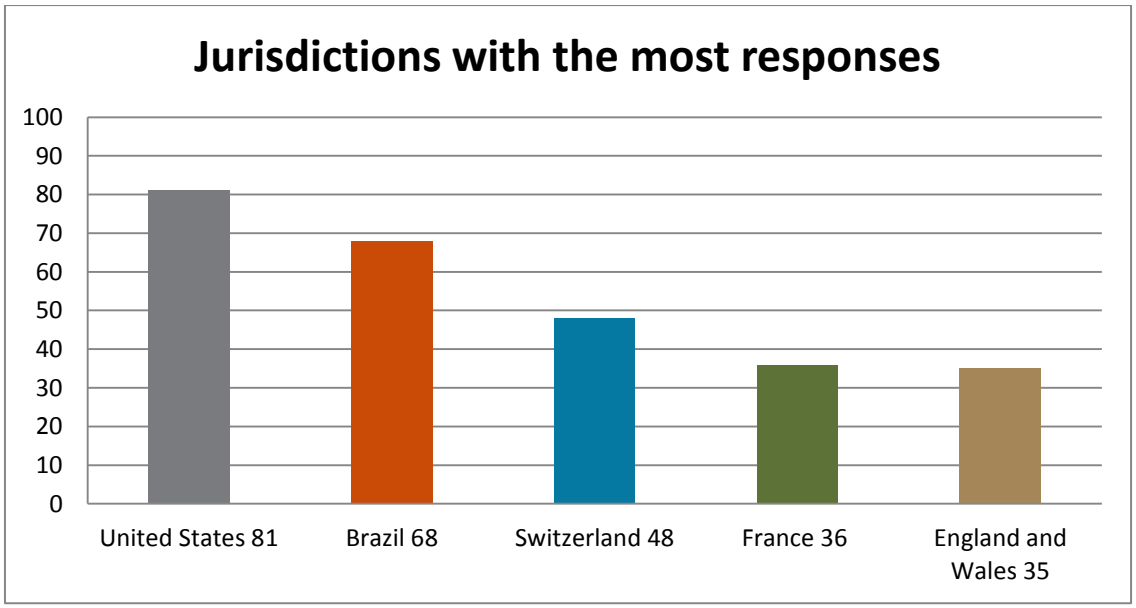
6. The responses were received from jurisdictions across the globe, and were submitted by Respondents with a variety of experiences in international arbitration, including counsel, arbitrators, case administrators, arbitration users and members of academia.

7. The Subcommittee received Meaningful Responses from Europe (323), Latin America (199), Asia-Pacific (136), North America (78), the Middle East (42), and Africa (33). The following chart illustrates the breakdown of Meaningful Responses received by region:

[1] As the survey targeted situations occurring in the last five years, some of the responses related to the Conflicts of Interest Guidelines may refer to their previous iteration issued in 2004.



8. The median number of responses received per jurisdiction was 10, while the average number of responses received per jurisdiction was 18. The reason for these low numbers is that for 14 jurisdictions only one Meaningful Response was received.[2] The highest number of responses was received from the United States, Brazil, Switzerland, France and England and Wales. This is depicted in the graph below.



9. In addition to the responses received by the Subcommittee to the survey questionnaire, the Subcommittee also solicited–and ultimately received–55 country

[2] Angola, Bosnia, Cyprus, Ethiopia, Greece, Guatemala, Honduras, Jordan, Kuwait, Nepal, Norway, Paraguay, Qatar and Scotland.

reports, each of which analyses the survey responses collected in a country, as well as the use of the IBA Rules and Guidelines as reflected in the arbitral jurisprudence and doctrine (a "**Country Report**"). The Subcommittee received Country Reports from Europe (23), Latin America (13), Asia-Pacific (9), North America (2), the Middle East (8) and Africa (2). All Country Reports are available on the website of the Arbitration Subcommittee.[3]

10. The responses reflect objective data gathered as a result of the survey. However, the following factors are worth considering:

- The size of the dataset for some jurisdictions has a significant influence on the regional and global statistics. For instance, in Latin America, three jurisdictions provided 78% of the data sample for the region;[4] another 15% of the data sample was provided by 4 jurisdictions,[5] while the remaining 7% was provided by 6 jurisdictions.[6] This means that when we say, for example, that in Latin America the Conflicts of Interest Guidelines have been referenced in 56% of the cases in which issues of conflicts arose, this statistic largely reflects the situation of the three jurisdictions that provided most of the data, but may not reflect the reality in the rest of the region. In addition, all of the cases cited in the survey were given the same weight in the regional and global statistics. The end result may therefore reflect the reality in the jurisdictions with the most cases rather than the reality across the region.

- Most survey questions asked the Respondents to identify the number of arbitrations they knew which fit certain requirements. It is unavoidable that Respondents therefore will have reported some of the same arbitrations in response to several of the questions. When adding up the total number of arbitrations reported, some arbitrations will invariably be counted more than once. Therefore, absolute numbers of cases should not receive much weight.

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3 When the country reports were written, Reporters addressed inconsistencies in the responses differently. However, in drafting the final Report, the Steering Group found it necessary to harmonise these approaches. For example, there are times when the Steering Group has decided to exclude inconsistent responses, even when these were not excluded in the country report(s). Therefore, the conclusions with respect to the numbers in the Country Reports on one hand and this Report on the other may vary.

4 In Latin America, 602 out of a total of 776 reported arbitrations in which issues of conflicts arose at the time of the constitution of the arbitral tribunal occurred in Brazil (258 cases), Peru (233 cases), and Mexico (111 cases).

5 In Latin America, 114 out of a total of 776 reported arbitrations in which issues of conflicts arose at the time of the constitution of the arbitral tribunal occurred in Argentina (40 cases), Ecuador (40 cases), and Chile (34 cases).

6 In Latin America, 60 cases out of a total of 776 reported arbitrations in which issues of conflicts arose at the time of the constitution of the arbitral tribunal occurred in Venezuela (15 cases), El Salvador (14 cases), Costa Rica (10 cases), the Dominican Republic (10 cases), Honduras (6 cases), and Colombia (5 cases). There were no reported cases for Guatemala, Nicaragua or Uruguay, and we received no survey responses from Cuba or Panama.

Instead, percentages and comparative results should be given greater significance as they reflect the reality the Respondents have experienced.

11. Despite these caveats, the responses received by the Subcommittee to the survey questionnaire and the Country Reports provide a meaningful reference point for assessing globally the current status and utility of the IBA Rules and Guidelines, and help identify areas that may be potentially considered for reform in the future.

II. THE IBA RULES ON THE TAKING OF EVIDENCE IN INTERNATIONAL ARBITRATION

A. EXECUTIVE SUMMARY

12. The key findings from the survey with respect of the Rules on Evidence are as follows:

13. Nearly half (48%) of the arbitrations known to Respondents worldwide referenced the Rules on Evidence. Reference to the Rules on Evidence was above 50% in all regions but Latin America (30%) and Africa (25%). It is particularly high in some of the most common arbitral seats, such as Singapore, England and Wales, to a slightly lesser extent, Switzerland, France and the U.S. Within all regions (except North America), the frequency of use varied significantly.

14. The Rules on Evidence are most frequently referenced in commercial, rather than in investment treaty arbitrations, and there does not appear to be a difference in their use between common and civil law jurisdictions.

15. The provisions of the Rules on Evidence most often cited were Article 3 on document production (approximately 21% of all references), followed by Article 9 on the admissibility of evidence (approximately 13%).

16. In approximately 80% of those arbitrations in which reference was made to the Rules on Evidence, the arbitral tribunal consulted them on the basis that they represented non-binding guidelines. In the remaining 20% of instances, the Rules on Evidence were considered binding. Yet, even in those arbitrations in which the tribunal consulted the Rules on Evidence as guidelines only, it overwhelmingly followed them (in more than 90% of the cases).

17. There appears to be a general consensus that the use of the Rules on Evidence will grow. In those circumstances identified by Respondents where the Rules on Evidence were not referenced, Respondents cited lack of awareness of the Rules on Evidence, and/or availability of local or institutional rules on evidence which makes reference to the Rules on Evidence unnecessary.

18. The general view is that the Rules on Evidence should not be changed. Of potential changes considered, adjusting the Rules on Evidence regarding discovery so that they resemble U.S.-style rules less closely was the one most frequently suggested. Some Respondents also called for clarification of the phrases "relevance" "materiality", and "category".

B. THE RULES ON EVIDENCE IN ARBITRAL PRACTICE

1. How Often are the Rules on Evidence Referred to in Arbitral Practice?

19. The data collected shows that the Rules on Evidence have gained acceptance and been used often by the international arbitration community. Of the three IBA instruments surveyed, the Rules on Evidence is the second most commonly referred to. 813 Respondents answered the survey question seeking to confirm the frequency with which the Rules on Evidence were referenced in arbitration proceedings in their jurisdiction.[7] Those Respondents indicated that nearly half (48%) of the arbitrations known to them referenced the Rules on Evidence,[8] as illustrated in the chart below.

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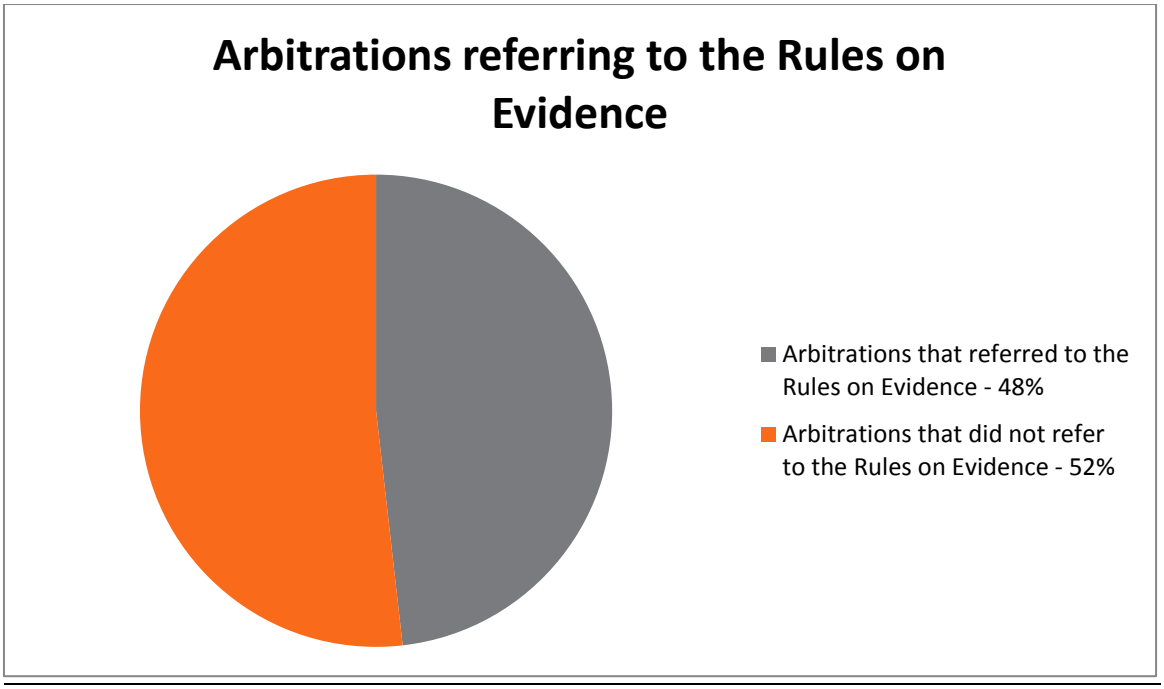
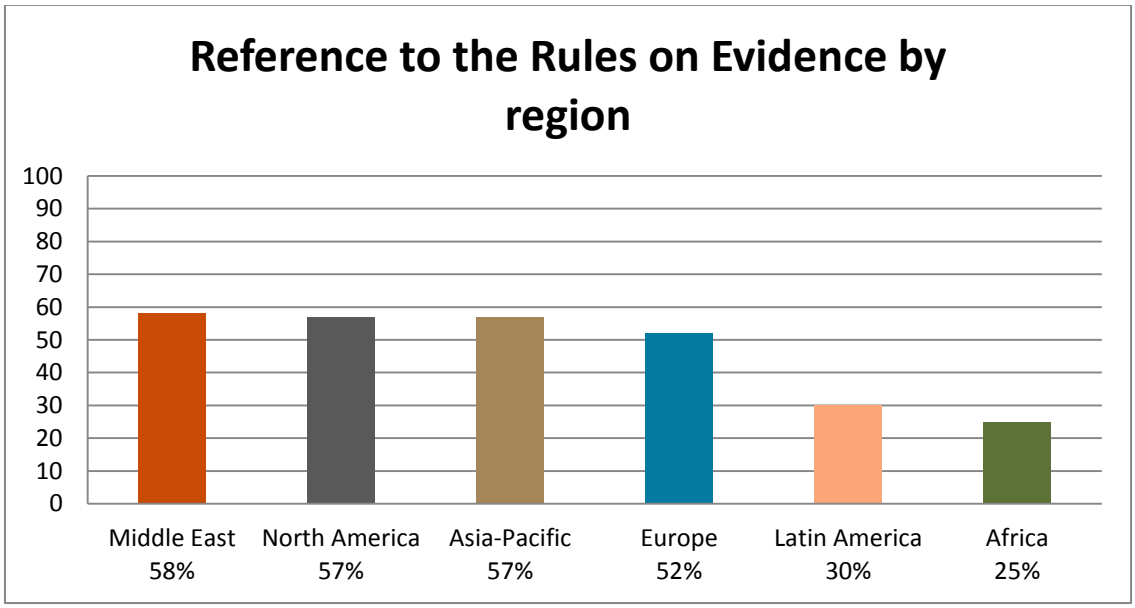
[7] Of the 813 responses to this survey question, 153 were statistically non-meaningful because they (i) included uncommonly high or inconsistent numbers, (ii) did not provide an answer to both parts (a) and (b) of the question, (iii) were expressed in percentages which could not be translated into numbers, or (iv) stated "unable to estimate."

[8] Overall, the results yielded by the survey questionnaire appear to be consistent with the information available from publicly available arbitral decisions, for example from France (see, for instance, ICC case No. 12260, Final Award, September 2005, ¶¶ 284-285, relying on the Rules on Evidence to decide on an objection relating to the admissibility of the evidence); Switzerland (see, for instance, *WADA and UCI v. Alejandro Valverde & RFEC*, CAS 2007/A/1396 & 1402, Final Award, 31 May 2010, discussing whether Articles 4.7 and 5.5 of the Rules on Evidence supported the inadmissibility of an article published by a doctor who was not party appointed and who had not produced a written statement in the arbitration); or Ecuador (see *Autoridad Portuaria de Manta v. Terminales Internacionales de Ecuador SA – En Liquidación, IIHC Limited, Hutchinson Port Holdings Limited*, Center of Arbitration and Mediation of the Chamber of Commerce of Quito, Case No. 091-13, Final Award, 30 November 2015); and from investment treaty cases against the Czech Republic (see *ECE Projektmanagement v. The Czech Republic*, UNCITRAL, PCA Case No. 2010-5, Award, 19 September 2013, ¶1.43) or Canada (see *Lone Pine Resources Inc v. Canada*, ICSID Case No. UNCT/15/2, Procedural Order No. 1, 11 March 2015; *Eli Lilly and Company v. Canada*, ICSID Case No. UNCT/14/2, Procedural Order No. 1, 26 May 2014; *Mesa Power Group, LLC v. Canada*, UNCITRAL, PCA Case No. 2012-17, Procedural Order No. 1, 21 November 2012, Procedural Order No. 4, 12 July 2013, Procedural Order No. 6, 5 March 2014; *Windstream Energy LLC v. Canada*, PCA Case No. 2013-22, Procedural Order No. 1, 16 September 2013, Procedural Order No. 2, 12 January 2014.). Most Reporters, however, noted that they were unable to unearth many references to the IBA Rules and Guidelines in local arbitral practice, presumably because most arbitral awards, decisions and procedural orders are not published, and may be subject to confidentiality and non-disclosure agreements.



(i) Regional Analysis

20. When broken down by region, the survey results show that the regions in which the Rules on Evidence are referenced least frequently are Latin America (30%) and Africa (25%). In all other regions, the Rules on Evidence were referenced in more than 50% of the arbitrations known to the Respondents: 57% in North America; 58% in the Middle East; 57% in Asia-Pacific; and 52% in Europe, as illustrated by the chart below.



21. In interpreting these regional results, two important caveats should be considered:

22. *First*, in some regions, there were few responses to this question. As a consequence, the results obtained from such regions may not be statistically significant. In

particular, Africa and the Middle East yielded respectively only 32 and 36 responses to this question.[9] By contrast, 320 responses were received from Europe to this question, 188 from Latin America, 115 from North America, and 128 from Asia-Pacific.[10]

23. *Second*, the survey results indicate that amongst countries within a particular region, the frequency with which the Rules on Evidence were referenced in arbitration proceedings appears to vary significantly (North America is an exception). While this result may be due in part to the low number of survey responses received from particular jurisdictions within those regions (e.g., only six survey responses were received from the Netherlands), it is likely that reference to the Rules on Evidence indeed varies significantly within all regions, except North America. The results from the regions will be discussed below.

i. North America

24. North America, with the highest regional average of arbitrations which referenced the Rules on Evidence (57%), is also the only region where that number is consistent amongst countries in the region. In the U.S., the Rules on Evidence were referenced in 55% of the arbitrations known to the Respondents. The percentage was slighter higher (58%)–but overall consistent–in Canada. It should be noted that although geographically speaking Mexico is in North America, we have considered North America as comprised of the U.S. and Canada, while Mexico has been grouped with Latin American jurisdictions.

ii. Middle East

25. In the Middle East, while the Rules on Evidence were referenced in 58% of the arbitrations known to the Respondents, that percentage varies significantly amongst countries.

26. In particular, the Rules on Evidence were referenced in approximately 66% of the arbitrations known to the Respondents in the UAE and Lebanon, but only around 16% in Israel.[11]

27. Respondents in the region referred to a general lack of awareness of the existence of the Rules on Evidence and their content within the region.

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9 In Africa, out of the 32 responses to this question, only 28 were statistically meaningful. In the Middle East, 33 out of the 36 responses were statistically meaningful.

10 In Europe, out of the 320 responses, only 263 were statistically meaningful; 143 out of 187 in Latin-America; 93 out of 115 in North-America; and 102 out of 128 in Asia-Pacific.

11 Note that 13 responses were received for the UAE, out of which one was statistically non-meaningful; 6 responses were received for Lebanon; and 5 for Israel.

iii. Asia-Pacific

28. The same pattern holds true in Asia-Pacific: the regional average of 57% of arbitrations known to the Respondents referring to the Rules on Evidence masks great differences amongst the countries in this region.

29. In Australia, the Rules on Evidence were referenced in over 90% of the arbitrations known to the Respondents, and in 78% of such arbitrations in Singapore. However, the percentage drops to 55% in Japan, followed by 43% in China, and 33% in India.

30. The Country Reports for certain jurisdictions such as South Korea indicate that the lower percentage of arbitrations referencing the Rules on Evidence might be explained by the fact that arbitrations in those jurisdictions closely follow the domestic court rules of procedure.

iv. Europe

31. In Europe, while the Rules on Evidence were referenced in 52% of the arbitrations known to the survey Respondents; that percentage also varies significantly amongst countries.

32. In particular, the survey results indicate that the Rules on Evidence were referenced in more than 70% of the arbitrations known to Respondents in England and Belgium,[12] and in more than 50% of such arbitrations in France, Switzerland, and Germany. The frequency in which they are referenced drops significantly, however, amongst other European countries: approximately 45% in Romania, Spain, and Italy; below 30% in the Netherlands[13] and Finland; and below 15% in Slovenia and Portugal.[14]

v. Latin America

33. The responses received from Latin America show a similar pattern. While the regional average of references to the Rules on Evidence is 30%, that number varies greatly amongst countries within the region.

34. The Rules on Evidence were referenced in more than 70% of the arbitrations known to the Respondents in Argentina (a percentage particularly high in light of the fact that several local arbitral institutions such as the *Tribunal de Arbitraje de la Bolsa de*

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12 Note, however, that only 7 responses were received for Belgium, out of which one was statistically non-meaningful.

13 Note, however, that only 6 responses were received for the Netherlands.

14 In some other European jurisdictions, the survey indicates that the Rules on Evidence were referenced in all the arbitrations known to the Respondents (Scotland, Slovakia, and Norway). In others (Russia), the survey results indicate that the Rules on Evidence were not referenced in any of the arbitrations known to the Respondents. The data for these countries is, however, based on a limited number of responses in each case (a single response from both Scotland and Norway, 4 responses from Russia–out of which only one was statistically meaningful, 3 responses for Slovenia, and 4 responses from Slovakia). The data is therefore not statistically significant.

Comercio de Buenos Aires, the *Centro de Mediación y Arbitraje Comercial* (CEMARC), and the *Cámara Arbitral de la Bolsa de Cereales de Buenos Aires*, have their own rules on evidence); approximately 55% of such arbitrations in Peru; around 43% in Mexico; and 34% in Costa Rica. The frequency of instances in which the Rules on Evidence were referenced is, however, significantly lower in Ecuador (13%), Brazil (11%), and Venezuela (8%).[15]

35. Many Respondents from Latin America indicated that the limited references to the Rules on Evidence in certain jurisdictions may be attributable to a general lack of awareness of the existence of the Rules on Evidence and their content, and pointed to the need to advertise and distribute the Rules on Evidence more broadly. Interestingly, a number of Respondents seemed to be unaware that the Rules on Evidence are currently available in various languages, and requested the translation of the Rules on Evidence into Spanish.

vi. Africa

36. The survey results for Africa, with a regional average of 25% of the arbitrations known to the Respondents which referenced the Rules on Evidence (but few answers to this question, as noted above), also show great disparities amongst countries within the region.

37. The Rules on Evidence were referenced in approximately 35% of the arbitrations known to the Respondents in Nigeria, but in only 14% of such arbitrations in Ghana, and 5% in Mozambique.

38. As in Latin America and the Middle East, Respondents highlighted a general lack of awareness of the existence of the Rules on Evidence and their content within their regions, and pointed out that the use of the Rules on Evidence will most likely grow in the coming years.

(ii) The Use of the Rules on Evidence in Common and Civil Law Jurisdictions

39. In terms of the frequency with which the Rules on Evidence are referenced in common and civil law jurisdictions, the survey results interestingly do not indicate any significant difference between the two. By way of example, a relatively high number of English arbitrations referred to the Rules on Evidence (72%), while a lower number of U.S. arbitrations (56%) did so. The frequency of such references in France, however, appears to lie somewhere between the two (62%).

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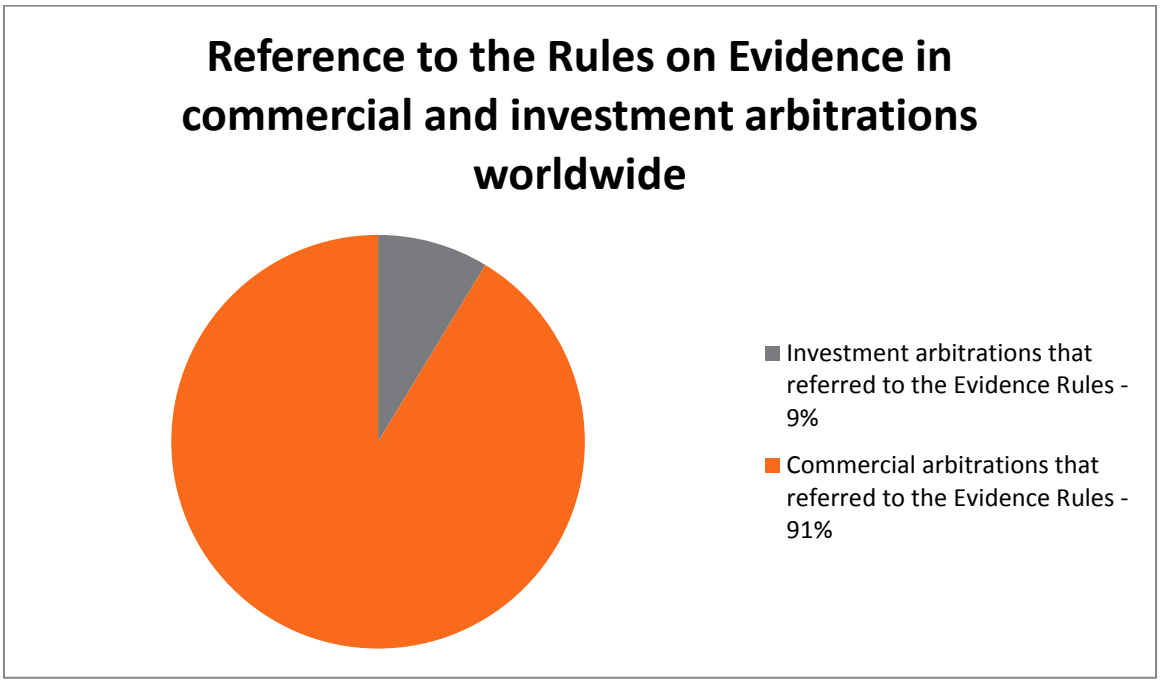
[15] The limited number of responses from Uruguay, Paraguay, Dominican Republic, Chile and Colombia does not offer conclusive results for those jurisdictions (2 responses from Uruguay, 1 from Paraguay, 3 from the Dominican Republic, 12 from Chile out of which only 7 were statistically meaningful, and 5 from Colombia out of which 1 was statistically meaningful). No responses were received for Bolivia, Nicaragua, and Panama.

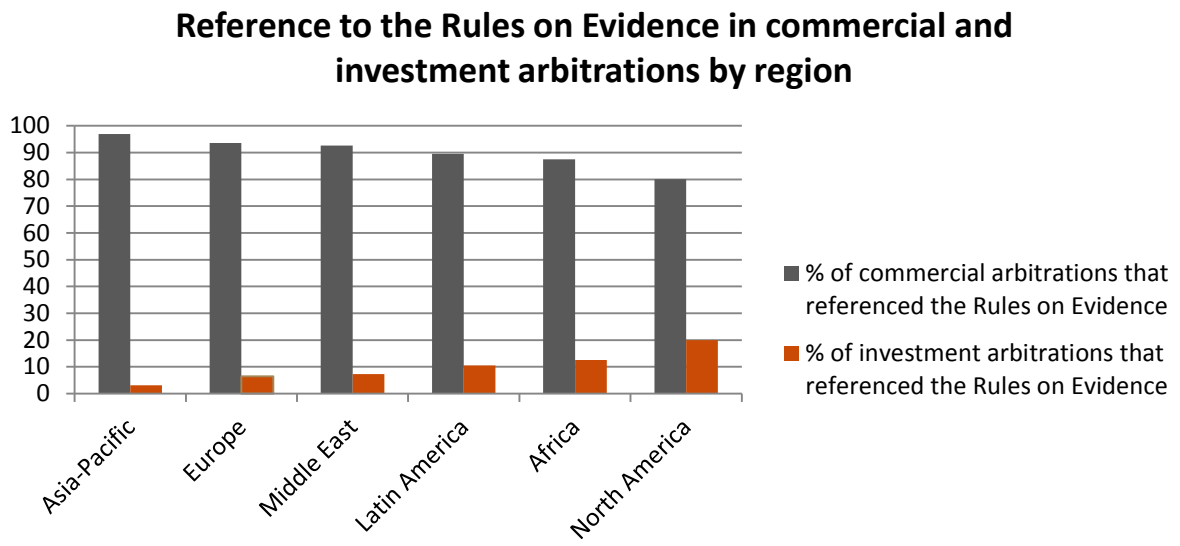
(iii) The Use of the Rules on Evidence in Investment and Commercial Arbitrations

40. The survey results indicate that of those arbitrations known to the Respondents in which the Rules on Evidence were referenced, 91% were commercial arbitrations, while only 9% were investment arbitrations, as illustrated in the chart below.



41. It does not necessarily follow from this finding, however, that the Rules on Evidence are referenced more frequently in commercial arbitrations. The disparity illustrated above may simply reflect the fact that most practitioners, particularly in certain jurisdictions, participate in a far greater number of commercial arbitrations than investment arbitrations, and thus the number of investment treaty arbitrations from which data was obtained is lower.

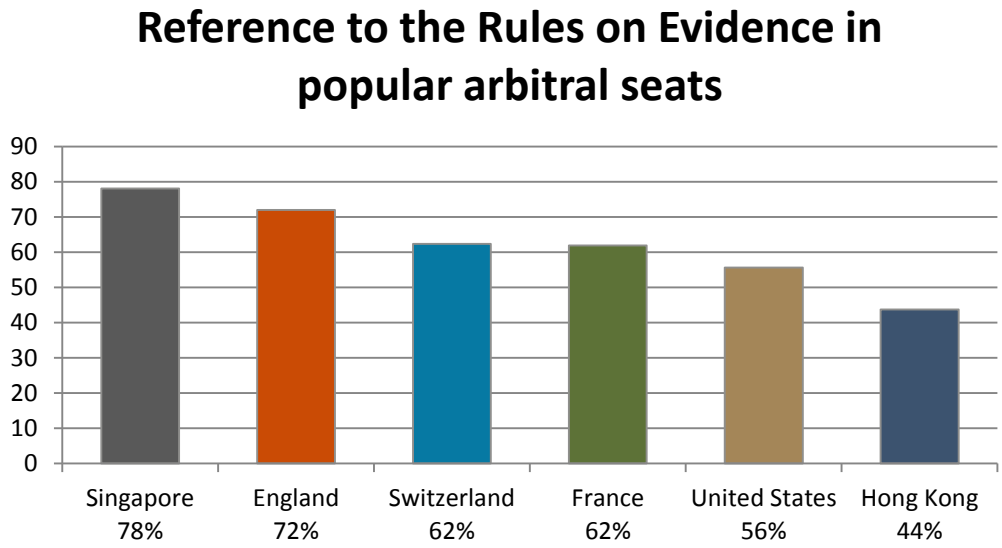
42. The frequency with which the Rules on Evidence are referenced in investment treaty arbitrations also varies amongst regions, ranging between 20% (North America) and 3% (Asia-Pacific). Perhaps surprisingly, only 7% of the references to the Rules on Evidence were made in investment arbitrations known to European Respondents. These figures are illustrated in the chart below.



2. The Use of the Rules on Evidence in Key Jurisdictions

43. Perhaps unsurprisingly, references to the Rules on Evidence are more common in those jurisdictions that serve as the most popular seats for international arbitrations, where familiarity with the Rules on Evidence may be presumed.

44. In Singapore and England, more than 70% of the arbitrations known to Respondents referenced the Rules on Evidence. In other jurisdictions such as Switzerland (62%), France (62%), and the U.S. (55%), the percentages were lower, yet still well above the global average of 48%. In Hong Kong SAR, Respondents reported a slightly lower percentage (44%), as illustrated in the chart below.

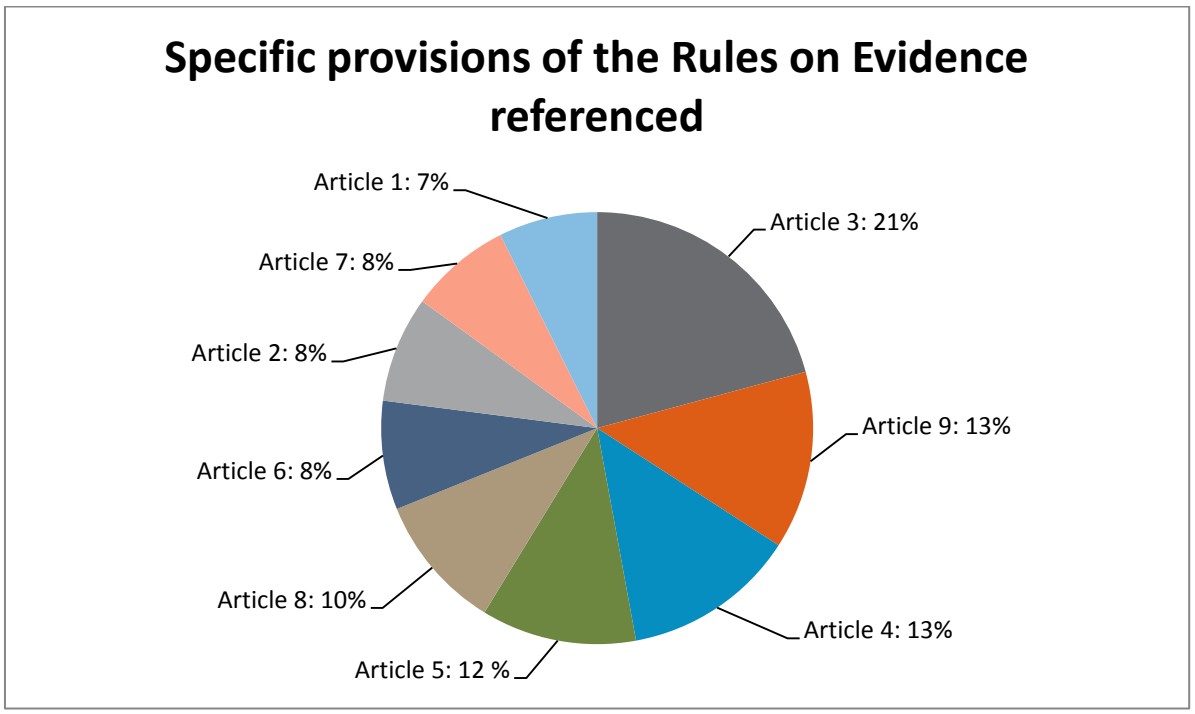


45. Interestingly, the Netherlands, a popular seat for international arbitration, defies this trend, with only 29% of the arbitrations known to Respondents referencing the Rules on Evidence. As noted above, however, relatively few (6) survey responses were

received from the Netherlands, and no Country Report was produced. As a result, the extent to which the abovementioned figure is reliable is uncertain.

3. What are the Specific Provisions Referenced?

46. The results of the survey show that Article 3 on document production is by far the most frequently referred-to provision of the Rules on Evidence to (approximately 21% of the references to the Rules on Evidence were references to Article 3), while Article 9 on the admissibility and assessment of evidence is the second most frequently referenced provision (approximately 13%). The frequency of references to these and other provisions is illustrated below.



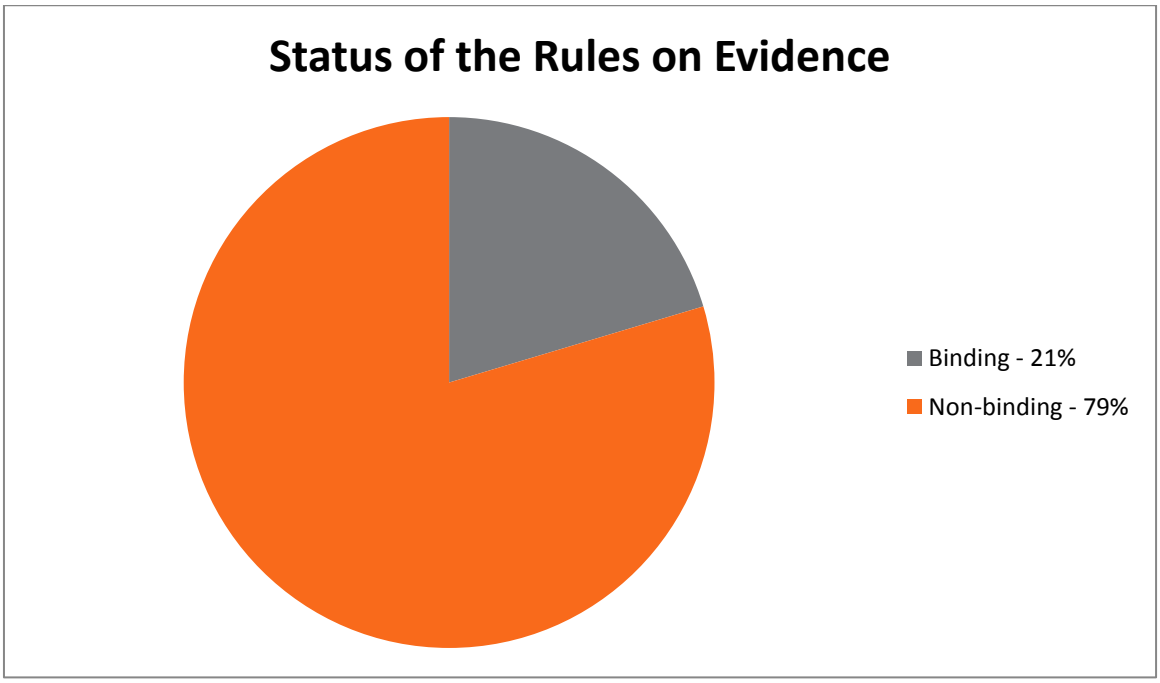
47. The differences in the frequency with which certain provisions are referenced can likely be explained in the following way. The more limited references to Articles 2 and 6 of the Rules on Evidence (at around 8% each)–which deal respectively with consultation on evidentiary issues and tribunal-appointed experts–are likely due to the fact that some arbitral institutions, such as the ICC,[16] already offer procedural rules addressing conferences or hearings where the parties and the tribunal may discuss the manner in which the taking of evidence will be dealt with. In terms of the limited use of Article 1–on the scope of application of the Rules on Evidence–which is the provision least referred to (7%), this may be explained by the fact that the Rules on Evidence are more frequently used as guidelines than as binding rules (see Section 4 below.

[16] See the ICC Rules of Arbitration, Article 25 – "Establishing the Facts of the Case."

48. This distribution in the frequency with which particular provisions of the Rules on Evidence are referenced is consistent amongst regions, with the exception of Africa. In Africa, Article 9 (on the admissibility and assessment of evidence) is the provision most frequently referred to (17%), followed by Articles 2 (on consultation of evidentiary issues), 3 (on document production), and 4 (on witnesses of fact)–the latter three referred to with equal frequency by African Respondents (approximately 14%). However, only 5 responses to this particular question were received from African Respondents, and it is therefore unclear how much reliance can be placed on this distribution.

4. What is the Status of the Rules on Evidence in the Arbitrations in Which they were Referenced?

49. 718 Respondents answered this question.[17] The survey results indicate that the Rules on Evidence were consulted as non-binding guidelines by arbitral tribunals in approximately 80% of the arbitrations in which they were referenced, while they were treated as binding by arbitral tribunals in only approximately 20% of those arbitrations.[18]



50. A regional analysis shows that the percentage of cases in which the tribunal considered itself bound by the Rules on Evidence is particularly high in Latin America (35%), and between approximately 15% and 20% in other regions, as illustrated by the table below:

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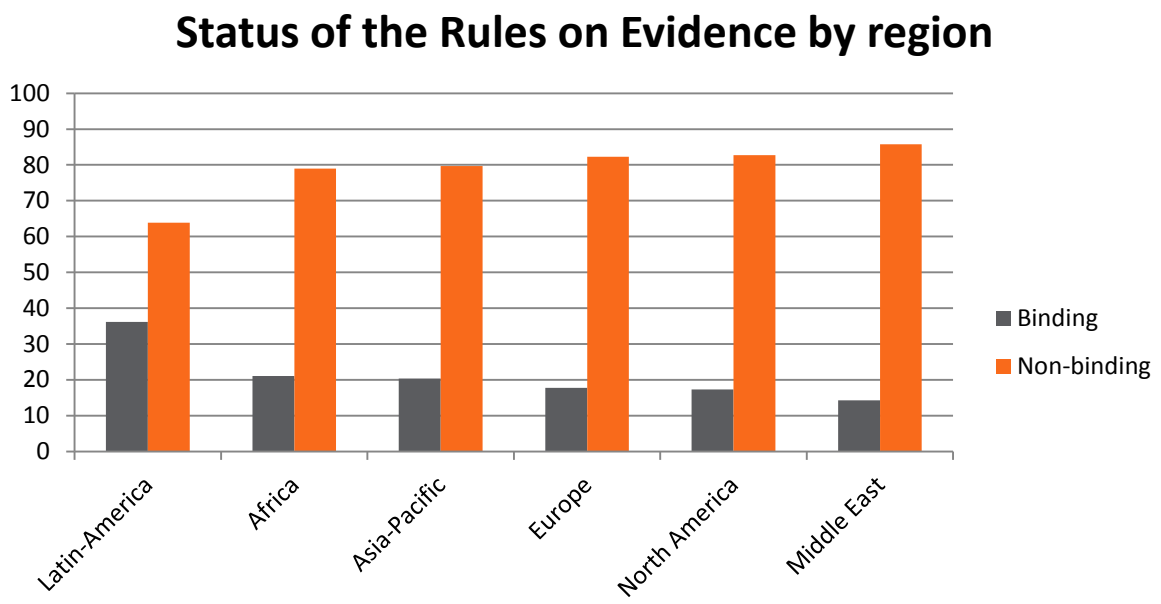
17 Of the 718 responses to this survey question, 67 were statistically non-meaningful.

18 The Rules on Evidence were referred to as guidelines in 4,273 arbitrations out of a total of 5,373 of reported arbitrations referencing the Rules on Evidence. They were considered binding in 1,100 reported arbitrations.



51. This regional breakdown is subject to the same caveats, however, as noted above in relation to the frequency of reference to the Rules on Evidence in general amongst regions (Section II.B.1(i)).

52. In particular, in response to the question as to the way in which arbitral tribunals consulted the Rules on Evidence (guidelines or binding), the Subcommittee received few responses from Respondents in Africa (22 responses)[19] and from the Middle East (34 responses).[20]

53. In addition, the survey results indicated that amongst countries within a particular region, the frequency with which the Rules on Evidence were consulted as guidelines or, alternatively, as binding rules, varied significantly (North America and Africa (for the latter, there is simply no significant data) are an exception).

54. In Latin America, the Rules on Evidence were considered binding in more than 45% of cases in Argentina, Colombia, Chile and Peru, and in approximately 30% of cases in Brazil, Dominican Republic, and Ecuador. However, the percentage drops significantly to around 15% in Costa Rica, El Salvador, and Mexico.[21]

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19 Out of the 22 responses from African Respondents, only 18 are statistically meaningful.

20 Out of the 34 responses from Respondents in the Middle East, only 30 are statistically meaningful.

21 In some other Latin American jurisdictions, the survey indicates that the Rules on Evidence were considered as binding in all of the arbitrations known to the Respondents (Guatemala). In others (Honduras and Venezuela), the survey indicates that the Rules on Evidence were not considered as binding in any of the arbitrations known to the Respondents. The data for these countries is, however, based on a limited number of responses in each case (a single response from both Guatemala and Honduras, and 5 responses from Venezuela–one of which is statistically non-meaningful), and therefore, not statistically significant.

55. In Europe, the numbers also greatly vary by country. While the tribunal considered itself bound by the Rules on Evidence in 60% or more of cases known to the Respondents in Poland and Slovenia, the percentage drops to 27% in France and around 20% in Belgium and the Netherlands. The percentage is even lower in England, Spain, Austria, Germany and Switzerland with around 10% each, and in Romania with 3%.[22]

56. The same is true for Asia-Pacific and the Middle East. In Asia-Pacific, the percentage of instances where the Rules on Evidence were considered binding range from 59% in Thailand to 12% in Japan. The Rules on Evidence were considered binding in 50% of cases in India, 31% of cases in China, and 18% of cases in Singapore. In the Middle East, the Rules on Evidence were considered binding in 38% of cases in Israel, in approximately 20% of cases in Egypt and Kuwait, and in 16% of cases in the UAE. The percentage then drops to 6% for Lebanon and 5% for Turkey.[23]

57. As noted above, these differences may be due in part to the low number of survey responses received from particular jurisdictions, but it is likely that the manner in which the Rules on Evidence are consulted does indeed vary significantly within these regions.

58. Interestingly, this difference in treatment of the Rules on Evidence does not appear to be attributable to the popularity of the jurisdiction as an arbitral seat or to the legal system (civil or common law) of the jurisdiction in which the arbitration takes place. By way of example, in both Singapore and the U.S., the Rules on Evidence were treated as binding in approximately 18% of instances in which they were referenced, compared to 15% in England. In civil law countries, the Rules on Evidence were treated as binding in approximately 27% of the arbitrations seated in France in which they were referenced, yet only 8% in Switzerland, while responses from other prominent arbitral seats (such as China, with 31%) show higher numbers. These figures are illustrated in the chart below.

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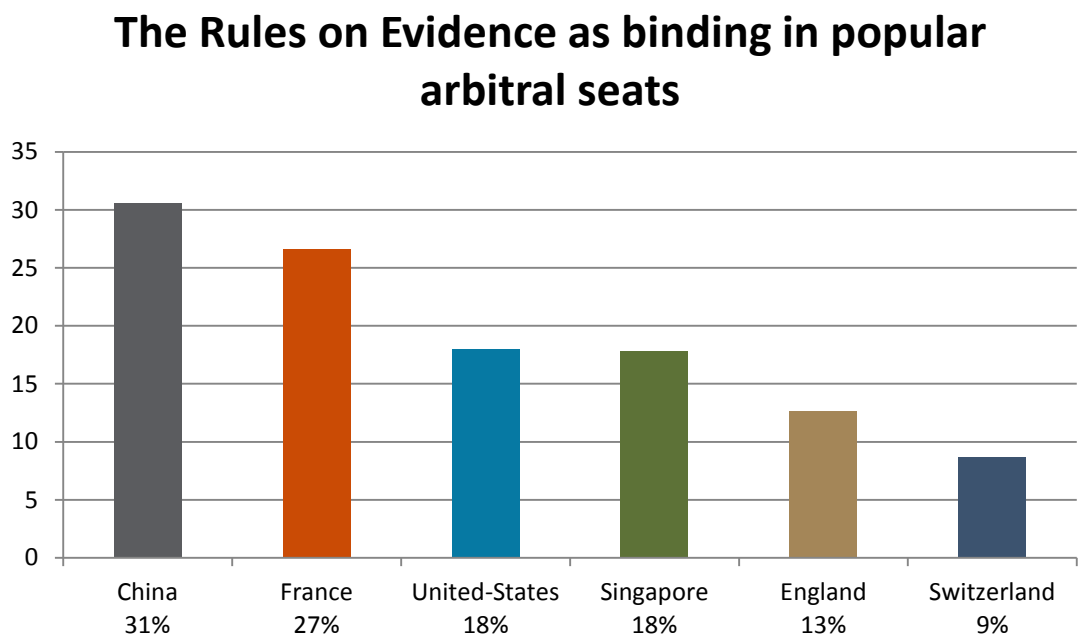
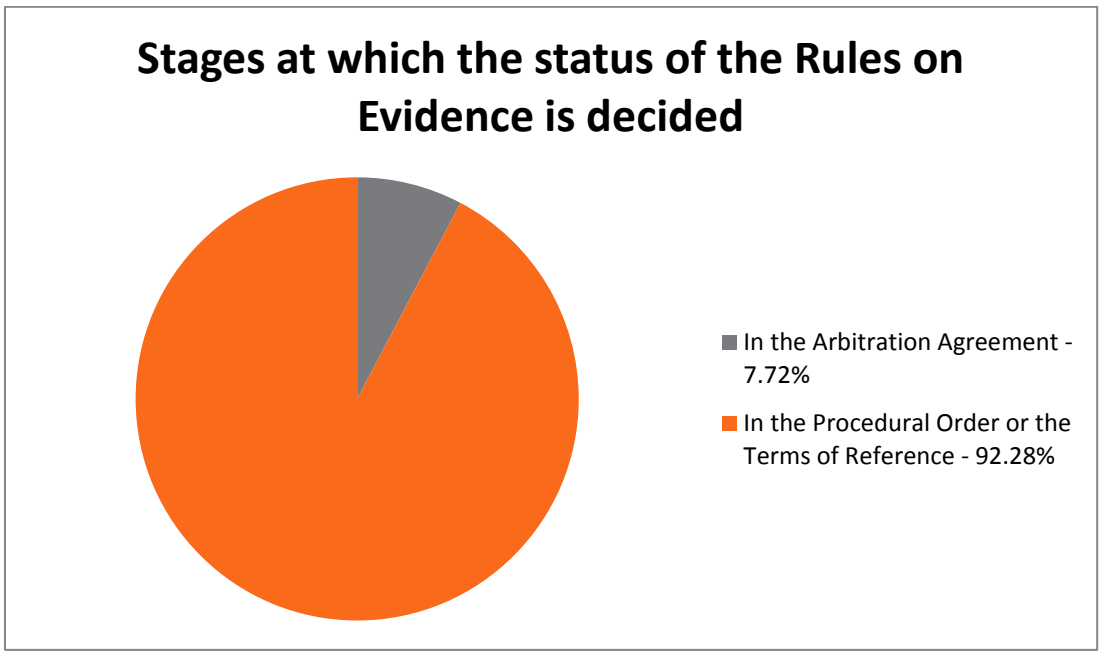
22 Again, in some other European jurisdictions, the survey indicates that the Rules on Evidence were considered as binding in all the arbitrations known to the Respondents (Scotland). In others (Slovakia, Ireland, and Russia), the survey indicates that the Rules on Evidence were not considered as binding in any of the arbitrations known to the Respondents. The data for these countries is, however, based on only 1, 2 or 3 responses in each case (a single response from Scotland, 3 responses from Slovakia, 3 responses from Ireland–one of which is statistically non-meaningful, and 2 responses for Russia). This data, therefore, is not statistically significant.

23 In some other Asian jurisdictions, the survey indicates that the Rules on Evidence were considered as binding in all of the arbitrations known to the Respondents (Taiwan). In others (Indonesia and New Zealand), the survey indicates that the Rules on Evidence were not considered as binding in any of the arbitrations known to the Respondents. The data for these countries is, however, based on very few responses in each case (7 for Taiwan–2 of which are statistically non-meaningful, 2 for Indonesia, and 4 for New Zealand), and therefore, not statistically significant. Moreover, in some Middle Eastern jurisdictions (Jordan and Qatar), the survey indicates that the Rules on Evidence were not considered as binding in any of the arbitrations known to the Respondents. Yet, again, the data for these countries is, however, based on a single response from each jurisdiction, and therefore, not statistically significant.

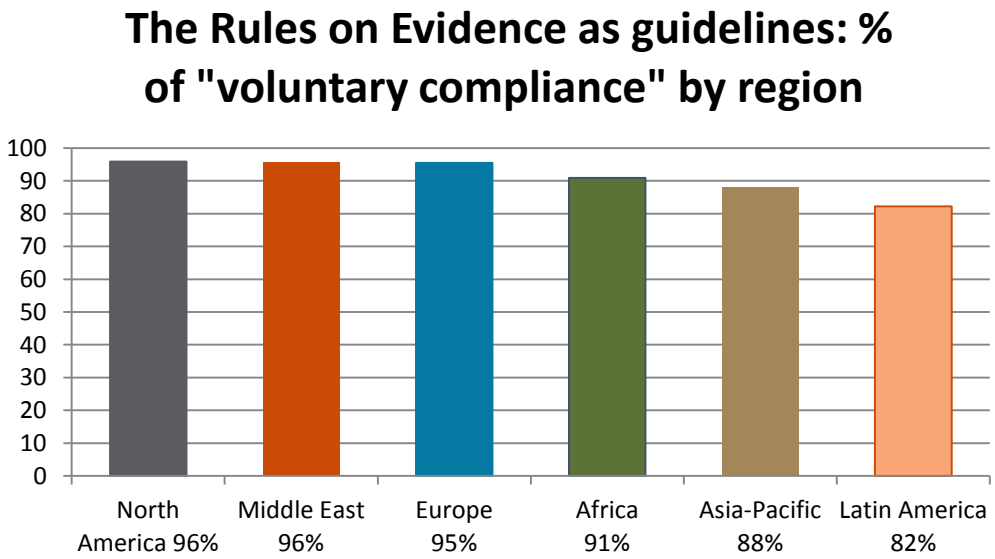


59. The survey results also indicated that, where the Rules on Evidence were considered as binding, they were treated in this way because the parties and/or the tribunals agreed as such after the dispute had arisen (e.g., in the first procedural order or in the terms of reference), not prior to the dispute by way of the parties' pre-existing arbitration agreement. In more than 90% of the reported arbitrations where the tribunal was bound by the Rules on Evidence, the parties and/or the tribunals decided that the Rules on Evidence would be binding once the arbitration had already commenced. In particular, this was agreed in 42% of cases in the terms of reference, and in 51% of cases as part of the first procedural order. Only in 8% of instances did the parties agree that the Rules on Evidence were to be binding by way of an arbitration agreement, as illustrated in the chart below.



60. Finally, it is notable that when the parties and/or tribunals chose to consult the Rules on Evidence as guidelines, they almost always (93%) followed them. This perhaps best evidences the real force of the Rules on Evidence: they are widely accepted and voluntarily complied with even when the parties choose not to make them binding.

61. This conclusion holds true across all regions (with percentages above 95% in Europe, North America, and the Middle East), as evidenced in the chart below.



C. THE RULES ON EVIDENCE IN CASE LAW

62. Responses to the survey, together with the Country Reports, suggest that references to the Rules on Evidence in domestic case law are non-existent in some regions, but

relatively common in others. In particular, North American, Asia-Pacific, and European Respondents and Reporters have noted instances in which domestic courts have referred to the Rules on Evidence.

63. In North America, domestic courts in the U.S. often refer to the Rules on Evidence when deciding issues relating to document production, particularly in relation to Title 28 U.S.C. § 1782 (Section 1782 is the federal statute provision allowing "any interested person" involved in proceedings before "a foreign or international tribunal" to seek evidence, including documents and testimony, from a person or entity located in the U.S.).[24] In that context, the Rules on Evidence have either been considered to weigh against, or in favour of, allowing the petitioner to obtain discovery from the relevant person or entity located in the U.S.[25]

64. In Asia-Pacific, the Singapore High Court has stated that the Rules on Evidence provide more comprehensive guidance as to the issue of document disclosure than the Arbitration Rules of the Singapore International Arbitration Centre.[26]

65. In Europe, local courts in England,[27] Spain,[28] Sweden[29] and Switzerland[30] have all referred to the Rules on Evidence.

66. However, Respondents from Latin America did not point to any particular court decisions that referred to the Rules on Evidence. Yet, the Ecuadorian Country Report

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24 See e.g., *Landmark Ventures, Inc. v. Insightec, Ltd.*, 63 F. Supp. 3d 343, 348, 352 (S.D.N.Y. 2014); *Yang v. Majestic Blue Fisheries, LLC*, 2015 WL 5003606 (D. Guam. 2015).

25 See e.g., *In re Application of Caratube Int'l Oil Co., LLP*, 730 F. Supp. 2d 101, 108 (D.D.C. 2010); *In re the Republic of Ecuador*, Nos. C 11-80171 CRB, 2011 WL 4434816, at *3 (N.D. Cal. 2011); *In re Application of Republic of Ecuador v. Douglas*, 2015 WL 9272853, *3 (D. Mass. 2015).

26 *Dongwoo Mann+Hummel Co Ltd v Mann+Hummel GmbH* [2008] 3 SLR(R) 871.

27 See e.g., *Chantiers de l'Atlantique S.A. v. Gaztransport & Technigaz S.A.S* [2011] EWHC 3383 (Comm): "*…it is important to have in mind that the ICC arbitration in this case was conducted in accordance with civil-law arbitration procedure. In particular the rules for disclosure of documents were based on the IBA rules. There was no duty to disclose relevant documents, akin to CPR Part 31, such as would be the case with London arbitration, conducted in accordance with English procedure. In these circumstances, the court must be careful not to import into its assessment of GTT's conduct and the serious allegations of concealment made by CAT English law concepts of the duty of disclosure*" and "[i]*t may be that, if one were looking at this answer in the context of disclosure obligations under English law, it would be open to criticism, but it is important to have in mind that this arbitration was being conducted in the more narrow confines of a disclosure procedure akin to that under the IBA rules, much closer to the procedure applicable before the French courts.*"

28 See *SACYR Concesiones, SL v. Inprisma, SL*, Superior Court of Justice of Madrid (Civil and Criminal Chambers, Section 1), Judgment No. 58/2013, 16 July 2013 (Claim No. 83/2012).

29 See *Euroflon Tekniska Produkter Aktiebolag v. B.A.*, NJA 2012 p. 289, Case No.Ö 1590-11 (concerning an application before the national courts for assistance in obtaining evidence in an ongoing arbitration, and referring to Article 3 of the IBA Rules for guidance).

30 See Decision of the Swiss Federal Supreme Court No. 4A_596/2012 of 15 April 2013 (where the Swiss Federal Supreme Court, in the context of dismissing a set aside application based on an arbitral tribunal's decision to order production of documents, observed that the tribunal's decision, which was made pursuant to the Rules on Evidence (Articles 3.10 and 9.5 in particular), was a procedural one made pursuant to procedural rules. As such, the decision could not be challenged before the Court).

referred to a decision of the Provincial Court of Pichincha,[31] ruling that an arbitral tribunal's departure from the provisions on the taking of evidence of the Ecuadorian Civil Procedure Code did not constitute grounds for annulment. In the opinion of the Ecuadorian Reporters, this decision opens the door for parties to freely agree on which rules should govern the taking of evidence, including the Rules on Evidence.

67. Respondents in Africa and the Middle East did not point to any particular court decisions that referred to the Rules on Evidence.

68. Some of the reasons that may explain the limited reference to the Rules on Evidence in case law in many jurisdictions are similar to those referred to above in Section II.B in relation to arbitral practice, including a lack of awareness of the Rules on Evidence and/or the existence of local or institutional rules. Perhaps more importantly, the limited reference to the Rules on Evidence in case law might be explained by the limited number of local court proceedings relating to aspects of an arbitration that may be covered by the Rules on Evidence, particularly in certain jurisdictions. A domestic court may be involved in the arbitral process only at three distinct stages – the granting of interim relief, enforcement of the award, and a challenge to the award. In ordinary circumstances, these are not instances where the appraisal of evidence would be at issue. Moreover, the appreciation of evidence is the perogative of the arbitral tribunal. It is therefore unsurprising that very few examples of case law referencing the Rules on Evidence have been cited in the Country Reports. One may also speculate as to whether the non-binding consultation of the Rules on Evidence in most cases explains the limited reference to the Rules on Evidence in case law in many jurisdictions. Finally, in some jurisdictions (such as Thailand), most court decisions are not publicly reported.

69. It is, nevertheless, arguably safe to assume that references to the Rules on Evidence in domestic proceedings will increase concomitantly with the growth of the arbitration market in general within some regions. Respondents have suggested that using tools such as training sessions and seminars to improve awareness and knowledge of the Rules on Evidence in certain regions may facilitate this process.

D. THE RULES ON EVIDENCE IN LEGAL PUBLICATIONS

70. The Country Reports show that the Rules on Evidence are often discussed among scholars around the world, with the exception of Africa. The general consensus regarding the Rules on Evidence is positive, although they also point to some areas for improvement.

71. In Europe, a substantial number of legal writings referring to the Rules on Evidence have been published, including in jurisdictions such as England, France, Germany,

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[31] *Wilson Orlando Acosta Paredes v. Ecuador Bottling Company Corp.*, Provincial Court of Pichincha, Case No. 17111-2009-0748, Judgement, 15 January 2010.

Switzerland and Sweden.[32] Overall, scholars believe the Rules on Evidence to be of valuable guidance, and to constitute a good compromise between the common law and civil law traditions.[33]

72. While this does not appear to constitute the majority view in Europe, some German publications reveal a certain degree of reluctance towards adopting the document production provisions contained in the Rules on Evidence, which they view as embracing the Anglo-American legal concept of discovery.[34] Some German publications also criticize the co-existence of both party- and tribunal-appointed experts under the Rules on Evidence as an inefficient practice.[35]

73. In North America, there are numerous publications regarding the Rules on Evidence.[36] While Canadian Reporters indicated that the references were overall positive, due to the large amount of legal publications published on this subject in the United States, the Reporter stated that "*it is difficult to summarize and distill the approving or critical tone of the publications*".[37]

74. The Rules on Evidence are also the subject of active discussion among academics in Asia and Oceania. Although most of the publications in this region discuss the Rules

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32 German scholarship has provided several contributions that deal with specific issues of the IBA Rules, such as document production, discovery and more specifically, e-discovery. See H. Raeschke-Kessler, "The Taking of Evidence in International Commercial Arbitration", 2010 DIS-Schriftenreihe 45, Vol. 26. See also A.C. Kläsener, A. Dolgorukow, "Die Überarbeitung der IBA-Regeln zur Beweisaufnahme in der internationalen Schiedsgerichtsbarkeit", [2010] SchiedsVZ 302; A. Sessler, "Reducting Costs in Arbitration – The Perspective of In-house Counsel", [2012] SchiedsVZ 15.

33 See e.g., in Finland, G. Knuts, "Asiakirjakategorian esittämispyyntö kansainvälisessä välimiesmenettelyssä International Bar Associationin Rules of Evidencen mukaan", in E. Havansi, R. Koulu, H. Lindfors, *Oikeudenkäyntejä ja tuomioistuimia – Juhlakirja Juha Lappalainen 60 vuotta* (2007), pp. 202–203; C. Wallgren-Lindholm, "Predictability of Proceedings in International Commercial Arbitration – And is there a Nordic Way?", 2011 Tidskrift utgiven av Juridiska Föreningen i Finland 705, Vol. 4–5. See also, in Lithuania, Dr. D. Bubliene, Dr. P. Zapolskis, "The process of electronic disclosure (E-Disclosure) and data protection in international arbitration", 2015 Arbitration: Theory and practice 26, Vol. 1 (referring to the fair balance between the legal cultures of European civil-law and Anglo-American common law in the context of discovery proceedings in international arbitration, in particular e-disclosure). In Slovenia, an author has pleaded for the wide use of the Rules on Evidence in corruption cases, arguing that the Rules on Evidence, which combine the principles of investigatory and adversarial procedure of civil and common law legal traditions, provide for a uniform standard of proof. See A. Friedl, "Tackling Corruption in Arbitration", 2015 Slovenian Arbitration Review 36, Vol. 4, Issue 3.

34 See S.P. Finizio, "Discovery in International Arbitration: Frankenstein's Monster in the Digital Age," 2010 DIS-Schriftenreihe 57, Vol. 26.

35 S.H. Elsing, "Procedural Efficiency in International Arbitration: Choosing the Best of Both Legal Worlds" [2011] SchiedsVZ 114; see also S. Wilske, L. Markert, in V. Vorwerk, C. Wolf (eds.), *Beck'scher Online-Kommentar zur ZPO* s. 1049, ¶ 6.

36 See e.g., J. Casey, *Arbitration Law of Canada: Practice and Procedure* (2nd ed. 2011); D. D'Allaire, R. Trittmann, "Disclosure Requests in International Commercial Arbitration: Finding A Balance Not Only Between Legal Traditions but Also Between the Parties' Rights", 2011 Am. Rev. Int'l Arb. 119, Vol. 22; P. Ashford, "Document Production in International Arbitration: A Critique from 'Across the Pond'", 2012 Loy. U. Chi. Int'l L. Rev. 1, Vol. 10.

37 United States, Country Report, IBA Arbitration Guidelines and Rules Subcommittee, p. 6.

on Evidence only descriptively and in general terms, others include a more detailed review of the Rules on Evidence. The writings in jurisdictions such as China, Hong Kong, Japan, Singapore, Taiwan and New Zealand all express positive and complimentary views of the Rules on Evidence, albeit some of them also include suggestions for reform with respect to document disclosure of electronically stored information.[38] In New Zealand, one scholar has indicated that parties and tribunals usually refer to the Rules on Evidence for guidance only in order to avoid potential challenges of the award on the basis that the Rules on Evidence were not complied with.[39]

75. In Latin America, and notably in jurisdictions such as Brazil, Mexico, Chile, Ecuador and Argentina, the Rules on Evidence are also referred to in academic publications.[40]

76. In the Middle East, the Reporters referred to few legal publications in Lebanon, Turkey, and the UAE which reference the Rules on Evidence. They also explained that the Rules on Evidence are occasionally referred to by professors of the Qatar University Law Program in their courses.

77. Reporters from African jurisdictions, however, indicated that they were not provided with, or did not have knowledge of, publications referring to the Rules on Evidence. It should be noted, however, that only two Country Reports (Angola and Mozambique) were received from African jurisdictions.

E. NEED TO AMEND THE RULES ON EVIDENCE AND SUGGESTIONS IN THAT REGARD

78. With a total of 714 responses, the question of whether the IBA Arbitration Committee should revise the Rules on Evidence received significant attention from Respondents.

79. The majority of Respondents are of the view that the Rules on Evidence should remain unaltered and offered positive comments about their usefulness and their "[good] *balance between civil and common law systems.*"[41] By contrast, less than 10% of Respondents believe that the Rules on Evidence warrant revision.

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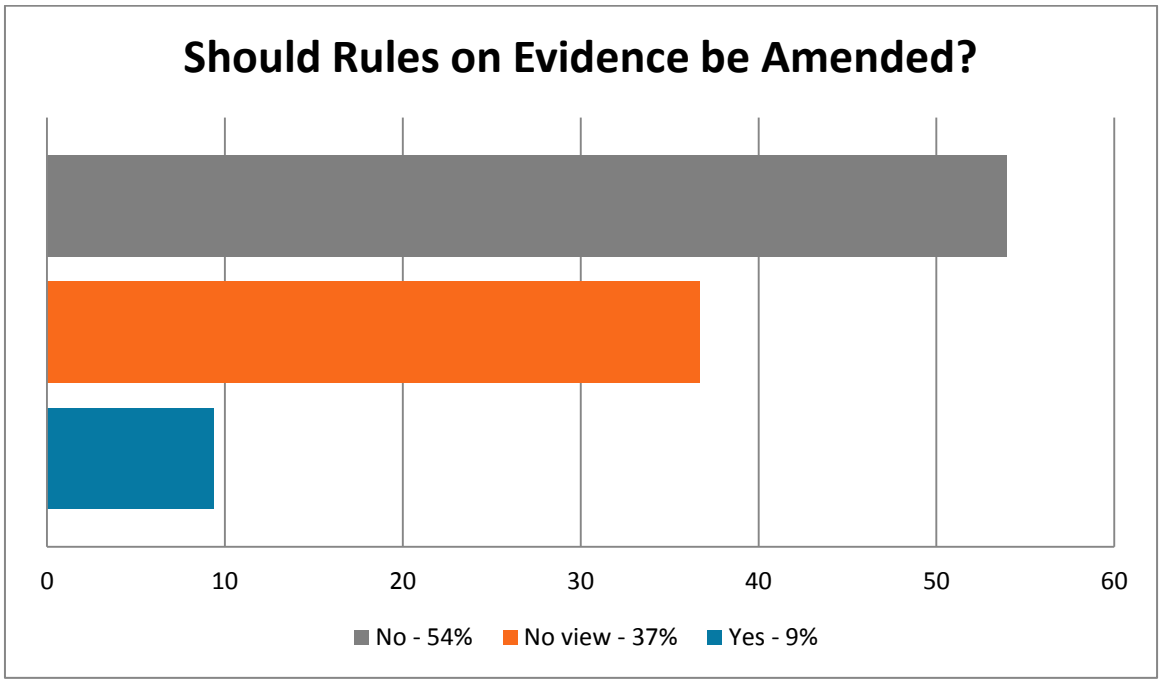
38 See e.g., D.-H. Kim, "A study on the taking of electronic evidence in International Arbitration", 2011 Bupjo Association Journal, Vol. 655, p. 203 (suggesting that the Article 3.12(b) provision relating to disclosure of documents maintained in electronic form should be an alternative solution to submitting the document in its original form if the latter is not convenient or extremely onerous).

39 D.A.R Williams QC, A. Kawharu, *Williams & Kawharu on Arbitration* (2011), Chapter 25, p. 714.

40 A total of 18 publications referring to the Rules on Evidence have been reported in Brazil; 3 in Mexico; 2 in Argentina and in Ecuador. Respondents have also acknowledged the existence of a few publications referencing the Rules on Evidence in Chile, but their total number is undetermined.

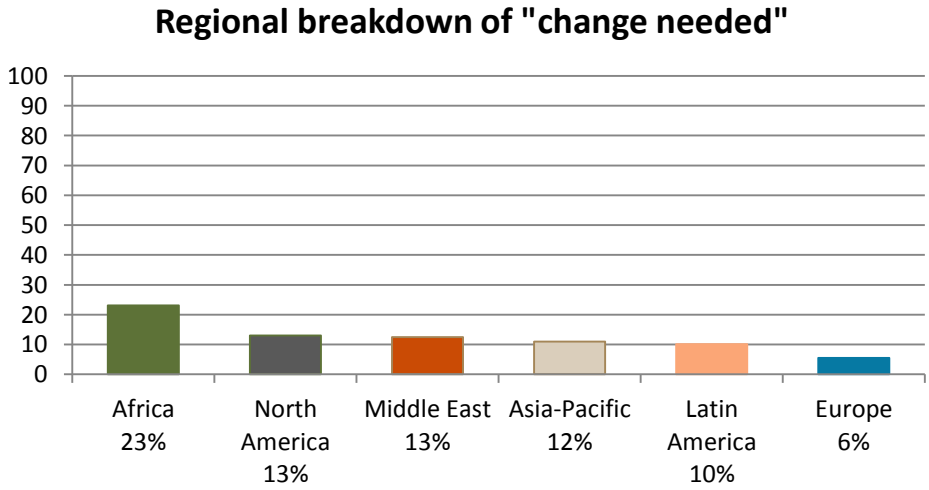
41 The quote refers to a Brazilian Respondent, but similar comments were offered by English, Finnish, German, Dutch and Portuguese Respondents.

Intriguingly, more than a third of Respondents expressed no view as to whether the Rules on Evidence should be amended.[42]



80. Compared to the answers to the same question regarding the other sets of IBA Rules and Guidelines, the Rules on Evidence garnered the highest percentage of replies opining that they should remain unchanged (compared to 53% for the Conflicts of Interest Guidelines and 37% for the Party Representation Guidelines).

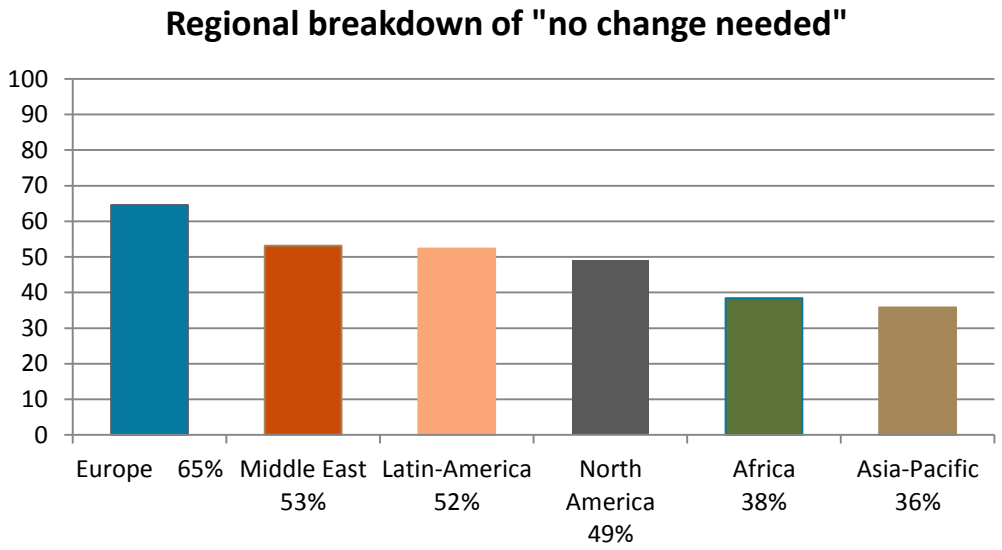
81. The chart below illustrates the significantly lower percentage of Respondents by region that believe that the Rules on Evidence should be amended.



[42] Respondents who chose the "no view" option could not expand on the reasons underlying their decision (for example, whether they had not yet applied the Rules on Evidence in a sufficient number of cases so as to form a view as to whether the Rules on Evidence should be amended).

82. Respondents from Africa, a region where the Rules on Evidence are not broadly used, generated the highest percentage of responses in favour of amendment, almost double the percentage of any other region. Europe, on the other hand, generated the lowest percentage of responses in favour of amendment–only around 6%. In the middle, between 10% and 13% of Respondents in North America, the Middle East, Asia-Pacific and Latin America believe that the Rules on Evidence should be amended.

83. The following chart illustrates the percentage of Respondents by region that believe the Rules on Evidence do not require amendment.



84. European Respondents–one of the regions where the Rules on Evidence are most often used–lead the support for not revising the Rules on Evidence (with almost 65% of Respondents in favour of not amending them), followed by Respondents from the Middle East, Latin America, and North America (all around 50% in favour of not amending). Respondents in Africa (38%) and Asia-Pacific (36%) are less vocal about the non-revision of the Rules on Evidence.

85. In summary (and while the match is not perfect), jurisdictions where the Rules on Evidence are most often used seem to support most strongly the position that they need not be reviewed or revised. Nevertheless, jurisdictions where the Rules on Evidence are not commonly used such as Africa would likely want the Rules on Evidence to reflect a regional compromise and not simply the practice of those that currently use them. This may suggest that the Respondents consider the modification of the Rules on Evidence as a tool to make them more attractive in their region.

86. The 10% of Respondents who asserted that the Rules on Evidence should be revised also identified the different provisions of the Rules on Evidence that, in their opinion, need amendment. Most Respondents who recommended that the Rules on Evidence be revised focused on the following areas: (1) document production; (2) burden of

proof; (3) privilege; (4) sanctions; (5) fact witnesses, and expert testimony. We address these focus areas in the sections below.

87. Underlying several answers to the question of whether the Rules on Evidence warrant revision is the repeated (yet, still minority)[43] sentiment that the Rules on Evidence do not yet strike a proper balance between the "U.S." and the civil law (or even the methodology adopted in other common law countries) approaches to the taking of evidence. In the view of some Respondents, the Rules on Evidence still embody the more cumbersome and complex approach adopted in the U.S. Interestingly, this criticism arises in civil law jurisdictions such as Italy, Brazil, Germany, Finland, Switzerland and Japan; but also out of certain common law jurisdictions such as Singapore, New Zealand, Canada, England and Ireland. These Respondents refer to the Rules on Evidence on document production as "too American."

1. Document Production

88. Article 3 of the Rules on Evidence was the most frequently cited provision among Respondents who recommended that the Rules on Evidence be amended. Respondents pointed to various areas of this provision warranting revision, including scope of disclosure, objections, and electronic evidence.

(i) Scope of Disclosure

89. Respondents who call for a revision of Article 3 believe that the IBA Committee should further limit the scope of disclosure to strike a proper balance between the civil law tradition and the U.S. legal culture. These Respondents, based in both civil and common law jurisdictions and from all regions but Africa, complained about the number and scope of document requests, as well as the cost and burden associated with addressing such requests. In their view, disclosure under Article 3 still resembles too closely discovery as it is practiced in common law litigation, or at least in the U.S. The proponents of a narrower Article 3 offered several suggestions:

- one Respondent from Canada suggested clarifying the meaning of "sufficient detail" in Article 3.3(a)(ii);[44]

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43 Notably, as highlighted above, several Respondents do find that the Rules on Evidence reflect a civil law/common law balance.

44 Article 3.3(a) of the IBA Rules provides that: "*A Request to Produce shall contain: … (i) a description of each requested Document sufficient to identify it, or (ii) a description in sufficient detail (including subject matter) of a narrow and specific requested category of Documents that are reasonably believed to exist; in the case of Documents maintained in electronic form, the requesting Party may, or the Arbitral Tribunal may order that it shall be required to, identify specific files, search terms, individuals or other means of searching for such Documents in an efficient and economical manner…*" A Respondent proposed clarification on whether all or some of the requirements set out in the unofficial commentary of the Rules on Evidence (presumed authors/recipients, presumed content and presumed time frame) were required under the Rules on Evidence.

- a Respondent from Italy proposed eliminating or nuancing the reference to "category of documents" in Article 3.3(a)(ii), so that only individual documents may be sought; and another Respondent, from Canada, proposed clarifying the meaning of "narrow and specific" when referring to categories of documents in Article 3.3(a)(ii);

- Respondents from Germany, Switzerland, and Canada suggested clarifying the meaning of "relevant to the case and material to its outcome" in Article 3.3(b);[45] or limiting the requirement to the materiality of the documents sought to the outcome of the case, as opposed to their relevance to the allegations asserted by the requesting party; while an Italian Respondent said that the word "relevant" should simply be removed from the provision for the purpose of making it clearer;

- one Respondent from the U.S. suggested providing guidance on the meaning and scope of the phrase "possession, custody, or control" in Article 3.3(c);[46] and

- an Argentinian Respondent proposed imposing time limits on the parties' obligation to produce documents.

(ii) Objections

90. Another area where European, North American, and Latin American Respondents offered recommendations for revision was in relation to the process whereby parties may object to documents sought under Article 3. In particular:

- an American Respondent proposed amending Article 3 to conform to standard practice that requests for production are not transmitted to the arbitral tribunal; the tribunal only becomes involved at the point at which disputes have crystallized and are presented to the tribunal in the form of a Redfern (or similar) Schedule;[47]

- a Respondent from Chile proposed eliminating the appointment of *ad hoc* experts when the propriety of an objection may only be determined by

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45 Article 3.3(b) of the Rules on Evidence provides that: "*A Request to Produce shall contain: … a statement as to how the Documents requested are relevant to the case and material to its outcome…*"

46 Article 3.3(c) of the Rules on Evidence provides that: "*A Request to Produce shall contain: … (i) a statement that the Documents requested are not in the possession, custody or control of the requesting Party or a statement of the reasons why it would be unreasonably burdensome for the requesting Party to produce such Documents, and (ii) a statement of the reasons why the requesting Party assumes the Documents requested are in the possession, custody or control of another Party.*"

47 Article 3.5 of the Rules on Evidence provides that: "*If the Party to whom the Request to Produce is addressed has an objection to some or all of the Documents requested, it shall state the objection in writing to the Arbitral Tribunal and the other Parties within the time ordered by the Arbitral Tribunal. The reasons for such objection shall be any of those set forth in Article 9.2 or a failure to satisfy any of the requirements of Article 3.3.*"

reviewing the document in question, as provided under Article 3.8,[48] and instead, making a provision for a *prima facie* review by the tribunal; and

- an Australian Respondent invited the IBA Committee to determine whether arbitral tribunals are best placed to decide discovery disputes over documents giving rise to political or institutional concerns (Article 9.3)[49] and, if so, to elaborate the best procedure for tribunals to proceed with such adjudication.

(iii) Electronic Documents

91. While a single Respondent recommended that references to e-discovery be eliminated from the Rules on Evidence, most Respondents advocated for revisions aimed at facilitating the exchange of e-documents between the parties and providing guidance on the use of electronic evidence. For example, one Respondent suggested that the Rules on Evidence be amended to expressly allow the exchange of documents through secure websites.

2. Burden of Proof

92. Two Respondents, from Mexico and the U.S. respectively, indicated that the Rules on Evidence should address the allocation of the burden of proof between the parties and the possibility to shift or reduce the burden in certain circumstances.

93. In addition, a Respondent from the Czech Republic suggested authorizing tribunals to disallow requests calling for the production of documents concerning facts that the requested party has the burden of proving.

3. Privilege

94. The prevailing sentiment among European, Asia-Pacific, and North American Respondents is that the Rules on Evidence are still unclear on the issue of privilege.

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[48] Article 3.8 of the Rules on Evidence provides that: "*In exceptional circumstances, if the propriety of an objection can be determined only by review of the Document, the Arbitral Tribunal may determine that it should not review the Document. In that event, the Arbitral Tribunal may, after consultation with the Parties, appoint an independent and impartial expert, bound to confidentiality, to review any such Document and to report on the objection. To the extent that the objection is upheld by the Arbitral Tribunal, the expert shall not disclose to the Arbitral Tribunal and to the other Parties the contents of the Document reviewed*".

[49] Article 9.3 of the Rules on Evidence provides that: "*In considering issues of legal impediment or privilege under Article 9.2(b), and insofar as permitted by any mandatory legal or ethical rules that are determined by it to be applicable, the Arbitral Tribunal may take into account: (a) any need to protect the confidentiality of a Document created or statement or oral communication made in connection with and for the purpose of providing or obtaining legal advice; (b) any need to protect the confidentiality of a Document created or statement or oral communication made in connection with and for the purpose of settlement negotiations; (c) the expectations of the Parties and their advisors at the time the legal impediment or privilege is said to have arisen; (d) any possible waiver of any applicable legal impediment or privilege by virtue of consent, earlier disclosure, affirmative use of the Document, statement, oral communication or advice contained therein, or otherwise; and (e) the need to maintain fairness and equality as between the Parties, particularly if they are subject to different legal or ethical rules*".

While Articles 9.2(b)[50] and 9.3[51] recognize privilege as a ground for exclusion of documents and testimony from evidence, they fail to describe the applicable standard.

95. In addition, a Respondent from Australia pointed to the need to provide a procedure for deciding issues of privilege, inviting the IBA Committee to consider whether privilege claims should be decided by the tribunal or an independent third party.

4. Sanctions

96. Three Respondents, from Mexico, Chile, and Argentina respectively, suggested introducing sanctions for non-cooperating parties, including via provisional allocation of legal costs and adverse inferences. The latter already exists for document production in Article 9.5 of the Rules on Evidence,[52] but not for other sections such as Article 4 on fact witnesses.

97. An Argentinian Respondent specifically proposed including mandatory language in Article 3 to ensure that tribunals draw adverse inferences when faced with parties who fail to produce evidence that has been requested and/or ordered. In the view of this Respondent, such amendment is warranted because tribunals fail to exercise this power even when presented with clear-cut situations in which a party has failed to comply with a discovery order.

5. Witness and Expert Testimony

98. European, Asia-Pacific, Latin American and North American Respondents who advocate for the revision of the Rules on Evidence made a series of recommendations concerning fact and expert testimony, in particular:

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50 Article 9.2(b) of the Rules on Evidence provides that: "*The Arbitral Tribunal shall, at the request of a Party or on its own motion, exclude from evidence or production any Document, statement, oral testimony or inspection for any of the following reasons: … (b) legal impediment or privilege under the legal or ethical rules determined by the Arbitral Tribunal to be applicable…*"

51 Article 9.3 of the Rules on Evidence provides that: "*In considering issues of legal impediment or privilege under Article 9.2(b), and insofar as permitted by any mandatory legal or ethical rules that are determined by it to be applicable, the Arbitral Tribunal may take into account: (a) any need to protect the confidentiality of a Document created or statement or oral communication made in connection with and for the purpose of providing or obtaining legal advice; (b) any need to protect the confidentiality of a Document created or statement or oral communication made in connection with and for the purpose of settlement negotiations; (c) the expectations of the Parties and their advisors at the time the legal impediment or privilege is said to have arisen; (d) any possible waiver of any applicable legal impediment or privilege by virtue of consent, earlier disclosure, affirmative use of the Document, statement, oral communication or advice contained therein, or otherwise; and (e) the need to maintain fairness and equality as between the Parties, particularly if they are subject to different legal or ethical rules.*"

52 Article 9.5 of the Rules on Evidence provides that: "*If a Party fails without satisfactory explanation to produce any Document requested in a Request to Produce to which it has not objected in due time or fails to produce any Document ordered to be produced by the Arbitral Tribunal, the Arbitral Tribunal may infer that such document would be adverse to the interests of that Party*."

- two Respondents, from Argentina and Singapore respectively, called for greater clarity on the boundaries between fact witness interviews and preparation;

- a Respondent from Uruguay noted that direct testimony should be offered live in front of the tribunal to ensure accurate and independent testimony;

- an Italian Respondent criticised the practice of witness preparation in anticipation of evidentiary hearings;

- a Brazilian Respondent proposed inclusion of provisions on the standards of independence and impartiality of experts in the lines of the Conflicts of Interest Guidelines, and to require disclosure of the terms of expert compensation in Article 5.2(b);[53]

- a Respondent from Peru suggested allowing tribunals to consider expert reports regardless of whether the expert attends the hearing;

- a Respondent from Canada called for more guidance on the taking of evidence via tribunal inspections;

- an American Respondent proposed an amendment to indicate whether there is a presumption for or against sequestration of witnesses during examination; and

- a Respondent from South Korea suggested removing Articles 4.8[54] and 5.6,[55] which state that if a party does not request the appearance of a witness or expert at the hearing, that party shall not be deemed to agree with the contents of such witness's statement or such expert's report. The Respondent argued that parties engage in the "unfair practice" of not calling a witness or expert, while making attempts to undermine his or her credibility through their written submissions.

6. Status of the Rules on Evidence

99. Finally, Respondents from India and Lebanon raised the question of whether the Rules on Evidence should be mandatory, as opposed to mere guidelines that the parties and the tribunal may adopt.

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53 Article 5.2(b) of the Rules on Evidence provides: "*The Expert Report shall contain: … a description of the instructions pursuant to which he or she is providing his or her opinions and conclusions…*"

54 Article 4.8 of the Rules on Evidence provides that: "*If the appearance of a witness has not been requested pursuant to Article 8.1, none of the other Parties shall be deemed to have agreed to the correctness of the content of the Witness Statement.*"

55 Article 5.6 of the Rules on Evidence provides that: "*If the appearance of a Party-Appointed Expert has not been requested pursuant to Article 8.1, none of the other Parties shall be deemed to have agreed to the correctness of the content of the Expert Report.*"

III. THE IBA GUIDELINES ON CONFLICTS OF INTEREST IN INTERNATIONAL ARBITRATION

A. EXECUTIVE SUMMARY

100. The key findings from the survey with respect of the Conflicts of Interest Guidelines are as follows:

101. The data collected shows that the Guidelines have gained broad acceptance and are used often by the international arbitration community. Of the three IBA instruments surveyed, the Conflicts of Interest Guidelines are the most commonly referenced. By way of example, in the 3201 arbitrations known to Respondents over the past five years in which issues of conflicts of interest arose (at the start of the arbitration),[56] the Guidelines were referenced in 57% of them.

102. Results of the survey, together with the Country Reports, suggest that, when acting as counsel, practitioners consult or rely on the Guidelines in the selection of arbitrators even more often than the Guidelines are generally referenced in arbitrations. At the global scale, counsel make use of the Guidelines when appointing arbitrators in 67% of all reported cases. Arbitrators also appear to make frequent use of the Guidelines across all regions.

103. The survey also confirms that the Guidelines often have been referenced by the relevant Decision-maker (arbitral institutions, tribunals, or courts) in reaching a pronouncement on the existence of a conflict of interest. At a global level, the Guidelines were referenced in 67% of decisions resolving issues of conflicts of interest. Perhaps more importantly, in 69% of the decisions that referenced the Guidelines in solving a conflict of interest issue, the Decision-maker chose to follow the Guidelines.

104. The survey results indicate that the Guidelines appear to have been well received in jurisdictions with a more developed arbitration practice, regardless of the region, and less so in jurisdictions where the use of arbitration is less prevalent. In addition, the Country Reports suggest that practitioners who are familiar with the Conflicts of Interest Guidelines tend to approve of them and find them useful (in varying degrees), regardless of their location and legal background.

105. As to the provisions of these Guidelines being used by the international arbitration community, the survey shows that no particular part of the Guidelines seems to be consulted or relied on significantly more often than others.

106. The survey provides no data as to whether, or to what extent, the Guidelines have been treated as binding as opposed to merely being treated as guidelines. That being said, some Country Reports reveal that certain arbitral institutions either recommend

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[56] As noted above, this number includes arbitrations which may have been double counted.

the incorporation of the Guidelines into the terms of reference at the beginning of the arbitration, thereby inducing the parties to make them binding, or routinely apply the Guidelines when deciding on issues of conflicts of interest (thereby making them binding at the decision stage).

107. While references to the Guidelines by local courts are rare, this does not necessarily indicate that courts do not apply or take into consideration the Conflicts of Interest Guidelines: Reporters for several jurisdictions noted that the absence of a case law database or search engine made the search for case law difficult. That being said, it appears undisputed that the rate at which the Guidelines are referred to or relied upon by local courts is much lower than the rate at which they are used by practitioners in local arbitral practice, or by arbitral institutions when deciding on challenges.

108. The Guidelines have caught the attention of legal scholars across the globe, particularly in jurisdictions with active arbitration communities. In those jurisdictions, scholars tend to view the Guidelines as a useful soft law tool in arbitration practice.

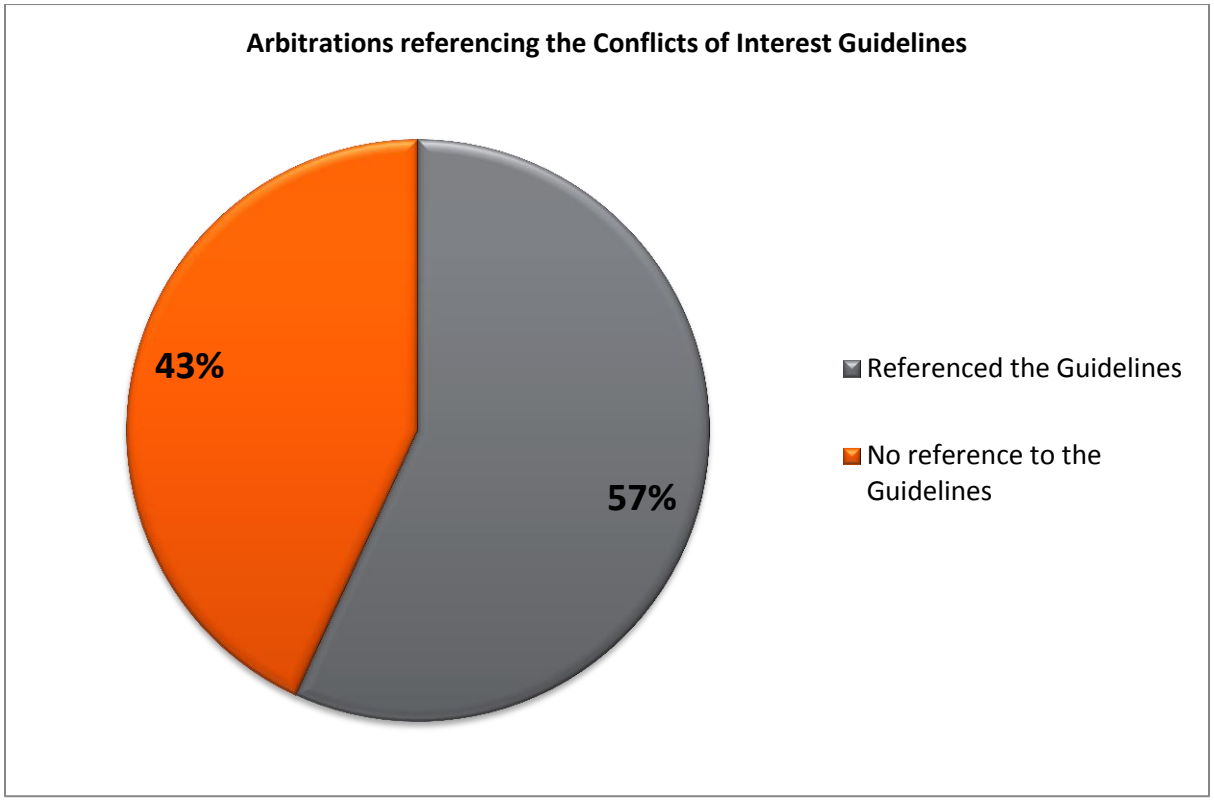
109. In general, the Guidelines appear to have been well received across the various jurisdictions. However, Respondents in some countries did indicate that they believe the Guidelines need revision. Broadly speaking, the different comments fall under the following categories: promotion, guidance, update, adaptation and revision. Some Respondents to the survey made additional comments regarding the use of the Guidelines which cannot be properly characterized as a request for revision.

B. THE CONFLICTS OF INTEREST GUIDELINES IN ARBITRAL PRACTICE

1. How Often are the Conflicts of Interest Guidelines Referred to in Arbitral Practice?

110. The data collected shows that the Guidelines have gained acceptance and have been often used by the international arbitration community. Of the three IBA instruments surveyed, the Conflicts of Interest Guidelines is the most commonly referred-to instrument. Out of 3201 arbitrations known to Respondents over the past five years in which issues of conflicts of interest arose (at the beginning of the arbitration),[57] the Guidelines have been referenced in 57% of them, as illustrated in the chart below.

[57] As noted above, this number includes arbitrations which have been double counted.

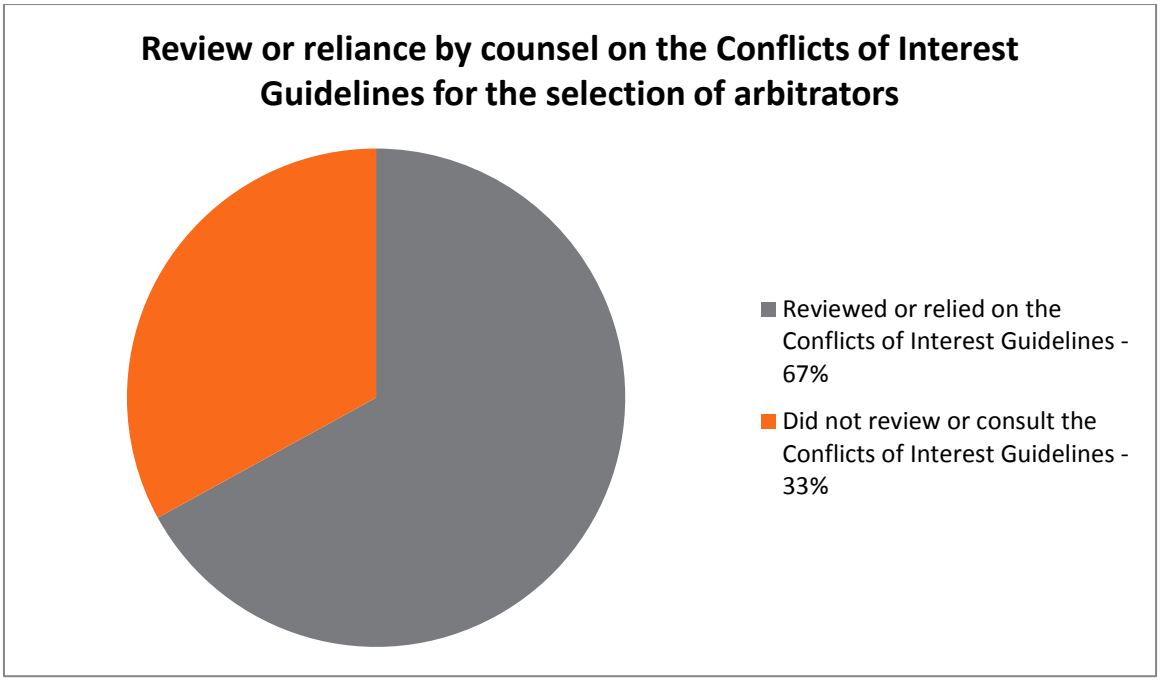


111. The Country Reports and survey results suggest that in jurisdictions where they are well known, the Guidelines are frequently consulted in local arbitral practice in the following situations:

- By counsel, when appointing or challenging an arbitrator, or when challenging an award;
- By arbitrators, when deciding whether to accept an appointment or make a disclosure; and
- By Decision-makers (arbitral institutions, tribunals or courts) when deciding a challenge to an arbitrator.

(i) Reference to the Conflicts of Interest Guidelines by Counsel

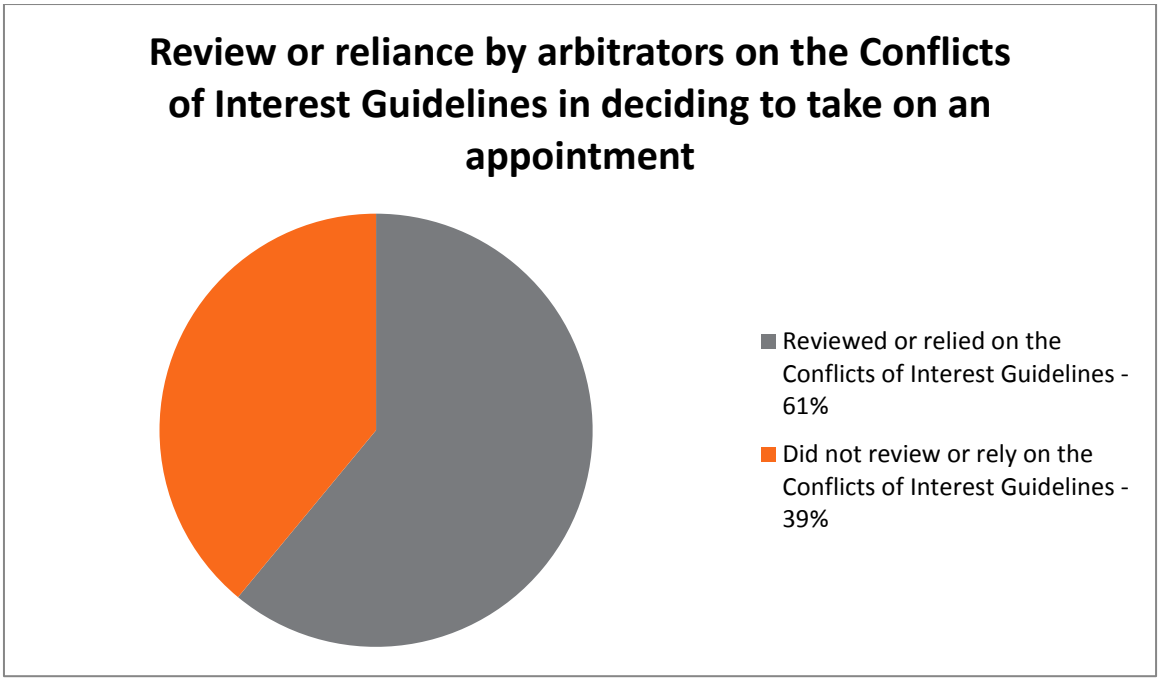
112. The results of the survey, together with the Country Reports, suggest that, when acting as counsel, practitioners consult or rely on the Guidelines in the selection of arbitrators even more often than the Guidelines are generally referenced in arbitrations. At the global scale, counsel made use of the Guidelines when appointing arbitrators in 67% of all reported cases. North American counsel reported a more frequent use of the Guidelines (77%), followed by counsel in Asia-Pacific (69%), Latin America (59%), the Middle East (54%), Europe (51%), and Africa (47%).

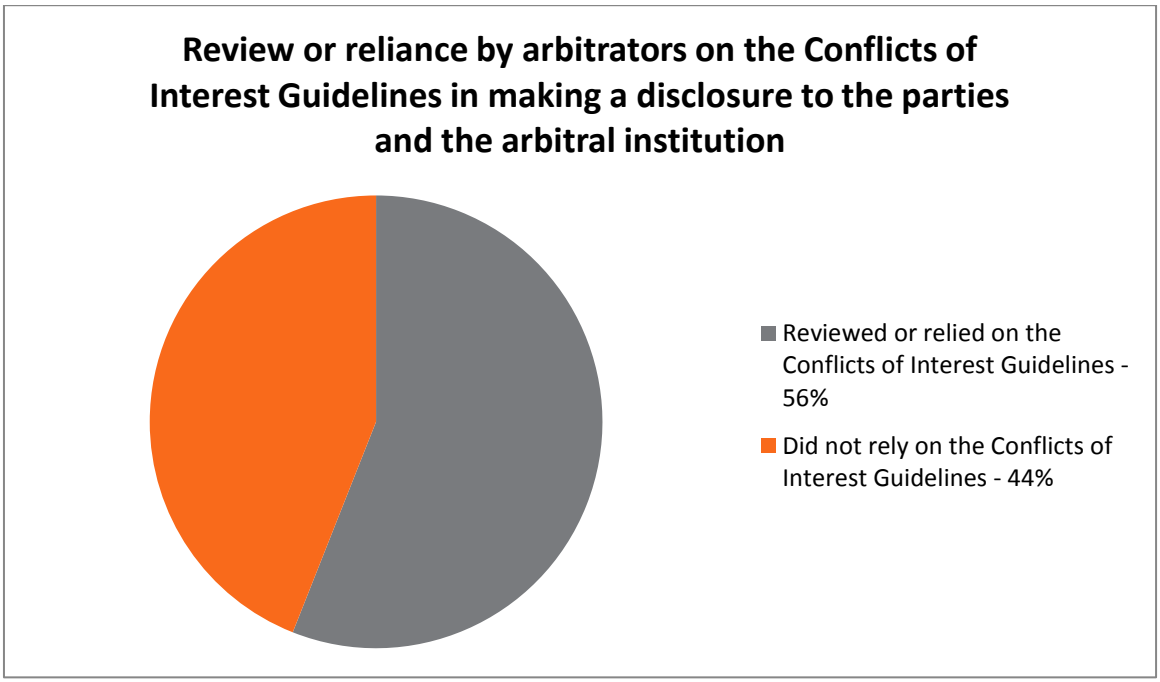


(ii) Reference to the Conflicts of Interest Guidelines by Arbitrators

113. Arbitrators appear to make frequent use of the Guidelines across all regions. According to the survey, arbitrators consulted or referred to the Guidelines in 61% of the cases when deciding to accept an appointment, and in 56% of the arbitrations when making decisions as to whether facts should be disclosed to the parties or to the arbitral institution.

114. In a pattern similar to the one observed in region-based data regarding counsel, North American arbitrators reported a more frequent use of the Conflicts of Interest Guidelines when deciding whether to accept an appointment (84%), closely followed by arbitrators in Latin America (85%). Then comes the Middle East (79%), and after that Asia-Pacific (55%), Europe (53%), and Africa (34%).



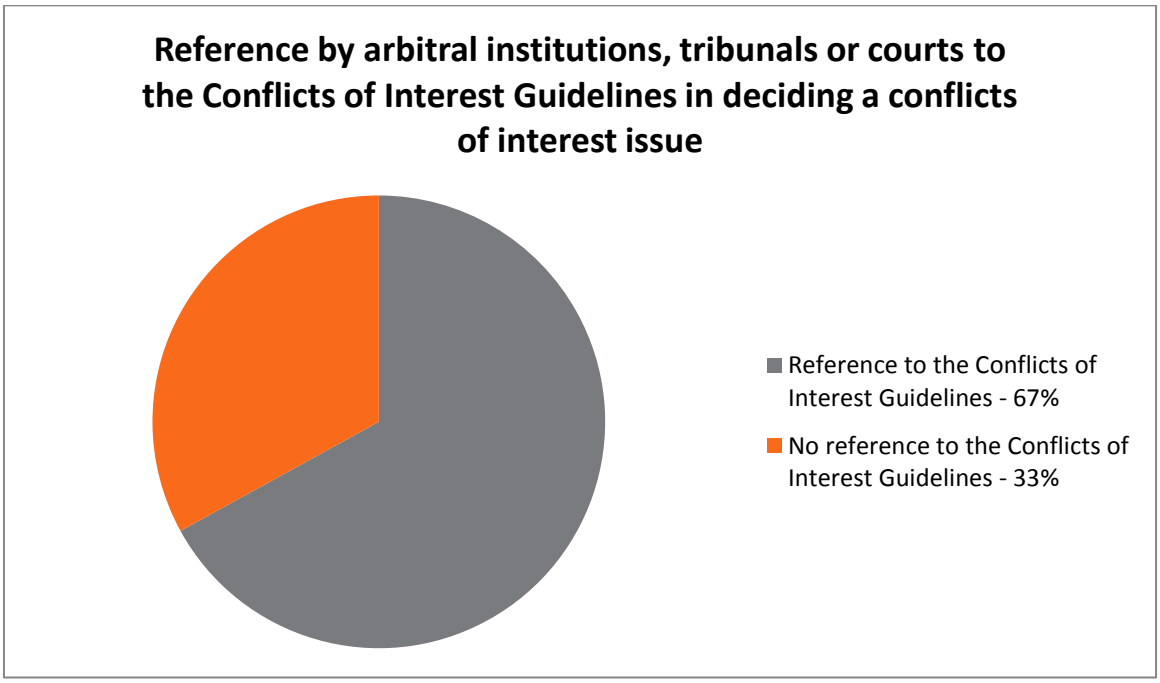


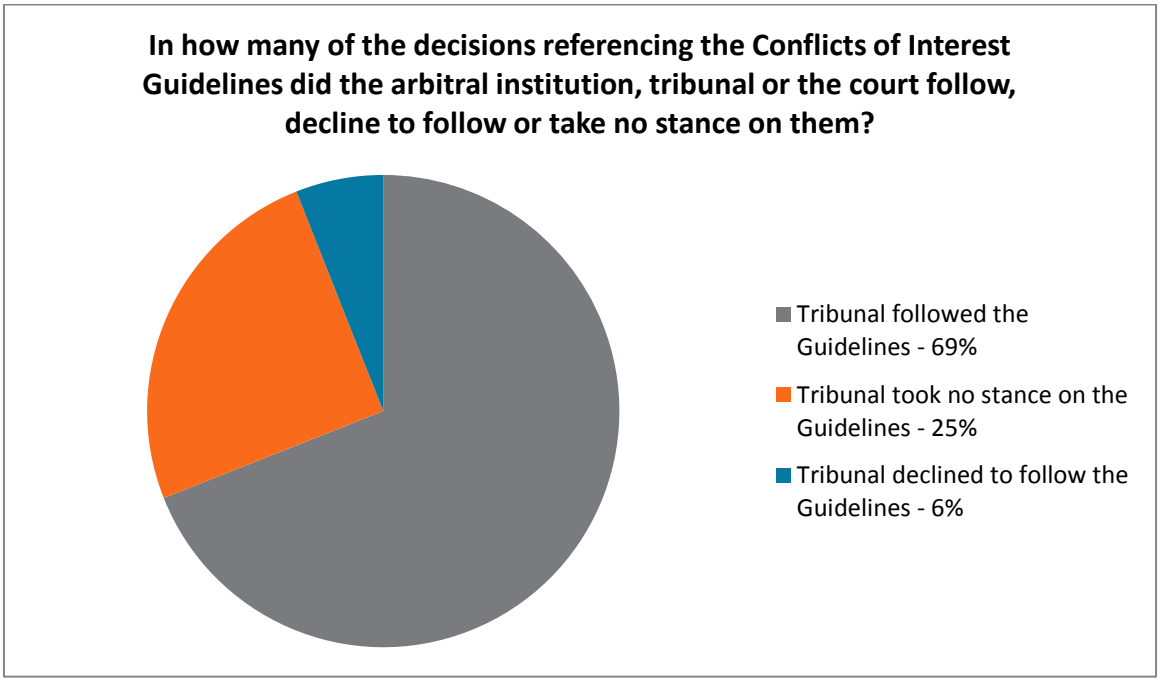
(iii) Reference to the Conflicts of Interest Guidelines by Decision-makers in Reaching Decisions

115. Finally, the survey confirms that the Guidelines have been often referenced by the relevant Decision-maker (arbitral institutions, tribunals, or courts) in reaching a decision on the existence of a conflict of interest. At a global level, the Guidelines were referenced in 67% of decisions resolving issues of conflicts of interest.

116. At a regional level, Asia-Pacific stands out as the region in which Decision-makers referred to the Guidelines most frequently (88%), followed by Europe (69%), North America (65%), Latin America (63%), the Middle East (42%) and Africa (29%).

117. Significantly, the Decision-maker chose to follow the Guidelines, in 69% of the decisions that referenced the Guidelines in solving a conflict of interest issue. Only 6% of those decisions declined to follow the Conflicts of Interest Guidelines, whereas 25% of them simply took no stance.





(iv) Regional Analysis

118. The survey responses indicate that the Guidelines appear to have been well received in jurisdictions with a more developed arbitration practice, regardless of the region, and less so in jurisdictions where the use of arbitration is less prevalent. In addition, the country reports suggest that practitioners who are familiar with the Conflicts of

Interest Guidelines tend to approve of them and find them useful (in varying degrees), regardless of their location and legal background.

i. Europe

119. In Europe, the Guidelines were referenced or consulted in 51% of the cases known to the Respondents. This however does not imply uniformity in the use of the Guidelines. There are countries which have many references while others have none.

120. For example, the Guidelines were frequently used and referenced in the following jurisdictions:

- In **Lithuania,** the fact that the Guidelines were referenced in 83% of the cases involving conflicts of interest at the time of the constitution of the arbitral tribunal indicates that the Guidelines are the main tool used to deal with these issues.

- In **Spain,** survey responses reveal that the Guidelines are viewed as an indispensable tool in arbitrations involving arbitrators' conflicts of interest. The survey results record that out of the reported cases in which conflicts of issue arose at the time of the constitution of the arbitral tribunal, 76% referenced the Guidelines.

- In **France**, the Guidelines were referenced in 60% of the cases in which conflicts of interest issues arose at the time of the constitution of the arbitral tribunal. Respondents reported that, out of 293 arbitrations known to them which involved arbitrator conflicts of interest issues,[58] counsel referred to the Guidelines in 50% of the cases when selecting arbitrators. The President of the *Association Française d'Arbitrage* (AFA), a French arbitral institution, also emphasized the importance of the Guidelines on Conflicts of Interest in harmonizing ethical standards in international arbitration.

- In **Switzerland,** the survey reveals that the Guidelines are widely used. In the last five years, they have been referenced in almost 57% of the arbitrations in which conflicts of interest issues arose at the time of the constitution of the arbitral tribunal. According to the survey, counsel consulted them very frequently (in more than 70% of the cases) when selecting international arbitral tribunals if there is a conflict of interest issue. Arbitrators also consulted them frequently (in 51% of the cases), notably when accepting appointments, and rather less frequently (38%) when making disclosures. In addition, arbitral institutions, arbitral tribunals or courts ruling on conflicts of interest issues have referred to them in 79% of the cases, and followed them in 93% of the cases.

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[58] Please note that all absolute numbers will include arbitrations which have been counted more than once.

- In **Portugal**, the Guidelines appear to have acquired widespread acceptance: out of the reported arbitrations in which issues of conflicts arose at the time of the constitution of the arbitral tribunal, 64% referenced the Guidelines. Portugal's most active arbitration centre (the *Centro de Arbitragem Comercial da Câmara de Comércio e Indústria Portuguesa*) makes a formal reference to the Guidelines in its criteria for the appointment of arbitrators, noting that as a rule the President of the Centre shall not accept the appointment of an arbitrator who falls into a situation described in the Non-Waivable Red List. In line with this, Decision-makers in Portugal (whether the arbitral institution, the tribunal or the court) appear to rely frequently on the Guidelines when deciding on situations of conflicts of interest: out of the reported arbitrations in which conflicts of issue arose, Decision-makers referenced the Guidelines in 71% of the cases (34 out of a total of 48 reported cases). Of those 34 cases, the Decision-maker followed the Guidelines in 31 cases, declined to follow them in one case, and was neutral in two cases.

- In **Romania**, while a large number of the cases in which conflicts of interest arose at the time of the constitution of the tribunal referenced the Guidelines (78%), Respondents acting as counsel consulted them less frequently when selecting arbitrators (51% of the time), and even less frequently when acting as arbitrators (40% of the time when accepting appointments and 32% of the time when making disclosures).

- In **Germany**, the Guidelines were referenced in 64% of the arbitrations in which conflicts of interest issues arose at the time of the constitution of the arbitral tribunal. Practitioners acting as counsel consulted or relied on the Guidelines frequently when selecting arbitrators (77% of the time), but rather less frequently when acting as arbitrators (49% of the time when accepting appointments and 43% of the time when making disclosures).

- In **Russia**, the Country Report notes that are no reported arbitral awards making reference to the Guidelines. However, the survey results indicate that the Guidelines were referenced in 64% of the reported arbitrations. Notably, Respondents acting as counsel or arbitrators consulted or relied on the Guidelines 100% of the times when selecting arbitrators, accepting an appointment or making a disclosure, but the small sample size may make this figure unreliable. The survey also indicates that, when deciding issues of conflicts of interest, the relevant Decision-makers referenced the Guidelines in 100% of the cases (out of a total of 9 reported cases). The Decision-makers followed the Guidelines in 8 of these cases and made no stance in one case.

- In **Poland**, the Guidelines were referenced in 60% of the arbitrations in which conflicts of interest issues arose at the time of the constitution of the arbitral tribunal. Polish practitioners seem to make the greatest practical use of the Red, Orange, and Green Lists attached to the Guidelines, as Respondents

many times answered that the "lists" were referenced in these arbitrations. However, no concrete article of the Guidelines was referenced.

- In **Italy**, the Guidelines were referenced in 53% of the arbitrations in which conflicts of interest issue arose at the time of the constitution of the arbitral tribunal. The survey responses also reveal that practitioners acting as counsel or arbitrators consulted the Guidelines frequently when deciding to take on or make an appointment, or make a disclosure.

- In **England and Wales**, roughly half of the arbitrations involving arbitrator conflicts of interest referred to the Guidelines. The most referenced articles were Articles 1, 2-4, and 5-7. Where Respondents acted as counsel in arbitrations involving arbitrator conflicts of interest, they consulted the Guidelines in 90% of the cases and they consulted the Guidelines to decide whether or not to take on an appointment in 61% of the cases.

121. By contrast, in other countries in Europe, the Guidelines appear to be used with some frequency but are rarely referenced, or if referenced, hard data is unavailable:

- In **Finland**, the Guidelines were only cited in 23% of the cases known to Respondents where issues of conflicts of interest arose at the time of the constitution of the arbitral tribunal. However, the conclusion was that overall, even though formal reference to the Guidelines is only rarely made, the Guidelines are often consulted as general guidance and an interpretative tool.

- In **Ireland**, out of all the arbitrations accounted for by the five Respondents, 16% of those arbitrations in some way referred to one set of the Guidelines, but the result is not very helpful given the extremely small sample size.

- In **Belgium**, although according to the survey the Guidelines were referenced in only 10% of the arbitrations in which issues of conflicts arose at the time of the constitution of the arbitral tribunal (4 out 38 reported cases), the Country Report notes that Belgian arbitrators frequently rely on the Guidelines, as there are no specific provisions containing such standards on conflicts of interest in the Belgian Arbitration Law. The Guidelines are also regularly used as guidance by the relevant body within the Belgian Centre for Arbitration and Mediation (CEPANI) in case of objections and challenges to arbitrators.

- In **Austria**, the results of the survey are inconclusive due to the small sample size. However, the Country Report notes that the Guidelines are regularly applied either as a guideline or directly in a large number of arbitration proceedings. That said, as awards or procedural orders rendered in such proceedings are almost never published, precise data is not available.

- In **Norway**, the Country Report notes that "[w]*hile it is safe to assume that a significant number of procedural orders in Norway do make reference to IBA*

Guidelines and Rules, no such procedural orders or awards have been published thus far."[59] Due to the small sample size, the results of the survey are unreliable.

122. There are also countries that do not identify any reference to the Guidelines, such as **Bulgaria** or **Slovenia**.

123. From a regional perspective, the survey results suggest that, in Europe during the last five years, the Guidelines were referenced in approximately 50% of the instances in which issues of conflicts arose at the time of the constitution of the arbitral tribunal. When acting as counsel, practitioners consulted or relied on the Guidelines in approximately 63% of the cases when selecting arbitrators. When acting as arbitrators, European practitioners consulted or relied on the Guidelines in approximately 53% of the cases when deciding on whether to accept an appointment, and in 45% of the cases when making a disclosure.

124. Despite their widespread use among practitioners in Europe, few express references to the Guidelines in arbitral awards or terms of reference were identified, probably due to the confidential nature of most arbitrations. One notable example can be found in Switzerland, in the context of an arbitration before the Court of Arbitration for Sport (CAS), where the arbitral tribunal (the CAS panel) invoked the Guidelines (among other factors) to deny a document production request aimed at establishing the panel's independence.[60] This award also contains a noteworthy statement by Mr. Matthieu Reeb, Secretary General of the CAS, who testified during the proceedings that "*if an arbitrator was challenged by a party, Swiss law was applied primarily and the IBA*

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59 Norway Country Report, p. 2. The relevance of this statement may be mitigated by the fact that it refers to all the IBA Rules and Guidelines.

60 *Union des Associations Européennes de Football (UEFA) v. FC Sion/Olympique des Alpes SA*, CAS 2011/O/2574, Award, 31 January 2012 (The respondent had challenged the jurisdiction of the CAS and the independence of the members of the CAS Panel vis-à-vis the plaintiff (the UEFA), and had requested the production of a number of documents, including past appointments and nominations of arbitrators by UEFA, to assess the panel's independence. The CAS Panel denied this request, noting that the "closed list" system of CAS arbitration is compatible not only with Swiss case law, but also with the IBA Guidelines on Conflicts of Interest, because "*sports law is a kind of arbitration subject to [the exception contained in the orange list, footnote 5] provided by the IBA Guidelines*". The award also contains a noteworthy statement by Matthieu Reeb, Secretary General of the CAS, who testified during the proceedings that "*if an arbitrator was challenged by a party, Swiss law was applied primarily and the IBA Guidelines on Conflicts of Interest in International Arbitration (...) were also taken into consideration*".); Footnote 5 of the Orange List provides an exception to the rule at paragraph 3.1.3, noting that "*[i]t may be the practice in certain types of arbitration, such as maritime, sports or commodities arbitration, to draw arbitrators from a smaller or specialised pool of individuals. If in such fields it is the custom and practice for parties to frequently appoint the same arbitrator in different cases, no disclosure of this fact is required, where all parties in the arbitration should be familiar with such custom and practice.*"

Guidelines on Conflicts of Interest in International Arbitration (…) were also taken into consideration".[61]

125. In terms of the resolution of issues of conflict of interest, European Decision-makers (the arbitral institution, local court or arbitral tribunal, depending on the circumstances) referred to the Guidelines in 69% of the cases when making their decision. The Decision-maker followed the Guidelines in 70% of these cases, declined to follow them in 3% of the cases, and took no stance in 27% of the cases.

126. As noted above, local arbitral institutions in various jurisdictions apply the Guidelines or use them as guidance in deciding arbitrator challenges. By contrast, the International Court of Arbitration of the International Chamber of Commerce (the "ICC Court"),[62] while acknowledging that the Guidelines are a "*commendable effort to try to identify uniform standards for disclosure related to conflicts of interest*",[63] has repeatedly stated that it is not bound by the Guidelines.[64] Instead, the ICC Court applies its own test to establish the impartiality and independence of arbitrators. Under Article 11(2) of the ICC Arbitration Rules (previously Article 7(2) of the 1998 ICC Arbitration Rules), arbitrators are required to disclose "*any facts or circumstances which might be of such a nature as to call into question the arbitrator's independence in the eyes of the parties, as well as any circumstances that could give rise to reasonable doubts as to the arbitrator's impartiality*".[65] Because this is a subjective test that requires the arbitrator to assess how facts or circumstances would appear "in the eyes of the parties", it has been said to be "fundamentally

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61 *Union des Associations Européennes de Football (UEFA) v. FC Sion/Olympique des Alpes SA*, CAS 2011/O/2574, Award, 31 January 2012.

62 While strictly speaking the ICC Court should not be attributed to any particular region (its arbitrations are seated in many jurisdictions), we have analysed it within Europe as it is formally based in Paris.

63 A-M. Whitesell, "Independence in ICC Arbitration: ICC Court Practice concerning the Appointment, Confirmation, Challenge and Replacement of Arbitrators", [2008] ICC Bulletin, Special Supplement 2007 Independence of Arbitrators 36. While this article refers to the 2004 version of the Guidelines, it is still useful to understand the interaction between the IBA and ICC standards.

64 A. Carlevaris, R. Digón, "Arbitrator Challenges under the ICC Rules and Practice", [2016] ICC Dispute Resolution Bulletin, Vol. 1, p. 27. See also, A-M. Whitesell, "Independence in ICC Arbitration: ICC Court Practice concerning the Appointment, Confirmation, Challenge and Replacement of Arbitrators", [2008] ICC Bulletin, Special Supplement 2007 Independence of Arbitrators 36. See also, J. Fry, S. Greenberg, "The Arbitral Tribunal: Applications of Articles 7-12 of the ICC Rules in Recent Cases", and its Appendix: S. Greenberg, J.R. Feris, "References to the IBA Guidelines on Conflicts of Interest in International Arbitration ('IBA Guidelines') when Deciding on Arbitrator Independence in ICC Cases," both in 2009 ICC Bulletin, Vol. 20, Issue 2, pp. 17, 33. While these publications refer to the 2004 version of the Conflicts of Interest Guidelines, they are still useful to understand the interaction between the IBA and ICC standards.

65 Article 11(2) of the ICC Arbitration Rules (2012). In addition, as of 2016 the ICC includes in its "Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration" a non-exhaustive list of circumstances that an arbitrator should take into consideration when assessing what circumstances, if any, are of the nature that would call into question his or her independence in the eyes of the parties or give rise to reasonable doubts as to his or her impartiality.

incompatible" with the objective list system recommended by the Guidelines.[66] This does not mean that the Guidelines are ignored by the ICC Court. On the contrary: the recently issued ICC Guidance Note on conflict disclosures by arbitrators, which contains a non-exhaustive list of situations that arbitrators or prospective arbitrators are invited to take into consideration in assessing whether a disclosure should be made, is said to have been in "*large part inspired by the IBA Guidelines on Conflicts of Interest*".[67] Moreover, the ICC Court has confirmed that the Guidelines are frequently invoked by the parties when objecting to an arbitrator's confirmation or when making a challenge, or by arbitrators when justifying non-disclosures.[68] While the ICC Court will consider this when deciding whether to confirm an arbitrator or uphold a challenge, its decision will be based on an assessment of all of the circumstances of the case, and the fact that a situation may fall under one of the Guidelines' lists will not be outcome determinative.[69] According to research conducted by the ICC Court, many arbitrators have been challenged successfully or denied confirmation as a result of situations not contemplated by the Guidelines, or as a result of situations where the Guidelines indicated that no disclosure would be necessary.[70]

ii. North America

127. The Guidelines appear to have been extremely well received in arbitral practice in North America:[71] The survey figures suggest that, in North America, during the last five years, the Guidelines were referenced in approximately 65% of the cases in which issues of conflicts arose at the time of the constitution of the arbitral tribunal. When acting as counsel, practitioners consulted or relied on the Guidelines in approximately 77% of the cases when selecting arbitrators. When acting as arbitrators, North American practitioners consulted or relied on the Guidelines in

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66 A-M. Whitesell, "Independence in ICC Arbitration: ICC Court Practice concerning the Appointment, Confirmation, Challenge and Replacement of Arbitrators", [2008] ICC Bulletin, Special Supplement 2007 Independence of Arbitrators 36.

67 A. Moure, "Message from the President", [2016] ICC Dispute Resolution Bulletin, Vol. 1.

68 J. Fry, S. Greenberg, "The Arbitral Tribunal: Applications of Articles 7-12 of the ICC Rules in Recent Cases", and its Appendix: S. Greenberg and J.R. Feris, "References to the IBA Guidelines on Conflicts of Interest in International Arbitration ('IBA Guidelines') when Deciding on Arbitrator Independence in ICC Cases," both in 2009 ICC Bulletin, Vol. 20, pp. 17-18, 33.

69 J. Fry, S. Greenberg, "The Arbitral Tribunal: Applications of Articles 7-12 of the ICC Rules in Recent Cases", and its Appendix: S. Greenberg and J.R. Feris, "References to the IBA Guidelines on Conflicts of Interest in International Arbitration ('IBA Guidelines') when Deciding on Arbitrator Independence in ICC Cases," both in [2009] ICC Bulletin, Vol. 20.

70 Appendix: S. Greenberg, J.R. Feris, "References to the IBA Guidelines on Conflicts of Interest in International Arbitration ('IBA Guidelines') when Deciding on Arbitrator Independence in ICC Cases," [2009] ICC Bulletin, Vol. 20, pp. 33-39.

71 Although strictly speaking Mexico is in North America, for purposes of our study we have included it in Latin America. As a result, in this Report, North America, is composed of the United States and Canada only.

approximately 84% of the cases when deciding on whether to accept an appointment, and in 91% of the cases when making a disclosure.

128. In terms of the resolution of issues of conflicts of interest, North American Decision-makers (the arbitral institution, local court or arbitral tribunal, depending on the circumstances) referred to the Guidelines in 65% of the cases when making their decision on conflict of interest issues. The Decision-maker followed the Guidelines in 64% of these cases, declined to follow them in 15% of the cases, and took no stance in 21% of the cases.

- In the **United States**, out of the reported arbitrations over the last five years in which conflicts of interest arose at the time of the constitution of the arbitral tribunal, 63% referenced the Guidelines in resolving the potential conflict. When serving as counsel, Respondents consulted or relied on the Guidelines 78% of the times in which issues of conflicts arose when appointing an arbitrator. Respondents who served as arbitrators consulted or referred to the Guidelines 84% of the time when accepting an appointment, and 83% of the time when making disclosures. There were only a few cursory references to the Guidelines in arbitrations, presumably because most arbitral awards and decisions are not published and may be subject to confidentiality and non-disclosure agreements.

- In **Canada**, out of the reported arbitrations in which issues of conflict of interest arose at the time of the constitution of the arbitral tribunal, 70% referenced the Guidelines. In addition, investor-state arbitrations frequently cite the Guidelines under Chapter 11 of the North American Free Trade Agreement ("NAFTA"). The Country Report cited five arbitration orders involving conflicts of interest to illustrate that arbitral tribunals apply the Guidelines or take them into account when rendering decisions regarding conflict of interest issues.[72]

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[72] *Lone Pine Resources Inc v. Canada,* ICSID Case No. UNCT/15/2, Procedural Order No. 1, 11 March 2015 (stating that the Arbitral Tribunal will apply the IBA Guidelines on Conflicts of Interest as published in 2004; *Windstream Energy LLC v. Canada*, UNCITRAL, PCA Case No. 2013-22, Procedural Order No. 1, 16 September 2013 (stating that the Arbitral Tribunal will take into account the Conflicts of Interest Guidelines (2004)); *Mesa Power Group, LLC v. Canada*, UNCITRAL, PCA Case No. 2012-17, Procedural Order No. 1, 21 November 2012 (stating that the Arbitral Tribunal will take into account the Conflicts of Interest Guidelines (2004)); *Vito G. Gallo v. Canada*, UNCITRAL, PCA Case No. 55798, Decision on Challenge to Arbitrator's Appointment, 14 October 2009 (where General Standard 2(c) of the Conflicts of Interest Guidelines was cited in a decision regarding whether there were justifiable doubts regarding the impartiality and independence of one of the arbitrators); *Clayton v. Canada*, UNCITRAL, PCA Case No. 2009-04, Procedural Order No. 1, 9 April 2009 (stating that the Conflicts of Interest Guidelines will apply to the arbitrators, and that members of the Arbitral Tribunal shall make disclosures required by the Guidelines within 14 days after the date of the order).

iii. Latin America

129. The Guidelines have had an uneven reception in Latin America. While they appear to be widely applied in some jurisdictions, in others their use is much more limited. This phenomenon seems to be related to the familiarity of arbitration practitioners with the Guidelines rather than to their intrinsic value. Indeed, in countries with an active domestic or international arbitration practice (such as Brazil, Peru, and Mexico), the Guidelines tend to be used more frequently and with approval. By contrast, in countries with a less active arbitration practice (whether domestic or international), the Guidelines are less known and therefore less applied. Several Reporters noted the need to promote the Guidelines in their jurisdictions in Spanish.[73]

130. The survey results suggest that, in Latin America, during the last five years, the Guidelines were referenced approximately 59% of the times in which issues of conflict of interest arose at the time of the constitution of the arbitral tribunal. When acting as counsel, practitioners consulted or relied on the Guidelines in approximately 68% of the cases when selecting arbitrators. When acting as arbitrators, Latin American practitioners consulted on relied on the Guidelines in approximately 85% of the cases when deciding on whether to accept an appointment, and in 73% of the cases when making a disclosure.

131. In terms of the resolution of issues of conflicts of interest, Latin American Decision-makers (the arbitral institution, local court or arbitral tribunal, depending on the circumstances) referred to the Guidelines in roughly 62% of the cases when making their decision. The Decision-maker followed the Guidelines in 66% of these cases, declined to follow them in 6% of the cases, and took no stance in 28% of the cases.

132. The Guidelines appear to have gained most acceptance in the following jurisdictions:

- In **Peru**, in the last 5 years the Guidelines were invoked in 65% of the cases in which conflicts of interest arose at the time of the constitution of the arbitral tribunal. Respondents serving as counsel consulted the Guidelines in 88% of the cases when selecting arbitrators, while Respondents acting as arbitrators consulted them in 89% of the cases when deciding to take on an appointment and in 85% of the cases when making a disclosure. Notably, the Guidelines appear to be routinely applied by local arbitral institutions to decide on challenges, in particular, the Arbitration Centre of the Lima Chamber of Commerce (CCL) and the American Chamber of Commerce (AmCham). Indeed, the CCL's model *Acta de Instalación* (a form of terms of reference) invites users to make the Guidelines (as well as the other IBA Rules and Guidelines) binding, a practice that the parties appear to accept in roughly 50% of the cases. The reporter for Peru was able to provide references to 15 examples of challenges decided by arbitral institutions that had invoked the

[73] However, as already noted above, a Spanish language version of the Guidelines already exist.

Guidelines. According to the survey results, Decision-makers in Peru referenced on the Guidelines in 68% of the cases (81 out of 119 reported cases).

- In **Brazil**, in the last 5 years the Guidelines were referenced in 60% of the cases known to Respondents in which issues of conflict of interest have arisen at the time of the constitution of the arbitral tribunal. Respondents serving as counsel consulted the Guidelines in 55% of the cases in which issues of conflicts arose, while Respondents acting as arbitrators consulted them in 88% of the cases when deciding to take on an appointment, and in 90% of the cases when making disclosures. In addition, the most active arbitral institutions in Brazil[74] tend to apply the Guidelines when deciding challenges.

- In **Mexico**, the Guidelines were applied in some way in 56% of local arbitrations in which issues of conflict of interest arose at the time of the constitution of the arbitral tribunal. Respondents serving as counsel consulted the Guidelines in 98% of the cases when selecting arbitrators, while Respondents acting as arbitrators consulted them in 80% of the cases when deciding to take on an appointment and in 63% of the cases when making a disclosure. However, the Decision-makers in Mexico referenced on the Guidelines in only 50% of the cases.

- In **Costa Rica**, while the number of arbitration cases reported was lower, the percentage of cases in which the Guidelines were applied was high: out of the reported arbitrations in which conflict of interest issues arose at the time of the constitution of the arbitral tribunal, 90% referenced the Guidelines. In addition, two local arbitral institutions[75] use criteria inspired by the Guidelines to decide on challenges, and Decision-makers in Costa Rica also appear to have referenced the Guidelines in 90% of arbitrations.

- In **Argentina**, while the Guidelines do not appear to be consulted or applied in arbitrations administered by local institutions, their use appears to be more widespread in *ad hoc* arbitrations and institutional arbitrations administered by international arbitral institutions. In the last 5 years, the Guidelines have been referenced in 80% of the cases in which issues of conflict arose at the time of the constitution of the arbitral tribunal. Arbitrators have consulted or relied on them in 79% of the cases when taking on an appointment, and 74% of the cases when making a disclosure.

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74 Specifically, the Arbitration and Mediation Center of the Brazil-Canada Chamber of Commerce (CAM-CCBC), the Arbitration and Conciliation Chamber of FGV (FGV-RJ), Arbitration Chamber of São Paulo (CAESP), and Chamber of Conciliation, Mediation and Arbitration of the Center of Industries of the State of São Paulo (CIESP/FIESP).

75 Specifically, the *Centro Internacional de Conciliación y Arbitraje* of the American-US Chamber of Commerce (CICA) and the *Centro de Conciliación y Arbitraje* of the Costa Rican Chamber of Commerce (CCA).

133. The level of familiarity and acceptance of the Guidelines is lower in other Latin American jurisdictions. According to the Country Reports from Chile, Colombia, Ecuador and Paraguay, local practitioners seem to be mostly unfamiliar with the Guidelines, and their use appears to be limited to a handful of arbitrators who consult the Guidelines prior to accepting an appointment or making a disclosure. The following statistics appear to confirm these statements:

- In **Chile**, the Guidelines were referenced in 50% of the reported arbitrations in which issues of conflict of interest arose at the time of the constitution of the tribunal, and arbitrators consulted or relied on the Guidelines 68% of the times when accepting an appointment. By contrast, counsel relied on the Guidelines only 10% of the times in which they selected arbitrators, and arbitrators relied on them in only 36% of the cases in which they made a disclosure.

- In **Ecuador**, the Guidelines were referenced in 30% of the reported arbitrations in which issues of conflict of interest arose at the time of the constitution of the tribunal, and counsel relied on the Guidelines 42% of the time when they selected arbitrators. The results with respect to use by arbitrators are unreliable. According to the survey, Decision-makers referred to the Guidelines in 32% of the cases, and the Reporters were able to identify at least two arbitrations in which the Guidelines were applied to decide a challenge.[76]

- In **Colombia**, while the Guidelines were referenced in 80% of the reported arbitrations in which issues of conflict of interest arose at the time of the constitution of the tribunal, the small sample size may reduce the value of this statistic. Only five cases were reported. In addition, no Respondents indicated having consulted or relied on the Guidelines, whether acting as counsel or as arbitrators. That being said, the Guidelines appear to have been invoked in at least 3 international arbitrations before the Bogotá Chamber of Commerce (BCC), the main centre for institutional arbitration in Colombia.

134. Finally, as a general matter, practitioners in Bolivia, the Dominican Republic, Guatemala, Honduras, Uruguay and Venezuela appear to be unfamiliar with the Guidelines.[77]

iv. Asia-Pacific

135. The Guidelines are widely used in local arbitral practice in most jurisdictions in the Asia-Pacific region, notably in the following:

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[76] One was an *ad hoc* case, while the other was a case under the rules of the Arbitration Center of AmCham-Quito.

[77] We did not receive Country Reports for El Salvador, Guatemala, or Honduras, so the results noted above for these countries rely only on the survey results. Additionally, the survey apparently did not receive responses from Nicaragua or Panama.

- In **South Korea**, the Guidelines were referenced in 95% of the reported cases that involved conflicts of interest. Most Respondents (89%) consult or rely on the Guidelines when selecting arbitrators for international tribunals when acting as counsel. The most referenced part of the Guidelines appears to be the section that provides for the Green/Orange/Red Waivable and Non-Waivable Lists. The Korean Commercial Arbitration Board has also created its own Code of Ethics for Arbitrators which is in most part consistent with the Guidelines.

- In **Japan,** when Respondents acted as counsel in arbitrations involving arbitrator conflicts of interest, they consulted the Guidelines 61% of the time. When Respondents acted as arbitrators in arbitrations involving arbitrator conflicts, they consulted the Guidelines 89% of the time.

- In **Singapore**, the Guidelines were referenced in arbitrations in which issues of conflicts arose at the time of the constitution of the tribunal in 96% of the cases. In addition, 69% of Respondents who acted as counsel in arbitrations consulted or relied on the Guidelines. 52% of Respondents who acted as arbitrators consulted or relied on the Guidelines in deciding whether to take on an appointment, and 67% of them also consulted or relied on the Guidelines in making their disclosure to the parties and the arbitral institution.

136. By contrast, the Guidelines were used less frequently in the following jurisdictions:

- In **New Zealand**, the Guidelines are referenced in the policies of the New Zealand International Arbitration Centre (NZIAC) Rules for International Commercial Arbitration (Art. 5.6), which provide: "*Where it appoints an arbitrator under these Rules, NZIAC will have regard to, but is not bound to apply, the International Bar Association Guidelines on Conflicts of Interest in International Commercial Arbitration current at the Date of the Notice of Arbitration…*".[78] Despite this, the results of the survey show an uneven pattern: out of the reported arbitrations in which issues of conflict of interest arose, only 20% of them referenced the Guidelines. However, where there appeared to be an actual conflict, the Decision-maker consulted the Guidelines every time, and followed the Guidelines in 89% of those cases and was neutral in 11% of cases. That being said, these answers may not be representative of a trend in the country as the data sample was small and questions were answered only by a few Respondents. Finally, the Reporter notes that the Guidelines are rarely referenced in domestic arbitrations.

- The Guidelines do not appear to be widely used in **India**. Only 40% of the reported cases in which issues of conflict of interest arose referred to the

[78] See D. A.R. Williams QC and A. Kawharu, *Williams & Kawharu on Arbitration* (2011), Chapter 24, p. 686.

Guidelines. The Country Report explains that it is difficult to determine the manner and extent of reliance on or reference to the Guidelines in local arbitral practice because the arbitration proceedings are private. One reason for the limited reliance on the Guidelines may be that almost 95% of arbitrations in India are *ad hoc*, and individual arbitrators determine the procedure. Likewise, most arbitral institutions have developed their own rules and guidelines, but they are silent on conflicts. Without referring to the Guidelines expressly, the Indian Arbitration and Conciliation (Amendment) Act, 2015, incorporates much of the Guidelines, including a verbatim recitation of the Non-Waivable Red List, the Waivable Red List, and the Orange List.

- In **Malaysia**, according to the Country Report, no local arbitrations have referred to the Guidelines. However, the survey responses indicated that the Guidelines were referred to in approximately half of the occasions featuring potential conflicts of interest. Arbitration counsel and arbitrators expressed gratitude for the assistance the Guidelines provide.

- In **Taiwan**, a few Respondents stated that they had seen the Guidelines referred to in international arbitration proceedings, but not in Taiwanese arbitration.

- Finally, the Guidelines are used to some extent in **Thailand**. Out of the reported arbitrations which involved arbitrator conflicts of interest, 48% made reference to the Guidelines. When acting as counsel in arbitrations involving arbitrator conflicts, Respondents consulted or relied on the Guidelines 94% of the time. When acting as arbitrators in arbitrations involving arbitrator conflicts, they consulted the Guidelines half of the time. However, the survey results could be misleading because some Respondents misunderstood some of the questions and the sample size was very small. Only ten arbitrations were reported to have referenced the guidelines.

137. As for **China**, we can draw a clear distinction between mainland China and Hong Kong:

- In **Mainland China**, the Guidelines were referenced in 69% of the arbitrations (46 out of 67 reported cases). Respondents acting as counsel relied or consulted on the Guidelines in only 17% (12 out of 70) arbitrations involving arbitrator conflicts of interest. When acting as arbitrators, Respondents only consulted the Guidelines in 37% of the cases when deciding to accept an appointment (16 out of 43 reported cases), and in 35% of the cases when making a disclosure (15 out of 43 reported cases).

- In **Hong Kong**, Respondents reported that 96% of the arbitrations in which conflicts of interest issues arose made reference to the Guidelines. When acting as counsel, Respondents consulted the Guidelines in 72% of the cases.

When acting as arbitrators, Respondents consulted the Guidelines in 67% of the cases. Again, these figures could be statistically insignificant due to the small sample size.

138. The survey figures suggest that, in the Asia-Pacific region during the last five years, the Guidelines were referenced approximately 73% of the cases in which issues of conflict of interest arose at the time of the constitution of the arbitral tribunal. When acting as counsel, practitioners consulted or relied on the Guidelines in approximately 68% of the cases when selecting arbitrators. When acting as arbitrators, practitioners in the region consulted on relied on the Guidelines in approximately 55% of the cases when deciding on whether to accept an appointment, and in 63% of the cases when making a disclosure.

139. In terms of the resolution of issues of conflicts of interest, Decision-makers in the Asia-Pacific region (the arbitral institution, local court or arbitral tribunal, depending on the circumstances) referred to the Guidelines in roughly 88% of the cases when making their decision. The Decision-maker followed the Guidelines in 82% of these cases, declined to follow them in 6% of the cases, and took no stance in 14% of the cases.

v. The Middle East

140. There is little information on the reception of the Guidelines in local arbitral practice in the Middle East. Only certain jurisdictions provided Meaningful Responses to the survey, and even then the information provided by the Reporters (with the exception of the **United Arab Emirates (UAE)**), was scarce. The reports for **Turkey**, **Lebanon**, and **Qatar** explain that this lack of information may be due to the confidential nature of arbitration, as well as the absence of a database. Consequently, the results recorded below may be misrepresentative.

141. According to the survey results and the Country Reports, the Guidelines do not appear to be referenced very often in arbitrations in this region, except in certain jurisdictions. However, arbitrators and counsel appear to rely frequently on the Guidelines, even if they are not referenced expressly:

- In the **United Arab Emirates (UAE)**, 61% of the cases in which conflicts of interest issues have arisen at the time of the constitution of the tribunal referenced the Guidelines. Counsel relied on the Guidelines 100% of the time when they selected arbitrators,[79] and arbitrators consulted or relied on the Guidelines 100% of the time when accepting an appointment or making a disclosure.[80] The UAE report also notes that counsel and arbitrators often follow the Guidelines when dealing with potential challenges to the Tribunal's

[79] In 20 out of 20 reported cases.

[80] In 24 out of 24 reported cases.

independence and impartiality. It also appears that the parties regularly wish to include the Guidelines in their terms of reference. However, a Respondent also shared his experience of an arbitral decision in the UAE and explained that "*in almost all the challenges against arbitrator involving conflict of interest DIAC, …, while they are consulting the guidelines and applying their provisions, they do not cite such provisions in their decision but rather cite provisions of the applicable law dealing with conflict of interest*"[81].

- In **Israel**, the Guidelines were referenced in 64% of the reported arbitrations in which issues of conflict of interest arose at the time of the constitution of the tribunal. By contrast, practitioners acting as counsel relied on the Guidelines only 36% of the time when they selected arbitrators, while arbitrators consulted or relied on the Guidelines 30% of the times when accepting an appointment or making a disclosure.

- In **Lebanon**, the Guidelines were referenced in 50% of the reported arbitrations in which issues of conflict of interest arose at the time of the constitution of the tribunal. Counsel relied on the Guidelines 44% of the time when they selected arbitrators. Arbitrators consulted or relied on the Guidelines 69% of the time when accepting an appointment, and 62% of the times when making a disclosure. The report for Lebanon also explains that some arbitral institutions in Lebanon have "confessed" to using the Waivable Red List of the Guidelines as guidance in situations where there was an objective conflict of interest.

- In **Egypt**, only 27% the reported arbitrations in which issues of conflicts arose at the time of the constitution of the tribunal referenced the Guidelines.[82]

- In **Turkey**, the Guidelines were referenced in 100% of the reported arbitrations in which issues of conflicts arose at the time of the constitution of the tribunal, but the small sample size means this result may not be representative of a trend in this country. Only two arbitrations were reported.

- For **Qatar**, the responses to the survey do not record any arbitrations in which the Guidelines were referenced. However, the Country Report notes that although the use of the Guidelines may not be apparent, the "word-of-mouth impression" is that counsel in arbitration cases do in fact refer to the Guidelines when necessary, although this does not happen frequently.

142. The survey results suggest that, in the Middle East during the last five years, the Guidelines were referenced approximately 54% of the times in which issues of

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81 United Arab Emirates, National Survey, IBA Arbitration Guidelines and Rules Subcommittee, Respondent no. 5, p. 23.

82 We received no country report for Egypt. The results noted above for Egypt rely only on the survey results.

conflict of interest arose at the time of the constitution of the arbitral tribunal. When acting as counsel, practitioners consulted or relied on the Guidelines in approximately 65% of the cases when selecting arbitrators. When acting as arbitrators, practitioners in the region consulted or relied on the Guidelines in 79% of the cases when deciding on whether to accept an appointment, and in 88% of the cases when making a disclosure.

143. In terms of the resolution of issues of conflicts of interest, Decision-makers in the Middle East (the arbitral institution, local court or arbitral tribunal, depending on the circumstances) referred to the Guidelines in roughly 42% of the cases when making their decision. The Decision-maker followed the Guidelines in 78% of these cases, declined to follow them in 5% of the cases, and took no stance in 18% of the cases.

vi. Africa

144. We have very little information on the reception of the Guidelines in Africa:

- The survey was only answered by Respondents in Angola, Ethiopia, Ghana, Mozambique, and Nigeria, and the rate of responses was very low.
- In addition, we only received country reports for Angola and Mozambique.
- Finally, information related to the use of the Guidelines could only be found in the Nigeria survey, in which two Respondents gave a very brief overview of arbitral decisions citing the Guidelines, without specifying the references.

145. Consequently, the results of the survey for Africa are of limited value. For the sake of completeness, we present them below.

146. The answers to the survey suggest that, in Africa and during the last five years, the Guidelines were referenced approximately 47% of the times in which issues of conflicts of interest arose at the time of the constitution of the arbitral tribunal. When acting as counsel, practitioners consulted or relied on the Guidelines in approximately 58% of the cases when selecting arbitrators. When acting as arbitrators, African practitioners consulted on relied on the Guidelines in approximately 35% of the cases when deciding on whether to accept an appointment, and in 42% of the cases when making a disclosure.

147. In terms of the resolution of issues of conflicts of interest, African Decision-makers (the arbitral institution, local court or arbitral tribunal, depending on the circumstances) referred to the Guidelines in roughly 29% of the cases when making their decision.

148. In addition, African Respondents made the following comments with respect to decisions on issues of conflicts:

- One of the Respondents referred to a case where the arbitral tribunal considered that an arbitrator who had "*10 years* [of] *previous professional representation against* [a] *vaguely related corporate entity was not preclusive*"[83].

- A second Respondent also mentioned a case where the "court relying on the guidelines held that [the] arbitrator should have decided the appellant as he was counsel to one of the parties to the arbitration"[84].

(v) The use of the Conflict of Interest Guidelines in Common and Civil law Jurisdictions

149. The survey results summarized above suggest that the Guidelines have been well received in both common law and civil law jurisdictions. While the Guidelines appear to be more widely used in certain key common law jurisdictions than in certain popular civil law arbitral seats, other civil law jurisdictions show a surprisingly high use of the Guidelines.

150. Indeed, the jurisdictions where the Guidelines were referenced more frequently at the time of the constitution of the tribunal are mostly common law jurisdictions: Singapore (96%), Hong Kong (96%), Canada (70%), and the United States (67%). But these results are not uniform across all common law jurisdictions: the Guidelines were referenced rather less frequently in England and Wales (50%), and significantly less frequently in India (40%), New Zealand (20%), and Malaysia (0%). The survey results for Australia, Ireland, and Scotland are unreliable due to the small sample size.

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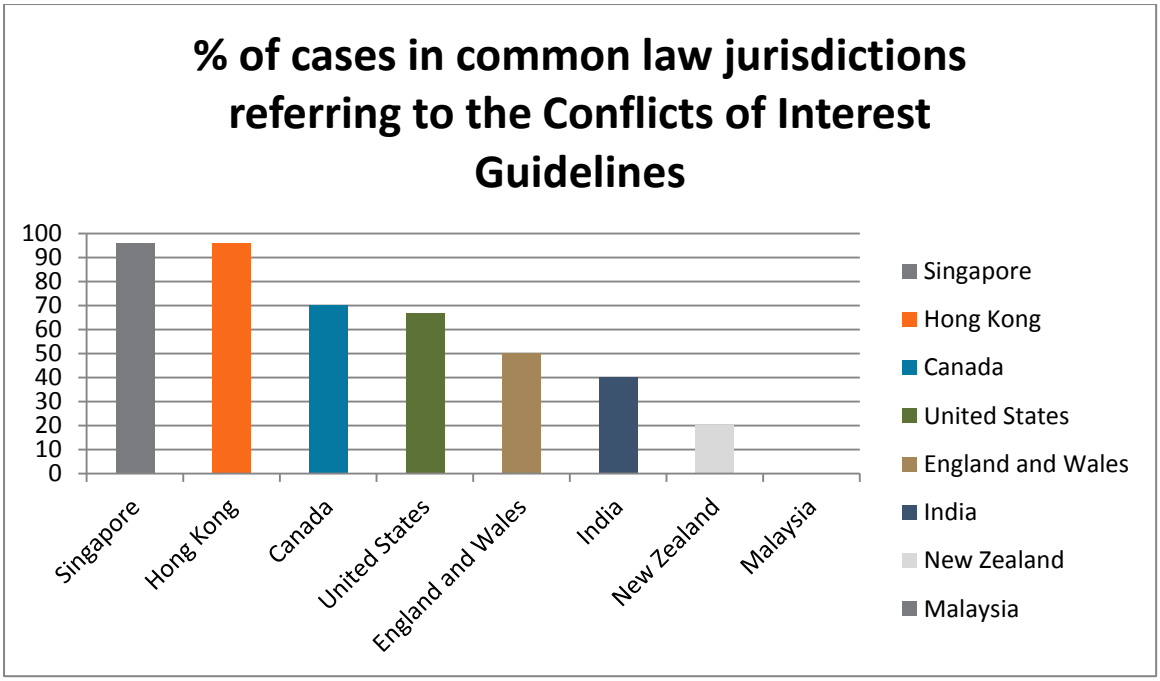
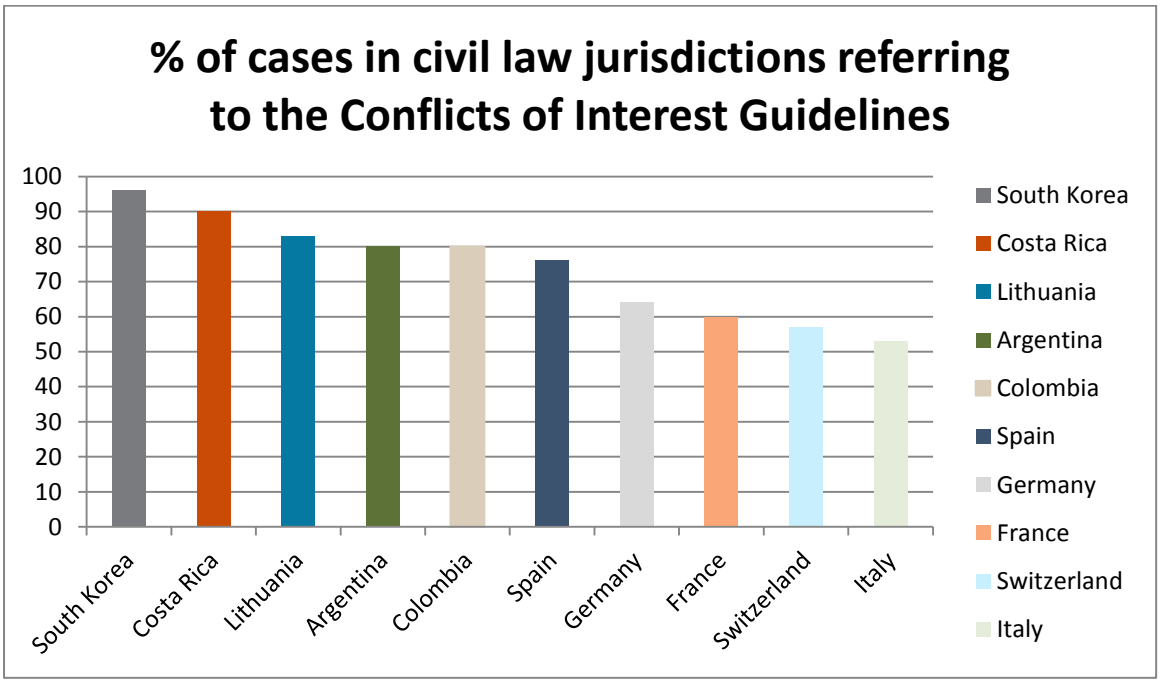
83 Nigeria, National Survey, IBA Arbitration Guidelines and Rules Subcommittee, Respondent no. 4, p. 19.

84 Nigeria, National Survey, IBA Arbitration Guidelines and Rules Subcommittee, Respondent no. 14 p. 61.



151. By contrast, while reference to the Guidelines was slightly lower in civil law jurisdictions traditionally used as arbitral seats, the survey shows that they are frequently referenced in civil law jurisdictions that are less popular internationally but have a developed arbitral practice. Thus, while the Guidelines are referenced slightly less frequently in the most common European seats such as France (60%), Switzerland (57%), Germany (64%), and Italy (53%), this percentage was much higher in less popular civil law seats such as South Korea (96%), Costa Rica (90%), Lithuania (83%), Argentina (80%), Colombia (80%), Romania (78%), and Spain (76%).



152. Reliance on the Guidelines by counsel and arbitrators seems to follow the same trend: while practitioners in common law jurisdictions appear to rely more frequently on the Guidelines when acting as counsel or arbitrators than in popular civil law jurisdictions, practitioners in certain less popular civil law seats tend to rely on the Guidelines very frequently. Specifically:

- Practitioners in certain popular common law jurisdictions consult or rely on the Guidelines very frequently when acting as counsel (e.g., England and Wales (90%), United States (78%), Hong Kong (72%), and Singapore (69%)). Practitioners in the United States and Hong Kong also relied on the Guidelines very frequently when acting as arbitrators, whether when accepting appointments (United States (84%), Hong Kong (67%)) or when making disclosures (United States (83%), Hong Kong (81%)), while practitioners in England and Wales and Singapore relied on them rather less frequently when accepting appointments (England and Wales (61%), Singapore (52%)) or making disclosures (England and Wales (49%), and Singapore (67%)).

- These percentages were slightly lower in popular civil law seats. For instance, in France, counsel referred to the Guidelines in 48% of the cases when selecting arbitrators, 37% of the times when accepting appointments and 38% of the times when making disclosures. In Switzerland, counsel consulted the Guidelines frequently when selecting arbitrators (70%), but rather less frequently when acting as arbitrators (51% of the cases when accepting appointments and 38% of the cases when making disclosures).

- By contrast, the Guidelines were consulted much more frequently in certain less popular civil law arbitral seats. For instance, practitioners acting as counsel relied very frequently on the Guidelines when appointing arbitrators in the UAE and Russia (100%),[85] Mexico (98%), Japan (92%), South Korea (89%), Peru (82%), and Argentina (78%). Similarly, arbitrators in certain civil law jurisdictions relied very frequently on the Guidelines when accepting appointments (e.g., 100% of the time in the UAE and Russia, [86] 89% of the time in Japan, 88% of the time in Brazil, 76% of the time in Peru) or when making disclosures (e.g., 100% of the time in Japan and Russia,[87] 90% of the time in Brazil, 75% of the time in Argentina, and 71% of the time in Peru).

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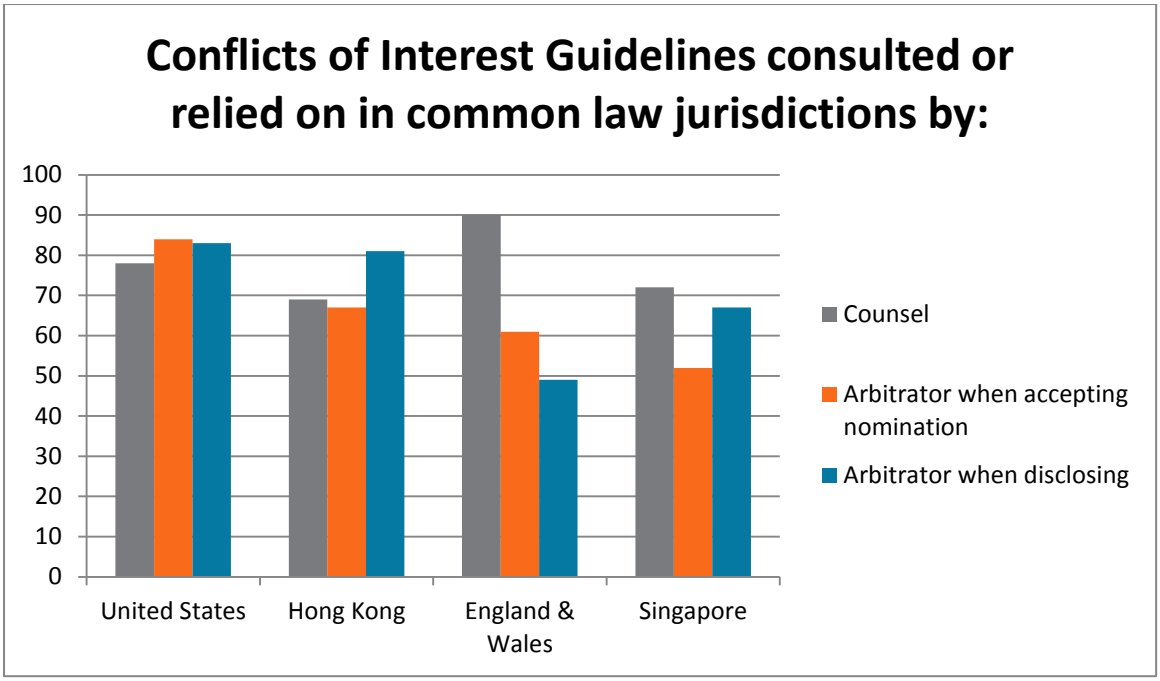
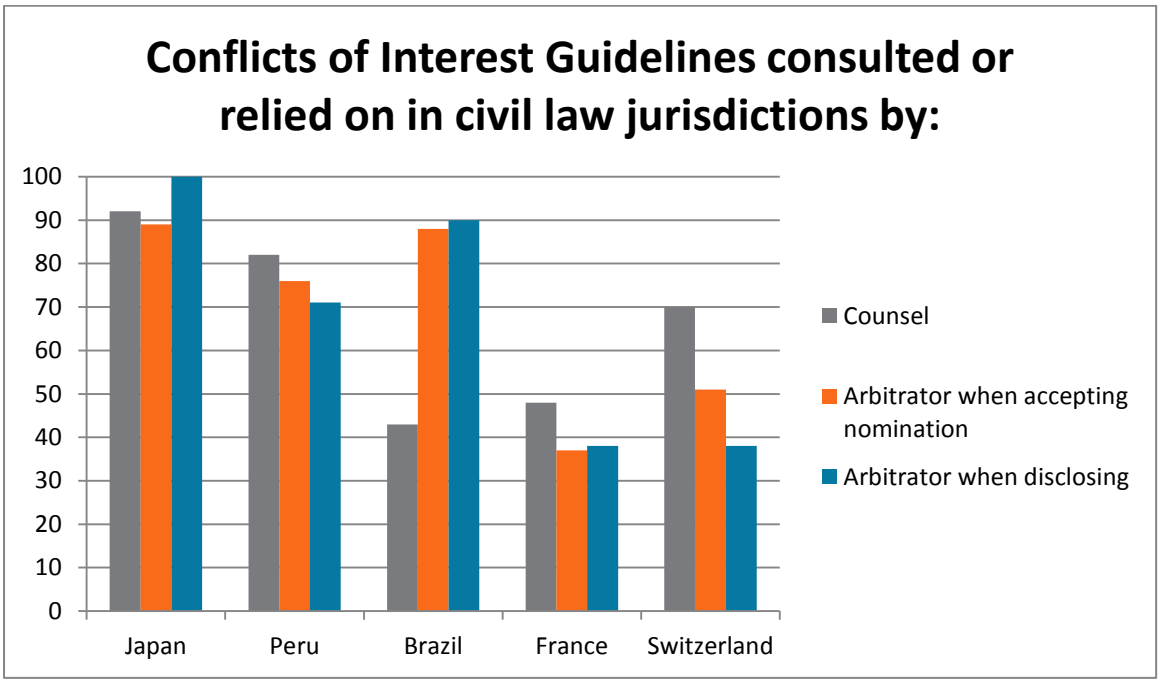
85 These figures may be unreliable due to the small sample size.

86 These figures may be unreliable due to the small sample size.

87 These figures may be unreliable due to the small sample size.



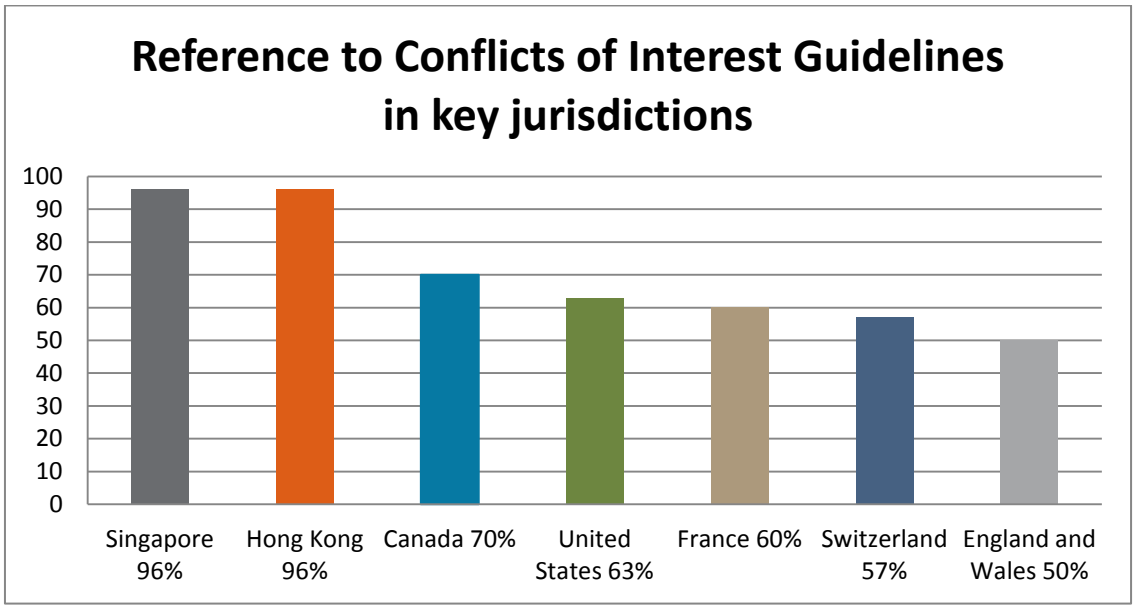


153. The above suggests that the nature of a particular legal system is not determinative of whether users in that jurisdiction will rely on the Guidelines. Alternatively, they could also suggest that the Guidelines are more widely accepted in developed common law arbitral seats than in developed civil law arbitral seats, where practitioners may rely on domestic ethical or legal rules to determine issues of conflicts of interest. By contrast, less traditional civil law arbitral seats may rely on the Guidelines to fill in gaps in their own legal systems.

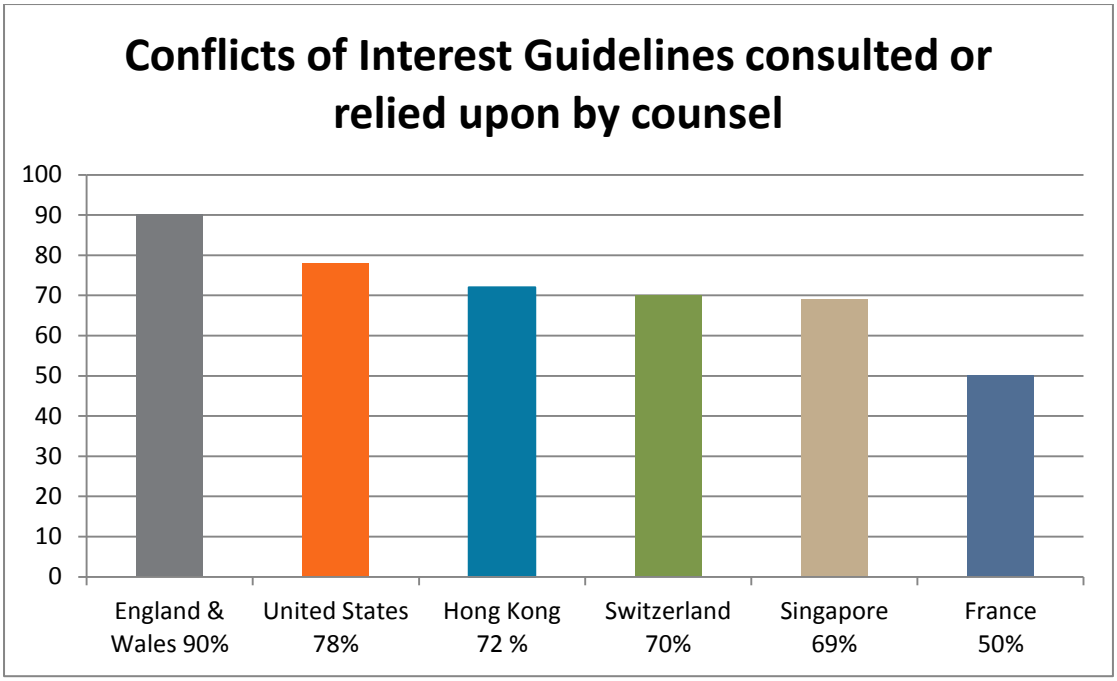
2. The Use of the Conflicts of Interest Guidelines in Key Jurisdictions

154. The survey results suggest that the use of the Guidelines in popular arbitral seats is relatively high.

155. The Guidelines were referenced particularly frequently in arbitrations involving conflicts of interest in key jurisdictions in Asia, such as Singapore (96%), and Hong Kong (96%), as well as in North America, with Canada at 70% and the United States at 63%. References to the Guidelines in cases involving issues of conflicts were also high in key European jurisdictions, such as France (60%) and Switzerland (57%), while slightly less in England and Wales (50%). Notably, the Guidelines were also frequently referenced in jurisdictions that are less popular internationally but which have a relatively developed domestic arbitral practice, such as Spain (76%), Peru (65%), the United Arab Emirates (61%), Brazil (60%), and Mexico (56%).



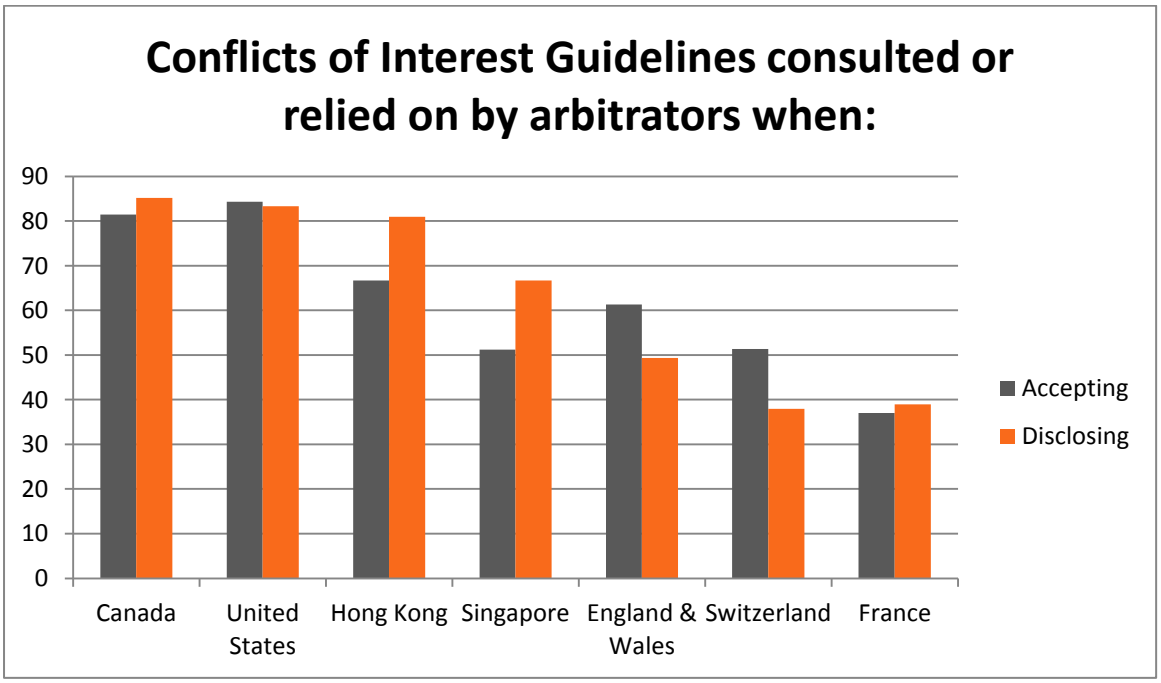
156. In line with these results, the Guidelines were also frequently consulted or relied upon by counsel in popular arbitral seats. As reflected in the chart below, Respondents who acted as counsel consulted or relied on the Guidelines when selecting arbitrators in 90% of the cases in England and Wales, 78% in the United States, 72% in Hong Kong, 70% in Switzerland, and 69% in Singapore, but only 50% in France. This percentage was even higher in less traditional arbitral seats such as the UAE (100%), Mexico (98%), and Peru (88%), but fell sharply in Brazil (55%).



157. Arbitrators in key jurisdictions consult or rely on the Guidelines somewhat less frequently, with some exceptions. This may suggest that arbitrators in these jurisdictions are more experienced and the arbitration laws are more developed concerning when and how impartiality and independence should be analysed. In Singapore, arbitrators consulted or relied on the Guidelines 52% of the times when deciding to accept an appointment, and 67% of the times when making a disclosure. In England and Wales, arbitrators consulted the Guidelines 61% of the times when accepting appointments and 49% of the times when making disclosures. In Switzerland, arbitrators consulted the Guidelines 51% of the times when accepting appointments but only 38% of the times when making disclosures. In France, arbitrators consulted the Guidelines 37% of the times when accepting appointments and 39% of the times when making disclosures. A notable exception is the United States, where arbitrators consulted or relied on the Guidelines 84% of the times when deciding to accept an appointment, and 83% of the times when making a disclosure. Hong Kong is another exception, where arbitrators consulted or relied on the Guidelines 67% of the times when deciding to take on an appointment, and 81% of the time when making a disclosure.

158. By contrast, in other active but less traditional arbitral seats, arbitrators tend to rely more frequently on the Guidelines. In Brazil, arbitrators consulted the Guidelines in 88% of the cases when deciding to take on an appointment, and in 90% of the cases when making disclosures. Similarly, in Peru, arbitrators relied on the Guidelines 89% of the times when deciding to take on an appointment, and 85% of the times when making a disclosure. In Mexico, arbitrators consulted on the Guidelines 80% of the times when deciding whether to take on an appointment, and 63% of the times when making disclosures. Finally, in the UAE; arbitrators consulted the Guidelines 100% of

the times, whether to decide to take on an appointment or in making disclosures. However, the UAE figures may be unreliable due to the small sample size.



3. What are the Specific Provisions Referenced?

159. As to the provisions of the Guidelines being used by the international arbitration community, the survey results show that no particular part of the Guidelines seem to be consulted or relied on significantly more often than others. The aggregate responses not only indicated many different provisions from both Part I (General Standards) and Part II (Practical Application of the General Standards), but also many individual practitioners reported having used "various" or "all" provisions, the "entire set" of the Conflicts of Interest Guidelines or the "general standards and the lists".

4. What is the Status of the Conflicts of Interest Guidelines in the Arbitrations in Which they were Referenced?

160. The survey has no data on whether or to what extent the Guidelines have been used with a binding nature, or only as guidelines (non-binding nature).

161. That being said, some Country Reports reveal that certain arbitral institutions either recommend their incorporation into the terms of reference at the beginning of the arbitration, thereby inducing the parties to make them binding, or routinely apply the Guidelines when deciding on issues of conflicts of interest (thereby making them binding at the decision stage). The following cases are worth noting:

- In **Peru**, the model *Acta de Instalación* (a form of terms of reference) of the Lima Chamber of Commerce (CCL) includes a provision stating that the Guidelines on Conflicts of Interest (as well as the other IBA Rules and

Guidelines) will apply to the arbitration. According to the country report, this practice is accepted by the parties in roughly 50% of the cases. The CCL and other two arbitral institutions in Peru routinely apply the Guidelines when deciding issues of conflicts of interest.[88]

- In **Portugal**, the *Centro de Arbitragem Comercial da Câmara de Comércio e Indústria Portuguesa* makes a formal reference to the Guidelines in its criteria for the appointment of arbitrators, noting that as rule the president of the centre shall not accept the appointment of an arbitrator who falls into a situation described in the Non-Waivable Red List.

- In **South Korea**, the Korean Commercial Arbitration Board has created its own Code of Ethics for Arbitrators which is largely consistent with the Guidelines.

- In **Costa Rica,** one of the four main arbitral institutions, the *Centro Internacional de Conciliación y Arbitraje of the American-US Chamber of Commerce* ("CICA"), issued a directive that includes some of the provisions of the Guidelines. Similarly, in 2011 the *Centro de Conciliación y Arbitraje of the Costa Rican Chamber of Commerce* ("CCA") established a directive inspired by the Guidelines according to which all persons approached to act as arbitrators must disclose, among other things, how many times the same party and/or law firm has appointed them in the past 5 years.

C. THE CONFLICTS OF INTEREST GUIDELINES IN CASE LAW

162. References to the Guidelines by local courts are rare. This does not necessarily mean that courts do not apply or take into consideration the Conflicts of Interest Guidelines: Reporters for several jurisdictions noted that the absence of a case law database or search engine made the search for jurisprudence difficult. As a result, the Country Reports may not be an accurate reflection of the available case law referring to the Guidelines.

163. That being said, it appears undisputed that the rate at which the Guidelines are referred to or relied on by local courts is much lower than the rate at which they are used by practitioners in local arbitral practice, or by arbitral institutions when deciding on challenges. This may be due to a number of reasons, in particular:

- Lack of knowledge/familiarity of domestic judges with the Guidelines.

- The existence of domestic ethical codes that courts must (or prefer) to use instead of the Guidelines.

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[88] The Reporter for Peru was able to provide references to 15 examples of challenges decided by arbitral institutions that had invoked the Guidelines.

- In some cases, the Guidelines may have been raised or relied upon by the parties, but courts ultimately may not have found it necessary to refer to them in their decision.

- Given the limited grounds on which the courts can become involved in an arbitration before, during, or after the proceedings, courts do not have many opportunities to comment on the use of the Guidelines.

164. The following paragraphs aim at presenting how the Conflicts of Interest Guidelines were applied by local courts in all six regions.

i. Europe

165. In Europe, the application of the Guidelines by local courts varies significantly from one jurisdiction to the other, and information on judicial case law is scarce. However, where available, the data suggests that local courts refer to the Guidelines with approval.

166. Reported citations tend to come from Superior Courts or Courts of Appeal, or in some instances by the Supreme Court, when dealing with challenges to arbitrators or challenges of arbitral awards. For instance:

- In **Spain,** case law shows general acceptance of the Guidelines, as they are consistently used by domestic courts as persuasive authority. The wide use of this particular IBA product could be attributed to two reasons. *First*, the Conflicts of Interest Guidelines are useful not only with regard to international arbitration but also in relation to domestic arbitration. *Second*, Article 17 of the Spanish Arbitration Act (pursuant to which the arbitrator must be "independent and impartial" during the arbitration proceeding and has the duty to disclose any circumstance that may affect said independence or impartiality) is an open provision and the practical approach of the color-coded lists provides concrete guidance that is useful in applying Article 17's broad standard. There are many recent citations to the Guidelines from the Superior Court of Justice.[89] For example, in *Frio Montrans v. Telecomunicaciones*

[89] *Cárnicas 7 Hermanos, S.A. v. Compañía Española de Seguros de Crédito a la Exportación (CESCE), S.A.*, Superior Court of Justice of Madrid (Civil and Criminal Chambers, Section 1), Judgment No. 93/2015, 17 December 2015 (Claim No. 11/2015); *Consultores Integrales de Telecomunicacion Consulintel SL v. Telefónica Investigación y Desarrollo, SAU*, Superior Court of Justice of Madrid, Judgment No. 68/2015, 6 October 2015 (Claim No. 14/2015); *Frio Montrans, SL v. Telecomunicaciones Palomo, SL*, Superior Court of Justice of Madrid, Judgment No. 65/2015, 17 September 2015 (Claim No. 106/2014); *Iberpistas S.A.C.E., Corporación Industrial Bankia, SAU v. Desarrollo de Concesiones Viarias Uno, SL, Corporación Industrial Bankia, SA, SACYR, SA*, Superior Court of Justice of Madrid, Judgment No. 61/2015, 2 September 2015 (Claim No. 64/2014); *Constructora de Viviendas Unifamiliares, SL, v. BBVA*, Superior Court of Justice of Madrid, 26 May 2015 (Claim No. 63/2011); *Repos i Repàs, SL v. BBVA*, Superior Court of Justice of Madrid, Judgment, 28 January 2015 (Claim No. 20/2014); *Indispensable Europea, SL v. Technology Hotels, SL*, Superior Court of Justice of Madrid, Judgment, 24 September 2014 (Claim No. 15/2014); *Delforca 2008*,

Palomo,[90] the Court analysed the impartiality of the arbitral institution by taking into consideration the Guidelines. Particularly, the Court relied on the Guidelines and concluded that it is not only the members of the arbitral tribunal who are obliged to be impartial, but this obligation extends also to the institutions that administer the arbitration proceedings.

- In **Switzerland**, in the last five years the Swiss Federal Supreme Court has referred to the Guidelines in five cases. In four of these cases, the parties had invoked the Guidelines,[91] while in one of them the Court referred to the Guidelines on its own motion.[92] While the Court considered the Guidelines in two of these cases when coming to its decision,[93] its position on the Guidelines (first articulated in a 2008[94]) is that "*… one should not overestimate the weight to be given to these formal grounds. It should not be forgotten that, although these guidelines represent a useful tool (in determining issues of conflicts of interest), they do not have force of law. Consequently, the particular circumstances of a case and the relevant case law will remain the determining factor in deciding a question of conflicts of interest.*"[95]

- In **Austria**, the Austrian Supreme Court has cited the Guidelines in four occasions in the last five years. One of these cases concerned a challenge to an arbitral award on the grounds of lack of impartiality of one of the arbitrators,[96] while the other three concerned challenges (all relating to the same facts) to the same sole arbitrator in two parallel proceedings.[97] In three of these cases, the plaintiff had invoked the Guidelines to support its challenge.[98] In all four decisions, the Supreme Court referred to the Guidelines as such in its

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Sociedad de Valores, SA v. Banco Santander, SA, Madrid Court of Appeals, Judgment, 30 June 2011 (Claim No. 3/2009).

90 *Frio Montrans, SL v. Telecomunicaciones Palomo, SL*, Superior Court of Justice of Madrid, Judgment No. 65/2015, 17 September 2015 (Claim No. 106/2014).

91 Decision of the Swiss Federal Supreme Court No. 4A_458/2009 of 10 June 2010; Decision of the Swiss Federal Supreme Court No. 4A_110/2012 of 9 October 2012; Decisions of the Swiss Federal Supreme Court Nos 4A_258/2009 of 11 January 2009 and 4A_256/2009 of 11 January 2009.

92 Decision of the Swiss Federal Supreme Court No. 4A_234/2010 of 29 October 2010.

93 In the other three cases, the Swiss Federal Supreme Court dismissed the challenge as untimely. Decision of the Swiss Federal Supreme Court No. 4A_110/2012 of 9 October 2012, and decisions of the Swiss Federal Supreme Court Nos 4A_258/2009 of 11 January 2009 and 4A_256/2009 of 11 January 2009.

94 Decision of the Swiss Federal Supreme Court No. 4A_506/2007 of 20 March 2008, para. 3.3.2.2.

95 Decision of the Swiss Federal Supreme Court No. 4A_458/2009 of 10 June 2010, paragraph 3.3.3.1 (English working translation).

96 OGH 17.06.2013, 2 Ob 112/12b.

97 OGH 05.08.2014, 18 ONc 1/14p, OGH 05.08.2014, 18 ONc 2/14k, and OGH 19.04.2016, 18 ONc 3/15h.

98 OGH 17.06.2013, 2 Ob 112/12b, OGH 05.08.2014, 18 ONc 2/14k and OGH 05.08.2014, 18 ONc 1/14p.

reasoning, but referred to particular provisions of the Guidelines to support its reasoning in only two of those decisions.[99] Notably, in all of these cases the Supreme Court stated that, absent an agreement of the parties, the Guidelines are not binding but may still serve as a guide to assess the impartiality or independence of an arbitrator.[100]

- In **Belgium**, in the last ten years the courts have referred to the Guidelines in at least two instances. In a 2011 decision, the Brussels Court of Appeals– recognizing that the Guidelines are non-binding guidelines–rejected the plaintiff's reliance on the Orange List, as these only call for disclosure in case of two of more repeat appointments by the same party, whereas the case in question revolved around the appointment of an arbitrator in another unrelated matter by one of the parties.[101] In the famous *Schwebel* case[102] in 2007, the Brussels Court of Appeals referred expressly to the general principle that the non-disclosure of a potential conflict of interest does not in itself lead to the automatic disqualification of the arbitrator. This principle set out in the Orange List of the Guidelines was the basis for the Court's decision to refuse to set aside an award because the arbitrator had not disclosed that he had been appointed twice by the same party.

- In **Sweden**, the Guidelines have been referenced in two cases decided by the Swedish Supreme Court in the last 10 years. In the first case, after relying on the Guidelines for guidance, the Supreme Court found that an arbitrator's failure to disclose a relationship with a law firm representing the respondent was a sufficient ground to set aside the award.[103] In the second case, the Supreme Court dismissed a challenge against an award based on the alleged lack of independence of one of the arbitrators, considering among other factors that the Guidelines do not provide a sanction for non-disclosure.[104]

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99 In decision OGH 17.06.2013, 2 Ob 112/12b, the Supreme Court noted in its reasoning that the facts described did not fall into the Guidelines' Non-Waivable Red list, and therefore it ultimately dismissed the challenge. In decision OGH 19.04.2016, 18 ONc 3/15h, in addition to referring to Austrian case law the Supreme Court referred to Section I.2.b) and c) of the Guidelines, and found that a neutral and reasonable third party in knowledge of the relevant facts would have considered it probable that the arbitrator's decision-making was not limited to the facts of the case, but was also influenced by other facts or circumstances. It also found that the Guidelines' standard correspondrd to Austrian case law in that regard.

100 OGH 17.06.2013, 2 Ob 112/12b, OGH 05.08.2014, 18 ONc 1/14p, OGH 05.08.2014, 18 ONc 2/14k and OGH 19.04.2016, 18 ONc 3/15h.

101 Brussels Court of Appeals, 6 December 2011, "Brussel 6 december 2011", 2014 b-Arbitra 215, Vol. 1.

102 *Poland v. Euroko & Stephen M. Schwebel*, Brussels Court of Appeals, Decision, 29 October 2007 (unpublished).

103 *A.J. v. Ericsson AB*, NJA 2007 p. 841.

104 *AB Fortum Värme v. Korsnäs AB*, NJA 2010 p. 317.

- In **England and Wales**, the Guidelines were referred to in two cases: *A v. B*,[105] and *W Limited v. M Sdn Bhd*.[106] The latter case was especially significant because it addressed the changes introduced in the Guidelines in 2014, and it also expressed some disapproval towards the drafting of the Guidelines. Knowles J, CBE identified "weaknesses" in the Guidelines regarding the coloured-lists classification system.

- In **Germany**, the Guidelines have been explicitly referred to in at least two decisions of the German state courts.[107] Notably, in the most recent decision a German court ruled that section 3.3.7 of the Guidelines could neither be applied directly nor by way of an *argumentum a fortiori*. According to the court, the Guidelines contain a definitive list of the relationships that require disclosure, and cases of failure to disclose generally only result in secondary claims against the arbitrator and do not constitute grounds for a challenge.[108]

- In the **Czech Republic**, the Supreme Court referred explicitly to the Guidelines in a case of a court's exclusion of an arbitrator from a dispute.[109]

- In **Lithuania** there is one recorded case in which the Court of Appeal, when considering the impartiality and independence of an arbitrator, referred to Article 1.1 of the Red List of the Guidelines.[110]

- In **Norway** there have not been any explicit references to the Guidelines in *published* case law.[111] However, the Reporters were aware of at least one *unpublished* decision of the Trondheim District Court where General Standard 6 of the Guidelines was explicitly referenced in the court's reasoning.[112]

- In **Russia** there are no cases explicitly referencing the Guidelines, but the Supreme Arbtirazh (Commercial) Court has referenced the Guidelines

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105 [2011] EWHC 2345 (Comm).

106 [2016] EWHC 422 (Comm).

107 Both relevant decisions were rendered by the Oberlandesgericht Frankfurt am Main (Higher Regional Court of Frankfurt am Main; "OLG Frankfurt"): OLG Frankfurt, [2008] SchiedsVZ 96 et seq.; OLG Frankfurt, [2014] BeckRS 12967.

108 OLG Frankfurt, [2014] BeckRS 12967.

109 Decision of the Supreme Court of the Czech Republic No. 23 Cdo 3150/2012 of 30 September 2014.

110 *Sativa Group" OÜ v. UAB "Galinta ir parteriai*, Court of Appeal of Lithuania, civil case No. 2T-84/2014, Ruling, 29 September 2014.

111 However, since only the decisions of the Supreme Court and of the six Appeals Courts are systematically published, there is a possibility that there may be decisions from the District Courts with explicit reference to the Guidelines that have not been published.

112 Decision of the Trondheim District Court of 26 September 2008 (TTRON-2008-20883).

(specifically, section 1.2 of the Non-Waivable Red List) in its review of court practice on the application of the public policy exception.[113]

167. By contrast, in other jurisdictions judicial courts tend not to apply or refer to the Guidelines at all. This is the case in France, the Netherlands, and Italy.

- In **France** and **Italy**, there appear to be no cases referencing the Guidelines.
- In **Ireland**, there are no reported court decisions from 2010 onwards that make reference to the Guidelines.
- By contrast, in **the Netherlands,** at least one court has affirmatively refused to apply the Guidelines. This was a case before the Court of Rotterdam[114] in which the plaintiff had invoked the Guidelines to challenge an award on the basis of an arbitrator's alleged impartiality. However, the court specifically refused to apply the Guidelines when deciding on this matter.

168. The reluctance of these courts to apply the Guidelines may be due to the existence of well-settled domestic ethical codes. This appears to be particularly the case in Italy, at least with respect to domestic arbitrations, where the independence and impartiality of arbitrators may be deemed to be sufficiently addressed by the Italian Code of Civil Procedure and the Deontological Code for Italian lawyers.

169. That being said, as shown in paragraphs 162 *et seq.* above, the dearth of judicial case law in these jurisdictions does not mean that the Guidelines are not used. The survey results show that the Guidelines have been referenced or relied on by parties in a large percentage of the cases in which issues of conflicts arose. Indeed, while the domestic law of many European jurisdictions imposes on arbitrators a duty of independence and impartiality (e.g., the French Code of Civil Procedure (Article 1456)[115], the Belgian Judicial Code (Article 1685 § 2 B.J.C.),[116] and the Dutch Code of Civil Procedure (Article 1033)[117]), these provisions do not set out any specific standard nor do they refer to given situations where a conflict of interest may arise. As a result, in

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113 Information Letter of the Supreme Arbitrazh Court No. 156 dated 26 February 2013 "Review of Arbitrazh Court Practice in Applying the Public Policy Exception as a Ground for Refusal to Recognize and Enforce Foreign Judgments and Arbitral Awards".

114 Bureau Veritas-Inspection-Valuation Assessment and Control-BIVAC B.V./[unknown],Rb Rotterdam, 11 May 2011, ECLUI:NL:RBROT:2011:BQ6204.

115 Article 1456 of the French Code of Civil Procedure provides: "*Before he accepts his mission, the arbitrator must reveal all the information which could affect his impartiality or independence. He must also reveal any similar information that could arise after he accepts his mission."*

116 Article 1685 of the Belgian Judicial Code provides: "*The parties are free to agree on a procedure for appointing the arbitrator or arbitrators, subject to the provisions of § 3 and § 4 of this article and the general requirement of independence and impartiality of the arbitrator or of the arbitrators.*"

117 Article 1033(1) of the Dutch Code of Civil Procedure provides: "*An arbitrator may be challenged if there are justifiable doubts as to his impartiality or independence.*"

practice, parties often refer to the Guidelines as guidance, although this use may not be then reflected in the resulting judicial decisions.

170. Finally, in yet another set of jurisdictions, the lack of case law referencing the Guidelines appears to be mainly the result of a lack of familiarity with the Guidelines.

ii. North America

171. The number of references to the Guidelines in judicial case law in North America is minimal:

- In **Canada**, only two reported cases referenced the Guidelines. In one case, the court concluded that the applicant failed to rebut the presumption of impartiality. It noted that the Guidelines are "*widely recognized as an authoritative source of information as to how the international arbitration community may regard particular fact situations in reasonable apprehension of bias cases.*"[118] The court awarded costs to the respondent on a substantial indemnity scale in an effort to "*deter losing parties in international commercial arbitrations from launching baseless ex post facto challenges to an arbitrator's impartiality.*"[119] In the second case, the court ordered the removal of the chairperson from a case in which she would have been required to rule on whether the decision of another partner in her law firm in another arbitration case constituted issue estoppel in the present case. The court found that the Guidelines shed light "*directly on the issue of this Chairperson through the lens of the arbitration community*."[120] The court found that the relationship between the chairperson and her partner, the arbitrator in the other case, was akin to example 2.3.3 in the Guidelines and ordered the Chairperson's removal.

- In the **United States**, the 2004 Guidelines have been referenced in written decisions in the federal courts at least three times, but the more recent Guidelines have not appeared in federal court cases.

iii. Latin America

172. There is very little publicly available information regarding the application of the Guidelines by local courts in Latin America. In some jurisdictions, this lack of information may be due to the lack of a systematized database in which such cases may be searched. However, even in countries where such a database is available, the search yielded virtually no results. This shows that the Guidelines have not yet gained acceptance amongst local courts.

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118 *Jacob Securities Inc. v. Typhoon Capital B.V.*, 2016 ONSC 604, ¶ 41.

119 *Jacob Securities Inc. v. Typhoon Capital B.V.*, 2016 ONSC 604, ¶ 64.

120 *Telesat Canada v. Boeing Satellite Systems International Inc.*, 2010 ONSC 4023, ¶ 154.

173. Indeed, the results of the survey and the Country Reports suggest that most local courts in Latin America tend not to apply the Guidelines, either because of a lack of familiarity with them, or because they prefer to apply domestic rules to decide on challenges based on conflicts of interest, or because the parties do not invoke them.

174. Only one judicial decision referring to the Guidelines has been identified in the Latin American jurisdictions studied: an annulment recourse decided by the Lima Commercial High Court in Peru, in which the court agreed with the challenging party that under the Guidelines the arbitrator had a duty to disclose a certain fact to the parties. However, the court ultimately ruled that the recourse was inadmissible because it had not been filed in a timely fashion.[121]

iv. Asia-Pacific

175. Following the same trend, citations to the Guidelines in the Asia-Pacific region are also rare. For example:

- In **New Zealand**, in *Child Cancer Foundation Inc. v. Piesse*,[122] the panel dismissed a challenge to an expert's independence and impartiality where the expert had been a former law partner of the counsel for the complainant 13 years earlier and had received 11 instructions from his former law firm over the 13 years he had been at the bar. The panel looked to the section of the 2004 Guidelines providing that an arbitrator can continue to act if there is no objection from either party within 30 days of disclosure, a provision that is also in the 2014 version of the Rules. The panel distinguished the case from items on the Orange List on the basis of the length of time between the end of the partnership and the present engagement, and the fact that experts in domain name disputes, the subject of the case, were appointed in a manner that protects against improprieties.

- In **India**, in one case,[123] the Bombay High Court determined that no bias could be attributed to an arbitrator who was engaged by solicitors of one of the parties in an unrelated matter. When the appellant cited a judgment from the Delhi High Court that had considered the Guidelines,[124] the respondents successfully distinguished their case.

- There have been no significant references made to the Guidelines in **Malaysia's** case law, although counsel have made arguments that rely on the Guidelines. In *MMC Engineering Group Bhd & Anor v Wayss & Freytag*

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121 *Química Suiza v. Dongo-Soria, Gaveglio y Asociados*, Lima Commercial High Court, Case No. 155-2012, Court Order No. 43, Decision regarding the annulment of the Arbitral Award, 6 June 2012.

122 *Child Cancer Foundation Inc. v. Piesse*, 21 March 2014, DRS Ref. 897.

123 *Perma Container (U.K) Line Limited v. Perma Container Line (India) Ltd*, MANU/MH/0615/2014.

124 *Shakti Bhog foods Limited v. Kola Shipping Ltd*, 21 August 2012, MANU/DE/3955/2012.

(Malaysia) Sdn Bhd & Anor,[125] for example, counsel cited the Guidelines to support the argument that arbitrators are to be independent and impartial and that disclosure should be the default rule. The court referenced counsel's argument, but did not comment upon it.

v. The Middle East

176. There is no case law referring to the Guidelines in any of the jurisdictions reviewed from the Middle East. However, this lack of case law does not necessarily reflect mistrust towards the Guidelines. Several Country Reports have given different explanations for these negative findings:

- The report for **Israel** states that it may be due to an underdeveloped local arbitration market.
- The report for **Kuwait** also explains this is due to a lack of awareness of the existence of Guidelines, not necessarily a negative view of the Guidelines.
- The report for **Qatar** justifies this situation by the fact that Qatari courts typically do not publish their decisions and that the country relies on a civil code system rather than on a judicial precedent system.
- The report for **Turkey** similarly explains that the Turkish High Court decisions generally do not discuss the whole case but only refer to the litigious matter in question in their final reports, which would explain the lack of reference to a soft law instrument such as the Guidelines.
- The report for **Lebanon** states that these negative results illustrate a general lack of knowledge of the Guidelines. This can be explained by the fact that the Guidelines have not yet been implemented in Lebanon due to the "*lack of practical guidance from arbitral institutions*".[126] The report also explains that differences in language and legal culture may contribute to practitioners' lack of familiarity with the existence of the Guidelines.

vi. Africa

177. We have not been provided with any case law referring to the Guidelines in the African jurisdictions studied, nor do we have any separate knowledge of any decisions.

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125 *MMC Engineering Group Bhd & Anor v Wayss & Freytag (Malaysia) Sdn Bhd & Anor*, [2015] 1 LNS 705.

126 Lebanon, Country Report, Section 1.1.3, p. 5.

D. THE CONFLICTS OF INTEREST GUIDELINES IN LEGAL PUBLICATIONS

178. The Guidelines have caught the attention of legal scholars across the globe, particularly in jurisdictions with active arbitration communities. In those jurisdictions, scholars tend to view the Guidelines as a useful soft law tool in arbitration practice. For instance, authors such as Yves Derains, Grégoire Bertrou, and Quentin De Margerie have opined that the Guidelines have led to an auto-regulated system, progressively creating custom in the arbitration practice, and have contributed to improving arbitration practice.[127]

179. The following paragraphs present how the Conflicts of Interest Guidelines were cited in publications in all six regions.

i. Europe

180. The Guidelines have been frequently cited in publications in Europe, when conflicts of interest and/or challenges of arbitrator are discussed. The Guidelines are sometimes the focus of the publication, and other times are discussed in more general treatises on arbitration. For instance:

- In **Belgium**, the Guidelines have received particular attention in an article by Caroline Verbruggen[128] in which she gave a detailed explanation of their influence on Belgian case law. However, the Belgian country report specifies that for most authors, the Guidelines may only serve as a starting point for arbitrators, even more so in "*small legal community such as Belgium where lawyers active in arbitration are bound to meet in other capacities.*"[129]

- In **France**, the Guidelines have been referenced in a number of legal publications relating to international arbitration.[130] They have also been

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127 Y. Derains, "Le Professionnalisme des arbitres", 2012 Cahiers de droit de l'entreprise n° 4, dossier 19; G. Bertrou, Q. De Margerie, "Obligation de révélation de l'arbitre: tentative de synthèse après la publication des nouvelles règles de l'IBA", 2015 Les Cahiers de l'Arbitrage 33, Vol. 1; M. De Boisséson, "La 'Soft Law' dans l'arbitrage", 2014 Les Cahiers de l'Arbitrage 520, Vol. 3.

128 C. Verbruggen, "The Arbitrator as a Neutral Third Party" in G. Keutgen (ed.), in *Walking a Thin Line, What an Arbitrator Can do, Must Do, or Must Not Do* (2010), pp. 39-40.

129 Belgium, Country Report, IBA Arbitration Guidelines and Rules Subcommittee, Section 1.3.3.

130 In the latest international arbitration treaty published in France in 2013, authors refer to the IBA Rules and Guidelines as regulatory norms which can be adopted by the parties and may be referred to by arbitrators for the conduct of the proceedings, see C. Seraglini, J. Ortscheidt, *Droit de l'Arbitrage Interne et International* (2013), ¶¶ 66,852. Previous treatises on international commercial arbitration published or updated before 2010 also contained references to the IBA Rules and Guidelines; e.g. P. Fouchard, E. Gaillard, B. Goldman, *Traité de l'arbitrage commercial international* (1996), the treatise refers to the IBA Rules and Guidelines describing them as reflecting harmonized practice and emphasizing their importance in international arbitration, ¶¶ 355, 356, 362, 1044, 1129, 1160, 1401 concerning the IBA Guidelines on Conflicts of Interest.

specifically discussed in a large number of articles dealing with conflicts of interest.[131]

- In **Switzerland**, the Guidelines are referenced in a number of leading arbitration commentaries,[132] as well as in publications focused on the Guidelines themselves.[133]

- In **Poland**, the Guidelines are referenced in academic publications on arbitration and commercial law and in collections of essays that are published as a tribute to individuals or to mark anniversaries of institutions. The Guidelines also come up in numerous shorter articles in professional journals that discuss select aspects of arbitration and are more practice-oriented.[134]

- In **Germany**, several legal publications make reference to or deal directly with the Guidelines, predominantly from a practitioner's point of view.[135]

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131 S. Lazareff, "De l'immoralité présumée de l'arbitre", 2009 Gazette du Palais 3, Vol. 199; D. Bensaude, "Présentation des Règles IBA 2010 sur l'administration de la preuve, par Denis Bensaude", 2011 Revue de l'Arbitrage, p. 1113, Issue 4; Y. Derains, "Le Professionnalisme des arbitres", 2012 Cahiers de droit de l'entreprise dossier 19, Vol. 4; M. de Boisséson, "La 'Soft Law' dans l'arbitrage", 2014 Les Cahiers de l'Arbitrage 522, Vol. 3; C. Benson, "The IBA Guidelines on Party Representation: An Important Step in Overcoming the Taboo of Ethics in International Arbitration", 2014 Les Cahiers de l'Arbitrage 47, Vol. 1; G. Bertrou,Q. De Margerie, "Obligation de révélation de l'arbitre : tentative de synthèse après la publication des nouvelles règles de l'IBA", 2015 Les Cahiers de l'Arbitrage 33, Vol. 1.

132 M. Arroyo (ed.), *Arbitration in Switzerland: the Practitioner's Guide* (2013); B. Berger, F. Kellerhals, *International and Domestic Arbitration in Switzerland* (2nd ed, 2010); T. Göksu, *Schiedsgerichtsbarkeit* (2014); G. Kaufmann-Kohler, A. Rigozzi, *International Arbitration – Law and Practice in Switzerland* (2015).

133 N. Voser, A.M. Petti, "The Revised IBA Guidelines on Conflicts of Interest in International Arbitration" 2015 ASA Bulletin 6, Vol. 33; B. Gottlieb, "Authority of Para-Regulatory Texts in International Arbitration", 2012 Selected Papers on International Arbitration 35, Vol. 2; M. Leemann, "Challenging international arbitration awards in Switzerland on the ground of lack of independence and impartiality of an arbitrator", 2011 ASA Bulletin 10, Vol. 29.

134 A. Szumański (ed.), *System Prawa Handlowego. Tom 8. Arbitraż Handlowy* (2015); M. Łaszczuk et al. (eds.), *Arbitraż i mediacja. Księga jubileuszowa dedykowana doktorowi Andrzejowi Tynelowi* (2012); B. Gessel-Kalinowska vel Kalisz (ed.), *The Challenges and the Future of Commercial and Investment Arbitration. Liber Amicorum Professor Jerzy Rajski* (2015); J. Okolski et al. (eds.), *Księga pamiątkowa 60-lecia Sądu Arbitrażowego przy Krajowej Izbie Gospodarczej w Warszawie* (2010).

135 Cf., *inter alia*, C. Wolf, N. Eslami, in V. Vorwerk, C.Wolf (eds.), *Beck'scher Online Kommentar zur ZPO*, s. 1036 ¶¶ 11 et seq.; W. Voit, in H-J. Musielak, W. Voit (eds.), *Zivilprozessordnung*, s. 1036, ¶¶ 5 et seq.; J. Münch, in T. Rauscher, P. Wax, J. Wenzel (eds.) *Münchener Kommentar zur Zivilprozessordnung*, s. 1049, ¶¶ 5 et seq; J.H. Nedden, in J. Nedden, A.B. Herzberg (eds.), *Praxiskommentar zu den Schiedsgerichtsordnungen*, Art. 14 ICC Rules, ¶ 29; J.H. Nedden, J. Büstgens, "Die Beratung des Schiedsgerichts – Konfliktpotential und Lösungswege", [2015] SchiedsVZ 169; R. Dendorfer, "Aktives Vergleichsmanagement – Best Practice oder Faux pas schiedsrichterlicher Tätigkeit?", [2009] SchiedsVZ 276; S.H. Elsing, "Procedural Efficiency in International Arbitration: Choosing the Best of Both Legal Worlds", [2011] SchiedsVZ 114; K. Pörnbacher, P. Duncker, S. Baur, "Gaspreisanpassungs-Schiedsverfahren – Hintergründe und prozessuale Besonderheiten", [2012] SchiedsVZ 289.

- In **Russia**, unlike the courts and arbitrators, legal writings demonstrate some interest in the Guidelines. The majority of the publications use the Guidelines to exemplify current international best practices in the field.[136]

ii. North America

181. The situation in North America is divided: while in the **United States** the Guidelines have been referenced in numerous publications,[137] in **Canada**, the Guidelines are referred to in only a few publications.[138]

iii. Latin America

182. The Guidelines have not received much discussion in legal publications in Latin America, with some notable exceptions (usually in the jurisdictions with a more active arbitration culture). Even then, these publications are usually not devoted to the Guidelines themselves, but rather to more general issues in international arbitration.

183. The Guidelines have been widely discussed in legal publications only in some jurisdictions in Latin America, notably in Brazil, Argentina, Mexico, Peru, Chile and Uruguay. Based on the publications identified by the Reporters, Brazil had by far the largest number of publications referencing the Guidelines,[139] followed by Colombia[140], Argentina,[141] Peru,[142] Mexico,[143] Chile[144] and Uruguay.[145]

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136 A.A. Korchin, "The Fight Against "Pocket" International Commercial Arbitrations and Issues of Independence and Impartiality of Arbitrators in Russian Judicial Practice", International Commercial Arbitration Newsletter, 2013, No. 1; R.M. Khodykin, "Independence and Impartiality of Arbitrators in Investment Disputes", Treteyskiy Sud, 2011, No. 4.

137 Notably in D. D'Allaire, R. Trittmann, "Disclosure Requests in International Commercial Arbitration: Finding A Balance Not Only Between Legal Traditions but Also Between the Parties' Rights", 2011 Am. Rev. Int'l Arb. 119, Vol. 22; S.F. Ali, "The Morality of Conciliation: An Empirical Examination of Arbitrator "Role Moralities" in East Asia and the West", 2011 Harv. Negot. L. Rev. 1, Vol. 16; K.M. Blankley, "Lying, Stealing, and Cheating: The Role of Arbitrators As Ethics Enforcers", 2014 U. Louisville L. Rev. 443, Vol. 52; G. Bottini, "Should Arbitrators Live on Mars? Challenge of Arbitrators in Investment Arbitration", 2009 Suffolk Transnat'l L. Rev. 341, Vol. 32; N.M. Crystal, F. Giannoni-Crystal, "'One, No One and One Hundred Thousand' ...Which Ethical Rule to Apply? Conflict of Ethical Rules in International Arbitration", 2013 Miss. C. L. Rev. 283, Vol. 32, p. 293; O.E. García-Bolívar, "Comparing Arbitrator Standards of Conduct in International Commercial Trade Investment Disputes", 2006 Disp. Resol. J. 76, Vol. 60; R.A. Holtzman, "The Role of Arbitrator Ethics", 2009 DePaul Bus. & Com. L.J. 481, Vol. 7; P. Horn, "A Matter of Appearances: Arbitrator Independence and Impartiality in ICSID Arbitration", 2014 N.Y.U. J.L. & Bus. 349, Vol. 11; J. Levine, "Dealing with Arbitrator 'Issue Conflicts' in International Arbitration", 2006, Disp. Resol. J. 60, Vol. 61; M.L. Moses, "Ethics in International Arbitration: Traps for the Unwary", 2012 Loy. U. Chi. Int'l L. Rev. 73, Vol. 10; M.K. Niedermeyer, "Ethics for Arbitrators at the International Level: Who Writes the Rules of the Game?", 2014 Am. Rev. Int'l Arb. 481, Vol. 25.

138 J.B. Casey, *Arbitration Law of Canada: Practice and Procedure* (2nd ed., 2011); J. Kenneth McEwan, L.B. Herbst, *Commercial Arbitration in Canada: A Guide to Domestic and International Arbitrations* (2014).

139 A.T.deA.C. Boscolo, G.V.Benetti, "O Consensualismo como Fundamento da Arbitragem e os Impasses Decorrentes do Dissenso", 2014 Revista de Direito Empresarial 303, Vol. 2; C.A. Carmona, "Em Torno do Árbitro", 2011 Revista de Arbitragem e Mediação 47, Vol. 28; T. Cavalieri, "Imparcialidade

na Arbitragem", 2014 Revista de Arbitragem e Mediação 117, Vol. 41; J. Dolinger, "O Árbitro da Parte - Considerações Éticas e Práticas", 2005 Revista Brasileira de Arbitragem 29, Vol. 2; R.C. Figueiredo, "Urbaser S.A. e Consorcio de Aguas Bilbao Bizkaia, Bilbao Biskaia Ur Partzuergoa vs. Argentina (ICSID case n. ARB/07/26): A Decisão Sobre o Pedido de Desqualificação de Árbitro de 12.08.2010", 2011 Revista de Arbitragem e Mediação 313, Vol. 29; G. Giusti. "A Ética das Instituições de Arbitragem", 2013 Revista Brasileira de Arbitragem 78, Vol. 10, Issue 40; J.M. Júdice. D.G. Henriques. "Regras para Nomeação de Árbitros: O Exemplo do Centro de Arbitragem Comercial da Câmara de Comércio e Indústria Portuguesa", 2015 Revista de Arbitragem e Mediação 241, Vol. 46; J.B. Lee, M.C. Procopiak. "A Obrigação da Revelação do Árbitro – Está Influenciada por Aspectos Culturais ou Existe um Verdadeiro Standard Universal?", 2007 Revista Brasileira de Arbitragem 9, Vol. 4, Issue 14; S.M.F. Lemes, "A independência e a Imparcialidade do Árbitro e o Dever de Revelação", 2010 Revista Brasileira de Arbitragem21, Vol. 7, Issue 26; P.H. Lucon, "Imparcialidade na Arbitragem e Impugnação aos Árbitros", 2013 Revista de Arbitragem e Mediação 39, Vol. 39; R.D. Marques, "Breves Apontamentos sobre a Extensão do Dever de Revelação do Árbitro", 2011 Revista Brasileira de Arbitragem 59, Vol. 31; R.D. Marques, M.M. Muchiuti, "As Diretrizes da IBA relativas a Conflitos de Interesses em Arbitragem Internacional", 2014 Migalhas, <http://www.migalhas.com.br/dePeso/16,MI213334,21048-As+diretrizes+da+IBA+relativas+a+conflitos+ de+interesses+em>; A.C. Martins, "Deveres de Imparcialidade e Independência dos Peritos em Arbitragem: Uma Reflexão sob a Perspectiva da Prática Internacional", 2013 Revista de Arbitragem e Mediação 99, Vol. 39; N.F.C. Moreira, "The Arbitrators' Duty of Disclosure Analyzed Through Case-law: Are the IBA Guidelines on Conflict of Interest in International Arbitration Enough to Create Consistency?", 2014 Revista de Arbitragem e Mediação 115, Vol. 40; M.C. Procopiak, "As Diretrizes do International Bar Association sobre Conflitos de Interesses na Arbitragem Internacional", 2007 Revista Brasileira de Arbitragem 7, Vol. 4, Issue 14; F.S.M. dos Santos , "Impedimento e Suspeição do Árbitro: O Dever de Revelação", 2012 Revista de Arbitragem e Mediação 35, Vol. 35; A. Wald, "A Ética e a Imparcialidade na Arbitragem", 2013 Revista de Arbitragem e Mediação 17, Vol. 39.

140 A. Collazos Ortíz, "The importance of ethics in the role of arbitrators", 2013 Revista Análisis Internacional 7, Universidad Tadeo Lozano, p. 39 et seq; L.M. Escobar-Martínez, "La independencia, imparcialidad y conflicto de interés del árbitro", 2009 Revista Colombiana de Derecho Internacional 15, Pontificia Universidad Javeriana, p. 181 et seq.; J. A. García-Muñoz, A. Collazos Ortíz, "El deber arbitral de revelar información relevante", Revista Internacional Foro de Derecho Mercantil 20, Legis, p. 93 et seq.; J.C. González, "Las directrices de la IBA sobre imparcialidad e independencia de los árbitros", Ámbito Jurídico, Marzo de 2015; N. Giraldo Carrillo, "The 'repeat arbitrators' issue: A subjective concept", 2011 Revista Colombiana de Derecho Internacional 19, Pontificia Universidad Javeriana, p. 75 et seq.; F. Mantilla-Serrano, "Etica y Arbitraje", Ámbito Jurídico, Febrero de 2011; A. Zuleta Londoño, J.C. Fandiño-Bravo, M. Escobar et al., "Colombia", 2016 Commercial Arbitration Know-How, Global Arbitration Review.

141 H. Grigera Naón, "La ley modelo sobre arbitraje comercial internacional y el derecho argentino", [1989] La Ley 1021; J.C. Rivera, *Arbitraje Comercial Internacional y Doméstico*, Lexis-Nexis (2007), p. 238 et seq.; M.L. Velazco, "La causal genérica de recusación en el Reglamento CEMA", [2013] MEDyAR Centro de Mediación y Arbitraje; R.J. Caivano, V. Sandler Obregón, "El contrato entre las partes y los árbitros en el Código Civil y Comercial", [2015] RCCyC p. 143; R.J. Caivano, "Independencia e imparcialidad de los árbitros y buena fe procesal", [2013] La Ley F175.

142 G. Arribas "Designando Árbitros", 2015 Enfoque derecho, <http://enfoquederecho.com/internacional/designando-arbitros/>; F. De Trazegnies "Conflictuando el conflicto: los conflictos de interés en el arbitraje", 2015 Revista de Derecho Themis 57, Vol. 53; F. Osterling, G. Miró Quesada, "Conflicto De Intereses: El Deber De Declaración Y Revelación De Los Árbitros", 2013 Osterling Firm 14.

143 C. von Wobeser, "Mexico", 2013 Arbitration Guide, IBA Arbitration Committee; Instituto Mexicano de Arbitraje, *Legislación Mexicana de Arbitraje Comercial Comentada* (2015).

144 E. Barros Bourie, A. Germain Ronco, "Los Conflictos de Interés en el Arbitraje Internacional", 2015 Santiago Arbitration and Mediation Center, ADR Papers.

145 L. Formento, V. Nuñez, "Conflicto de Interés y Exequatur de Laudos Arbitrales Extranjeros", 2014 Revista de Derecho de la Universidad de Montevideo 249, Vol. 26.

184. In most cases, the Guidelines have been referenced in general publications relating to arbitration, or more specifically in the context of publications dealing with conflicts of interest. Only in Brazil was it possible to identify publications devoted exclusively to the Guidelines.[146]

iv. Asia-Pacific

185. References to the Guidelines in legal publications are also unevenly distributed in the Asia-Pacific region. In Singapore, several publications have addressed the Guidelines from a Singaporean perspective.[147] The Guidelines are also discussed in some publications in mainland China,[148] and in important texts on arbitration in Hong Kong.[149]

v. The Middle East

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146 M.C. Procopiak, "As Diretrizes do International Bar Association sobre Conflitos de Interesses na Arbitragem Internacional.", 2007 Revista Brasileira de Arbitragem 7, Vol. 4, Issue 14; N.F.C. Moreira, "The Arbitrators' Duty of Disclosure Analyzed Through Case-law: Are the IBA Guidelines on Conflict of Interest in International Arbitration Enough to Create Consistency?", 2014 Revista de Arbitragem e Mediação 115, Vol. 40; R.D. Marques, M.M. Muchiuti, "As Diretrizes da IBA relativas a Conflitos de Interesses em Arbitragem Internacional.", 2014 Migalhas, <http://www.migalhas.com.br/dePeso/16,MI213334,21048-As+diretrizes+da+IBA+relativas+a+conflitos+de+interesses+ em>.

147 L.S. Chan, *Singapore Law on Arbitral Awards* (2011), pp. 152, 172; S. Menon, D. Brock (eds), *Arbitration in Singapore: A Practical Guide* (2014), pp. 184-185, 521-525; S. Menon, "Keynote Address – International Arbitration: The Coming of a New Age for Asia (and Elsewhere)" in ICCA Congress Series No 17 (2013), p. 3; D. Jones, "Comments on the Speech of the Singapore Attorney General" in ICCA Congress Series No 17 (2013), p. 29; B. Giaretta, "Duties of Arbitrators and Emergency Arbitrators under the SIAC Rules", 2012 Asian International Arbitration Journal 196, Vol. 8, Issue 2; L.S. Chan, "Arbitrators' Conflicts of Interest: Bias By Any Name", 2007 Singapore Academy of Law Journal 245, Vol. 19; S. Chong, "Singapore Institute of Arbitrators Annual Dinner 6 November 2013 – Speech by the Attorney General", 2013 Singapore Institute of Arbitrators Newsletter 3, Issue 8.

148 K. Fan, *Arbitration in China : a legal and cultural analysis* (2013); Q. Ren, "国际投资仲裁仲裁员回避制度析论" ("Arbitrators' Recusals in International Investment Arbitration", a Master's dissertation in Chinese submitted to Southwest University of Political Science & Law in 2012; W. Sun, M. Willems, *Arbitration in China: a practitioner's guide* (2015); A. Ye, H.H. Liu, "论限制担任仲裁员的律师代理案件之规定的存 废" (Whether to abolish the prohibition of lawyers from representing clients in arbitration administered by the arbitration commission(s) where the lawyer used to act or still currently acts as an arbitrator), published/posted on the Chinalawinsight.com on 15 July 2013; Z. Zhang, "一文轻松读懂2014年IBA利益冲突指南（按颜色排版）" (A brief summary in Chinese to help the readers understand the IBA Guidelines on Conflicts of Interest in International Arbitration), 5 November 2015, <http://www.huanzhonglaw.com>.

149 F. van Eupen, "Chapter 11: Arbitrators", in Arbitration in Hong Kong: A Practical Guide, Third Edition; J. Choong and J. R. Weeramantry, The Hong Kong Arbitration Ordinance: Commentary and Annotations.

186. The Guidelines have been discussed in legal publications only in certain jurisdictions, notably in **Lebanon**, where some publications refer directly to the Guidelines,[150] and in the **UAE** in more general publications on arbitration.[151]

vi. Africa

187. We have not been provided with nor have we knowledge of legal publications referring to the IBA Guidelines on Conflicts of Interest in the African jurisdictions previously listed.

E. NEED TO AMEND THE GUIDELINES AND SUGGESTIONS IN THAT REGARD

188. In general, the Guidelines appear to have been well received across the various jurisdictions surveyed. However, Respondents in various countries answered affirmatively to the question on whether the Guidelines need revision. For instance:

- In **France**, the majority (78%) of practitioners are satisfied with current Guidelines. However, a minority pushed for their revision (4 out of 28).
- Six **Canadian** Respondents believe that the IBA Arbitration Committee should revise the Guidelines, while only two believe they are not in need of revision.
- In the **United States**, 14% of Respondents believed the Guidelines should be changed.
- The majority of Respondents in **Nigeria** (11 out of 12, or 92%) appear to be satisfied with the Guidelines (*i.e.*, they either have no view or do not feel that the Guidelines need to be revised).
- Within the all surveys carried out in **Middle-Eastern** countries, the general trend shows that a majority of practitioners are satisfied with the Guidelines (22 out of 24 in the combined surveys, or 92%).

189. The Global reception of the Guidelines is demonstrated in the chart below.

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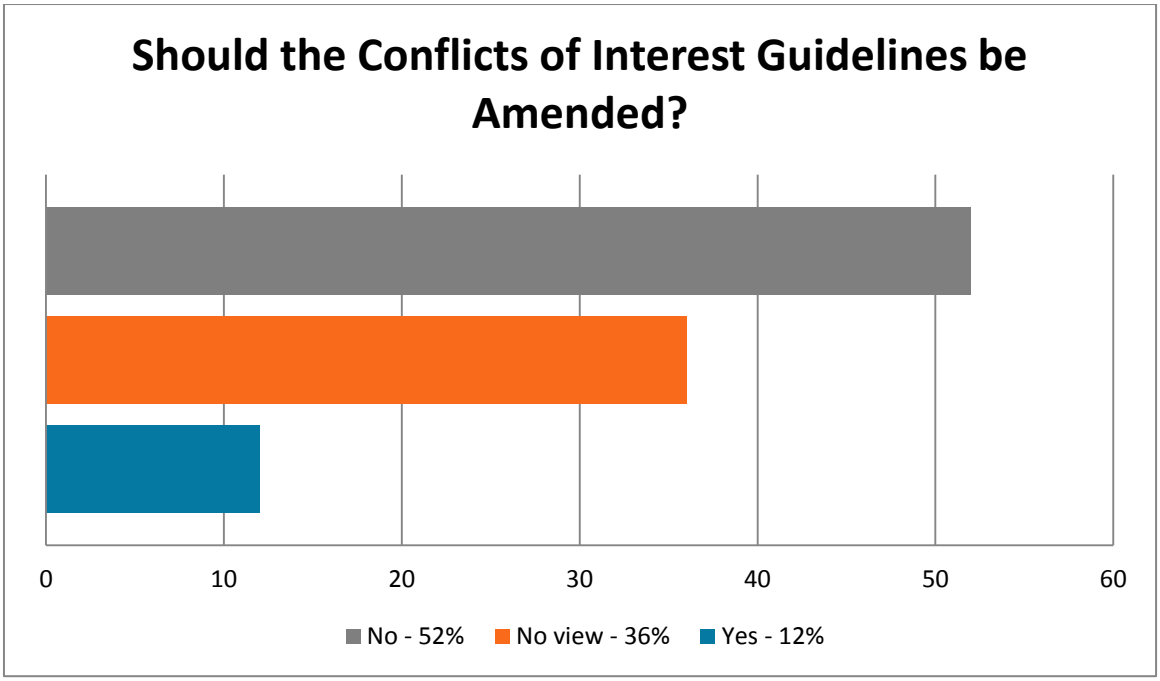
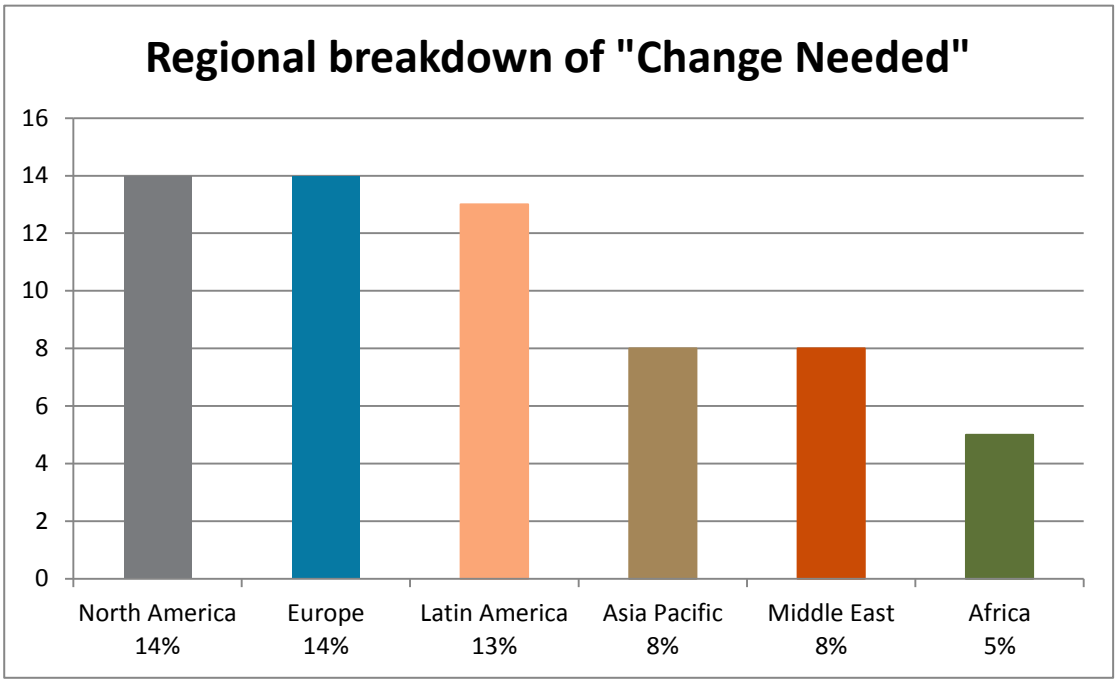
150 P. N. Ziade "The Conflicts of Interests in International Arbitration in theory and Practice", 2013 Journal of Arab Arbitration 71, Vol. 20; M. Bou Saber, "Appointment of an Arbitrator, his independency and impartiality", 2010 Journal of Arab Arbitration 649, Vol. 8 bis; A. El Ahdab, "Impartiality and Independency of Arbitrators", *Encyclopedia of Arbitration, International Arbitration* 214, Vol. 3.

151 G. Blanke, C. Abi Habib Kanakr, "Arbitration in Dubai: A Basic Primer", *Austrian Yearbook on International Arbitration* (2011), p. 217; R. Mohtashami, "Recent Arbitration-related Developments in the UAE", 2008 Journal of International Arbitration 631, Vol. 25, Issue 5.



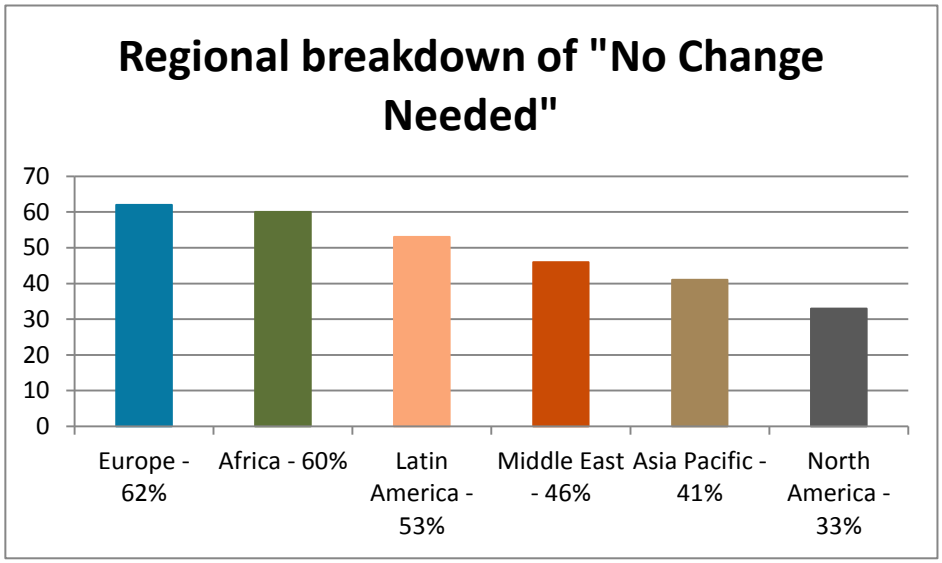
190. Compared to answers to the same question regarding the other Rules and Guidelines (Rules on Evidence and Party Representation Guidelines), a large proportion of Respondents considered that the Conflicts of Interests Guidelines should be amended (12% as opposed to 9% and 8% for the other Rules and Guidelines, respectively). Nonetheless, this percentage remains low compared to those who believe they should not be amended, *i.e.*, 52%, which is a meaningful percentage when compared to the results obtained for this same answer regarding whether the Rules on Evidence and the Party Representation Guidelines should remain unchanged (*i.e.*, 54% and 36% respectively).

191. The chart below illustrates the percentage of Respondents by region that believe that the Conflicts of Interest Guidelines need to be amended.



192. Respondents from Europe and Latin America, regions which frequently use the Guidelines, generated the highest percentage of votes in favour of amendment. Africa and Asia-Pacific, on the other hand, generated the lowest percentage of votes in favour of amendment – only around 5% and 8% respectively.

193. The following chart illustrates the percentage of Respondents by region that believe that the Conflicts of Interest Guidelines do not require amendment.



194. Interestingly, though apart from African Respondents, it is also Respondents from Europe and Latin America which lead the support for not revising the Guidelines on Conflicts of Interest (with 62% and 53% respectively). 60% of African Respondents do not favour a change.

195. Broadly speaking, the different comments fall under the following categories: i) promotion; ii) guidance; iii) update; iv) adaptation; and v) revision. These will be discussed below.

196. **Promotion**. There are many countries that are unfamiliar with the Guidelines. Therefore the first step is to promote them in those countries in order for practitioners to be aware of them. This comment was made in the Country Reports or responses for Austria, Russia, Peru, Costa Rica, Ecuador, the Dominican Republic, Thailand, and in most African jurisdictions, among others.

197. **Guidance**. Once the Guidelines are known, Respondents noted that they need to be explained in particular cases. For example:

- In **Germany** practitioners asked for guidance as to connections between counsel and arbitrator.
- In the **Czech Republic** and **Portugal**, they requested particular examples so as to identify clearly the situations in which the Guidelines can be used.

- One **Canadian** Respondent indicated that "there is a need to provide greater clarity on some categories and to assist in circumstances where experts serve as counsel or on situations where counsel are arbitrators in assessing arguments raised in the current case". Another indicated that "[i]*t would be useful to add guidelines on conflicts of interest for experts, and grounds for expert disqualification.*"

- One Respondent from **Mexico** stated that disclosure obligations could be better explained, for instance with more practical examples and commentaries, in order to better understand when a disclosure is necessary. This was noted as important because overuse of disclosures leads to superfluous challenges.

- In **Singapore** one Respondent suggested "*clearer guidance on the meaning of 'law firm' given the different ways in which law practices are now organized, especially across jurisdictions*"; and that "*perhaps more clarity on obligation to disclose how many times a particular law firm or commercial entity has previously appointed or nominated that same arbitrator.*"

- In **Japan**, a Respondent pointed out that it is unclear whether the Guidelines' revisions should apply to cases where the arbitrator's decision on disclosure has already been made.

- One Respondent from **Nigeria** suggested that the Guidelines should be reviewed in order "[t]*o clarify degrees of social or familial relationship of party appointed arbitrator to his appointed counsel*". [152]

- Another Respondent from the **UAE** suggested that "[t]*he arbitration institutions in the region should apply these rules in a proper way. Nothing [is] clear yet [on how to] apply these rules*".[153]

198. **Update**. Other comments referred to the need to update the Guidelines to the evolution of the law or to new technological trends. For example:

- In **France**, one of the recurring requests is to take into account the evolution of case law in the General Principles of the Guidelines : "*Account should be taken on the evolutions in case law in a number of jurisdictions (for example France) in clarifying some of the Guidelines*."

- Also in **France**, a more specific request was that the three lists included in the Guidelines should also be revised, in order to provide examples of more recent

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152 Nigeria, National Survey, IBA Arbitration Guidelines and Rules Subcommittee, Respondent no. 4, p. 19.

153 United Arab Emirates, National Survey, IBA Arbitration Guidelines and Rules Subcommittee, Respondent no. 8 p. 36.

conflict situations: "*Red, Orange and Green lists should be revisited in light of current trends*."

- Also in **France**, it was also suggested by a Respondent that revised Guidelines should "[c]*ontemplate further situations*" by including examples of new practices that could raise potential conflicts of interest. This Respondent highlighted the risk of mechanisms such as third party funding.

- In **Germany**, Respondents asked for an update to account for social media.

- In **Poland**, Respondents mentioned the need to deal with conflicts of interests connected with academic activities.

- One Respondent from **the Netherlands** suggested that "[t]he conflicts of interest relating to influence in the work sphere could be elaborated (e.g. an arbitrator has a lower position in the organization than a party appointed expert)".[154]

- A Respondent from **Argentina** said that the Guidelines should seek to reduce the gaps in situations referenced in the different lists; *i.e.*, a situation referenced in one list (*i.e.*, Red List) that is also referenced in another list (*i.e.*, Orange List) in different circumstances.

- A Respondent from **Mexico** stated that the number of cases and time periods considered in the Guidelines could be revisited.

- A Respondent from **Peru** stated that the Guidelines should refer [more] to the situation of repeat appointments.

199. Adaptation

- Respondents from both **Norway** and **Sweden** expressed their concern on the need for the Guidelines to be adapted to smaller jurisdictions, where they are too strict considering the amount of people available for appointment as arbitrators.

- A Respondent from **Sweden** also asked for a revision of the Guidelines to take into account global law firms.

- A Respondent from **Brazil** suggested that the IBA Arbitration Committee should consider the cultural backgrounds of other countries, since the Rules on Evidence are very common law-oriented.

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[154] The Netherlands, National Survey, IBA Arbitration Guidelines and Rules Subcommittee, Respondent no. 6, p. 28.

200. **Revision**. Some Respondents requested the incorporation of new categories or the elimination of current categories. For instance:

- In the common law jurisdiction country reports, there appears to be a desire to have the Guidelines address the issue of conflicts arising from different roles assumed by barristers in the same chambers. For instance, one **English** Respondent found it indefensible that barristers from the same chambers can be counsel and arbitrator in the same proceeding.

- A **United States** Respondent suggested renewed focus on "[t]wo *areas at least: relationships involving barristers in the same chambers; clarification and perhaps more nuanced approach to understanding of the concept of the 'arbitrator's firm,' in light of the size and geographic dispersion of modern law firms and the variety of kinds of relationships that arbitrators may have with law firms–non-equity partner, counsel to firm, non-employee consultant, etc.*"

- Another **United States** Respondent wrote that, "[a]*n arbitrator should not sit on a panel in a case where one of the party's counsel is also adverse counsel in another case against the same arbitrator. Thus, in one case the arbitrator is opposing counsel and in another it acts as arbitrator.*"

- Another comment was that the Red, Orange and Green Lists should be revisited to ensure that they capture the key scenarios that arise in practice, and to grant more flexibility. One Respondent from the **United States** stated that Section 3.2.1 should "*be moved to the red list" because "*[t]*his issue affects the integrity of the process as viewed from the outside and leads to collateral dispute*".

- A Respondent from **Argentina** suggested that "[i]*nvolvement as counsel adverse to one of the parties or to counsel to one of the parties–short of enmity but possibly generating a bias–should be identified as a source of conflict under the color codes (probably waivable or even non-waivable red)*".

- One Respondent from **Argentina** and another from **Venezuela** stated that the Guidelines should develop more issue conflict situations.

- Respondents from **Brazil**, **Costa Rica,** and **El Salvador** stated that the Guidelines should be routinely reviewed to take into consideration new situations that are not currently contemplated.

- A Respondent from **Peru** suggested that the Guidelines should refer to the consequences of the lack of disclosure and impartiality on the annulment of the award.

- In **South Korea**, a Respondent suggested that the Guidelines should differentiate between cases where an arbitrator had been appointed but the case was terminated before an award was issued or early in the proceedings from regular proceedings.

- Another Respondent from **South Korea** took issue with Article 3.1.5, commenting that serving as arbitrator in another arbitration on a related issue involving one of the parties should not automatically suggest a lack of independence/impartiality.

- In **Thailand**, one Respondent suggested that the IBA should make it absolutely clear that neutrality is a requirement and if an arbitrator is found to have not acted neutrally, his or her name should be disclosed.

- One Respondent from **Israel** suggested that "[i]*t would be helpful for the guidelines to address a prospective arbitrator's discussion of unrelated potential matters with a party's counsel.*"

- A Respondent from **Lebanon** suggested that Articles 3.3.6 and 3.7.7 be removed because of the difficulty to assess friendship and enmity between an arbitrator and a counsel in practice.

F. ADDITIONAL COMMENTS BY THE RESPONDENTS

201. Some Respondents to the survey made additional comments regarding the use of the Guidelines which cannot be properly characterized as a request for revision:

- The comments in the **French** survey illustrated the positive view of a majority of participants towards the Guidelines on Conflicts of Interest. For instance, two Respondents added that the Guidelines were a "*very useful tool. Realistic and practical*",[155] and they generally encouraged the initiative from the Arbitration Committee to supervise the use and application of the Guidelines in French case law: "*Always good to monitor*."[156]

- A Respondent from **Singapore** found the Guidelines to be a "*useful touchstone*," but was concerned that parties or arbitrators often resolve matters "*by taking the line of least resistance*." As a result, he explained that it was rare for matters to require a decision by a tribunal or court. This cautious approach "*leads to an inference of conflict where none exists particularly in the case of unsophisticated (or trouble-making) parties*."

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155 France, National Survey, IBA Arbitration Guidelines and Rules Subcommittee, Respondent no. 3, p. 15.

156 France, National Survey, IBA Arbitration Guidelines and Rules Subcommittee, p. 5.

- Another Respondent from **Japan** noted that each country has its own conflict of interest rules, some of which could be even more stringent than the Guidelines, and it would be helpful if those countries/institutions could share their experience in applying those rules.

- A Respondent in **Thailand** noted that, as counsel in Thai *ad hoc* arbitrations, the respondent sends a copy of the Guidelines as a matter of course to someone who is sought for potential appointment as an arbitrator.

IV. THE IBA GUIDELINES ON PARTY REPRESENTATION IN INTERNATIONAL ARBITRATION

A. EXECUTIVE SUMMARY

202. The key findings from the survey with respect of the Party Representation Guidelines are as follows:

203. The Party Representation Guidelines are the least frequently used of the three IBA Rules and Guidelines, with references to the Party Representation Guidelines being made in less than 20% of arbitrations involving issues of counsel conduct. That being said, the Party Representation Guidelines appear to be more frequently used in common law jurisdictions than in civil law jurisdictions.

204. In arbitrations in which the Party Representation Guidelines are referenced, tribunals usually only consult the Party Representation Guidelines and do not feel bound by them.

205. There is no clear indication in the survey results that certain parts of the Party Representation Guidelines were cited considerably more frequently than other parts.

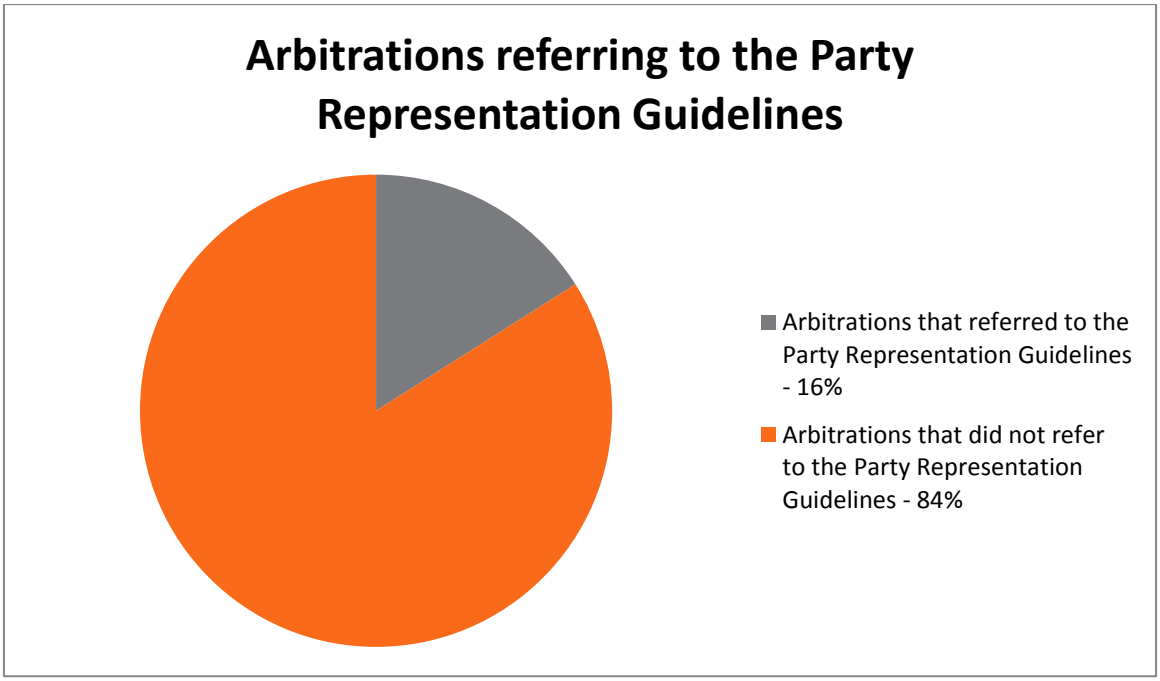
206. No public cases making reference to the Party Representation Guidelines could be identified. Legal publications usually only provide information on the Party Representation Guidelines and recommend using them. However, in at least one key arbitral jurisdiction (Switzerland), there has been considerable criticism with regard to the Party Representation Guidelines.

207. A majority of Respondents had no view as to whether the Party Representation Guidelines should be amended. Of the remaining Respondents, a considerably larger number did not consider amendments necessary. The view that amendments should be made was held in particular by Respondents from Europe.

B. THE PARTY REPRESENTATION GUIDELINES IN ARBITRAL PRACTICE

1. How Often are the Party Representation Guidelines Referred to in Arbitral Practice?

208. According to survey results, the Party Representation Guidelines are the least frequently used of the three IBA Rules and Guidelines. Overall, the Respondents identified 1358 arbitrations in which issues of counsel conduct had arisen. Among these, a total of 16% (218 of 1358) referenced the Party Representation Guidelines, as illustrated by the chart below.



209. However, there have been no published arbitration cases referencing the Party Representation Guidelines across the 54 jurisdictions. Most Country Reports commented that it was difficult to unearth references to the Party Representation Guidelines in local arbitral practice because most arbitral awards and decisions are confidential.

210. On the other hand, in most cases, Respondents skipped the questions regarding the relevance of the Party Representation Guidelines. That being said, insofar as the cases where Respondents did provide answers, it appears that, in a clear majority of the arbitrations in which the Party Representation Guidelines were referenced (almost 81%), tribunals only consulted the Party Representation Guidelines as non-binding guidance. Tribunals felt bound by the Party Representation Guidelines only in 19% of cases. Moreover, in arbitrations in which tribunals were bound by the Party Representation Guidelines, it was estimated that in 83% of cases, the Party Representation Guidelines were incorporated in the terms of reference or the first procedural order. Conversely, the reference to the Party Representation Guidelines stemmed from the arbitration agreement only in 17% of relevant arbitrations. The

Respondents also estimated that out of the cases in which tribunals consulted the Party Representation Guidelines, tribunals followed the Party Representation Guidelines in almost 72% of cases.[157]

2. The Use of the Party Representation Guidelines in Key Jurisdictions

211. Survey results for individual countries confirm that the Party Representation Guidelines are referenced rather infrequently. At least with regard to key jurisdictions, there is also a clear divide between civil law and common law countries, with arbitrations involving Respondents from common law countries referencing the Party Representation Guidelines more frequently.

- According to **French** Respondents, the Party Representation Guidelines are very rarely referenced. In total, only 6% of the cases involving counsel conduct referenced the Party Representation Guidelines.

- Out of the large number of reported arbitrations invoked by Respondents from **Switzerland** in which issues of counsel conduct had arisen, only 7% referenced the Party Representation Guidelines.

- Out of the large number of reported arbitrations involving issues of counsel conduct reported by **German** Respondents, 6% referenced the Party Representation Guidelines in some way.

- For **England and Wales**, the Respondents reported over a 100 arbitrations in which issues of counsel conduct had arisen. Of these, it was said that 22% referred to the Party Representation Guidelines.

- With respect to the **U.S.**, a large number of arbitrations were identified that involved issues of counsel conduct and of those, 34% referenced the Party Representation Guidelines.

- Out of the arbitrations reported by Respondents from **Singapore** in which issues of counsel conduct have arisen, 38% referenced the Party Representation Guidelines. It should be noted that this represents the experience of only six out of 20 Respondents, as the remaining 14 Respondents who answered the question did not encounter any issues of counsel conduct.

- The survey responses from mainland **China** are somewhat unexpected. Out of the reported arbitrations involving issues of counsel conduct, 79% in some way referenced the Party Representation Guidelines. However, caution is

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[157] No breakdown by key jurisdictions has been prepared because, for most jurisdictions, the numbers of cases reported is too low to arrive at meaningful conclusions.

needed before concluding that a relatively high percentage of arbitrations in mainland China are adopting the Party Representation Guidelines. The survey was conducted in English only. As a result, the survey may only have received responses from those practitioners who have strong English language skills and may not have taken into account the full extent of Chinese domestic arbitration practice where the Guidelines may be less frequently relied upon.

- For **Mexico**, the survey indicates that the Party Representation Guidelines are not well known or regularly consulted by the Respondents. According to the responses to the survey, 23% of arbitrations involving counsel conduct referred to the Party Representation Guidelines.

- The survey results indicate that **Brazilian** Respondents appear to be less familiar with the Party Representation Guidelines compared to the other IBA Rules and Guidelines. Out of the arbitrations known to Brazilian Respondents over the last five years in which issues of counsel conduct have arisen, 22% referenced the Party Representation Guidelines.

- For **Ecuador**, the survey shows that the Party Representation Guidelines were used quite frequently in arbitrations involving issues of counsel conduct, albeit such arbitrations were rather rare. Specifically, 54% arbitrations involving issues of counsel conduct referenced the Party Representation Guidelines.

- According to the **Peruvian** Respondents, the Party Representation Guidelines were referenced in 12% of the high number arbitrations involving issues of counsel conduct reported.

- **Argentinian** Respondents accounted for 15 arbitrations in which party conduct issues arose and stated that in 33% of these, the Party Representation Guidelines were used or referenced.

3. What are the Specific Provisions Referenced?

212. As to the specific provisions referenced in arbitrations, Respondents frequently stated that no specific provisions were invoked but that the Party Representation Guidelines as a whole had been referenced. Otherwise, the most referenced provisions were:

- **Guidelines 4-6** dealing with conflicts of interest between the tribunal and party appointed representatives;

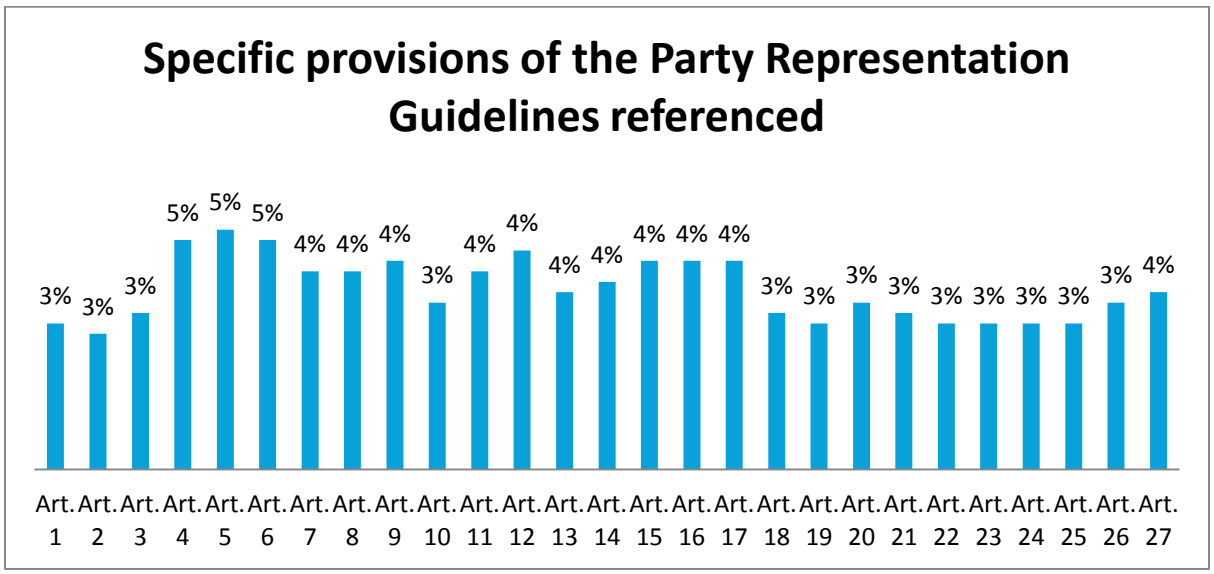
- **Guidelines 7-8** dealing with communications between a party representative and an arbitrator or potential arbitrator concerning the arbitration;

- **Guidelines 9 and 11** dealing with submissions to the tribunal and concerning the responsibility of party representatives when making submissions and tendering evidence to the tribunal;

- **Guidelines 12-17** relating to the conduct of party representatives in connection with information exchange and disclosure; and

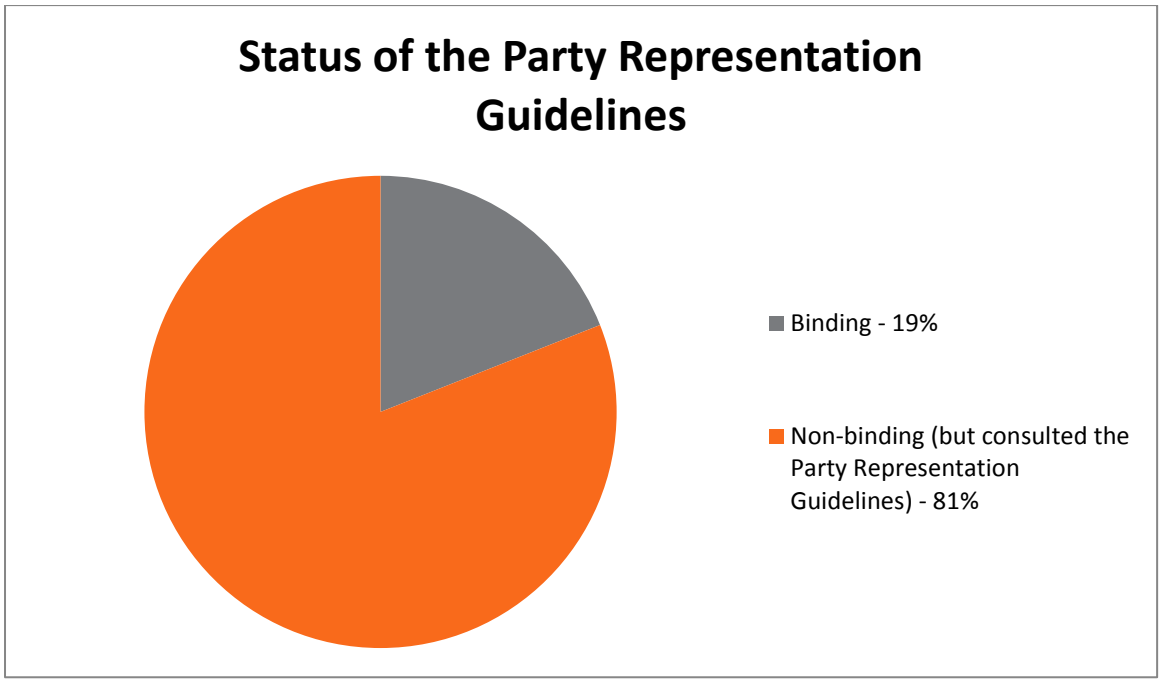
- **Guidelines 26-27** dealing with potential remedies to address misconduct by party representatives.

213. The frequency of references to those and other provisions is illustrated below.

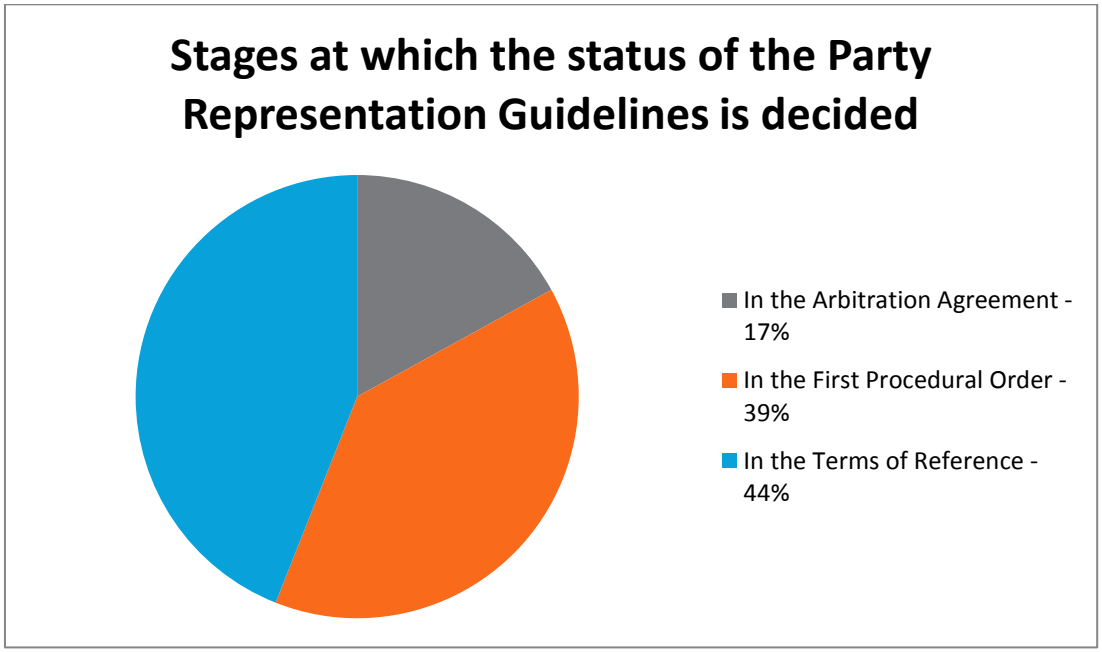


4. What is the Status of the Party Representation Guidelines in the Arbitrations in Which they were Referenced?

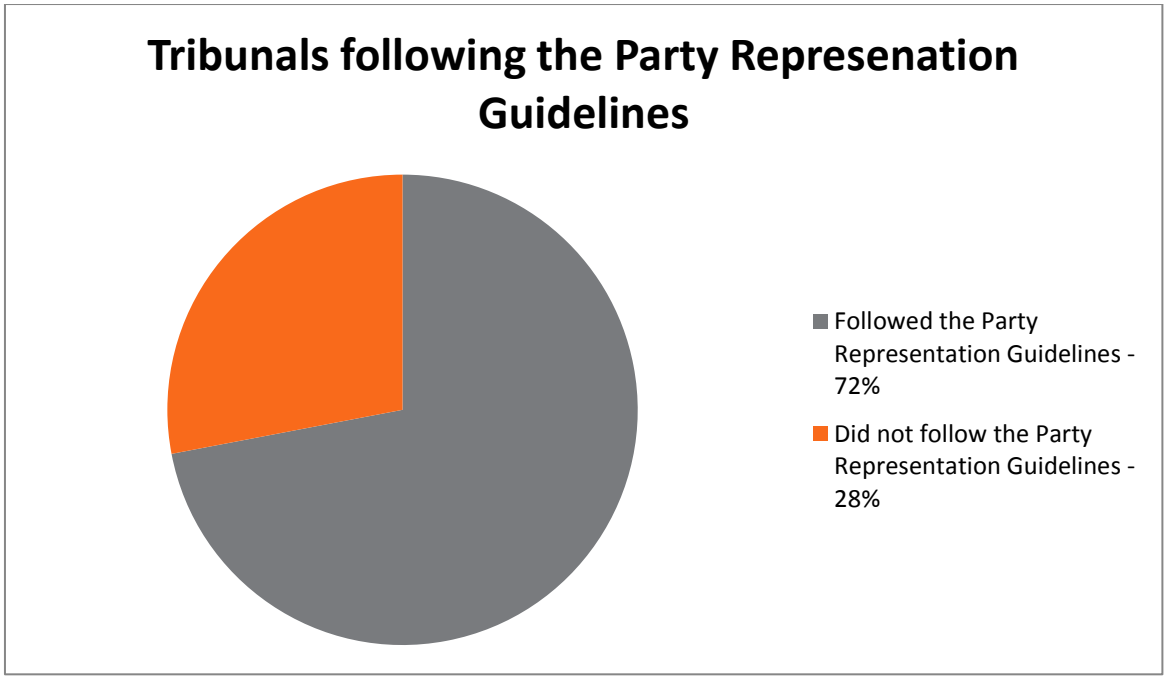
214. The Party Representation Guidelines are predominantly considered non-binding (80% of referenced cases), as is illustrated in the chart below.



215. According to the survey responses, of the cases in which the Party Representation Guidelines were considered binding, such binding nature was determined most frequently in the terms of reference (45%) and in the first procedural order (37%). In 18% of the cases, the application of the Party Representation Guidelines had been stipulated in the arbitration agreement. That being said, due to the low number of cases in which the Party Representation Guidelines were referred to and considered binding, it is questionable whether this split is statistically meaningful.



216. Moreover, according to the survey, 72% of the tribunals which referred to the Party Representation Guidelines followed the Party Representation Guidelines, with 28% of tribunals declining to do so. Again, due to the small sample size, it is questionable whether this split is statistically meaningful.



C. THE PARTY REPRESENTATION GUIDELINES IN CASE LAW

217. Across the 57 jurisdictions for which there are Country Reports, there have been no reported litigation cases referencing the Party Representation Guidelines. Consequently, for all the jurisdictions considered in the country reports, judicial familiarity with, and response to, the Party Representation Guidelines remains unknown.

D. THE PARTY REPRESENTATION GUIDELINES IN LEGAL PUBLICATIONS

218. Finally, the number of references to the Party Representation Guidelines in publications is negligible in all jurisdictions except for Europe, where legal writers have demonstrated some interest in the Party Representation Guidelines. Legal publications usually have an informative character and approve of the use of the Party Representation Guidelines. An exception is in Switzerland, where the ASA Board published "Comments and Recommendations" regarding the Party Representation Guidelines and expressed "serious reservations", issuing the recommendation that tribunals should not apply the remedies for misconduct of party representatives set out in the Guidelines, especially in the absence of express consent by both parties.[158] Moreover, ASA's former president, Michael E. Schneider, has also criticized the Party Representation Guidelines in strong terms.[159]

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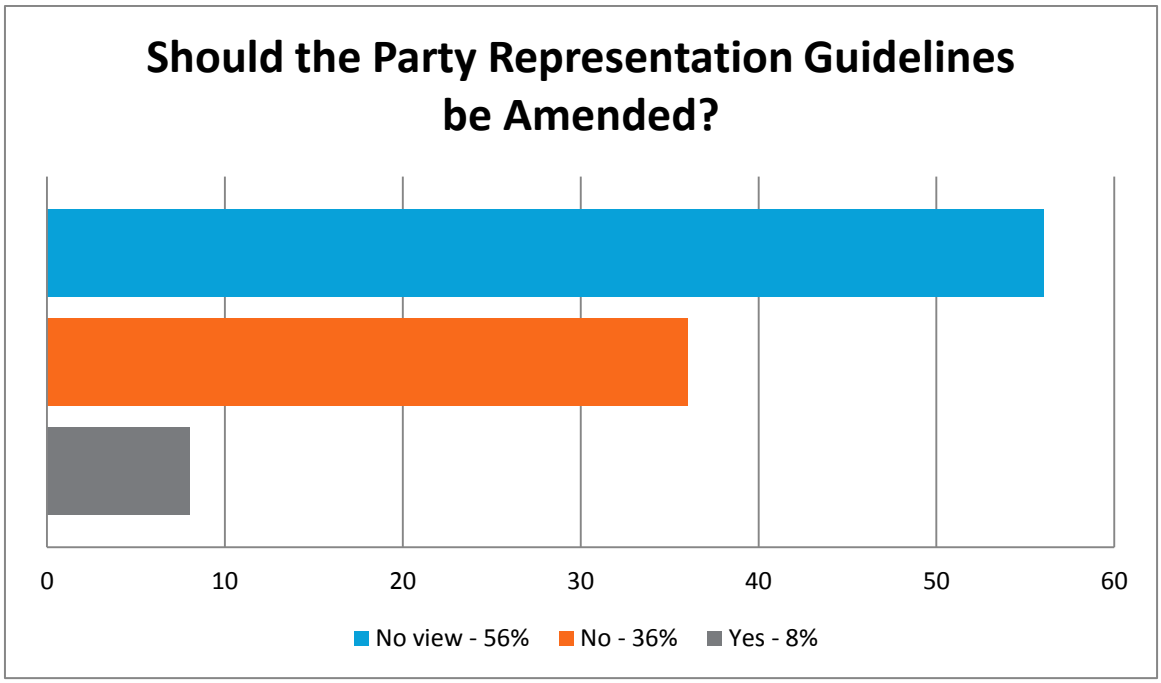
158 Comments and Recommendations by the Board of the Swiss Arbitration Association (ASA), 4 April 2014.

159 M.E. Schneider, "President's Message: Yet another Opportunity to Waste Time and Money on Procedural Skirmishes: The IBA Guidelines on Party Representation", 2013 ASA Bulletin 497, Vol. 31.

E. NEED TO AMEND THE PARTY REPRESENTATION GUIDELINES AND SUGGESTIONS IN THAT REGARD

219. Few Respondents thought that the IBA Arbitration Committee should revise the Party Representation Guidelines. While the majority of Respondents expressed no view on possible amendments to the Party Representation Guidelines, a fair amount opined that there was no need for amendments.[160]



220. Africa, followed by Europe, and Asia-Pacific, were the regions with the most appetite for amendments to the Party Representation Guidelines.[161] It is worth mentioning that 48% of the European Respondents that expressed a need to modify the Party Representation Guidelines were from Switzerland.

221. The percentage of Respondents with "no view" as to whether the Party Representation Guidelines should be amended or not is the highest compared to Respondents with "no view" on this issue regarding the other sets of Rules and Guidelines (37% for the Rules on Evidence and 35% for the Conflicts of Interest Guidelines). Likewise and comparatively, a low proportion of Respondents considered that the Party Representation Guidelines should or should not be amended: indeed, only 8% considered they should be amended as opposed to 9% for the Rules on Evidence and 12% for the Guidelines on Conflicts of Interest on one hand and 36% considered they

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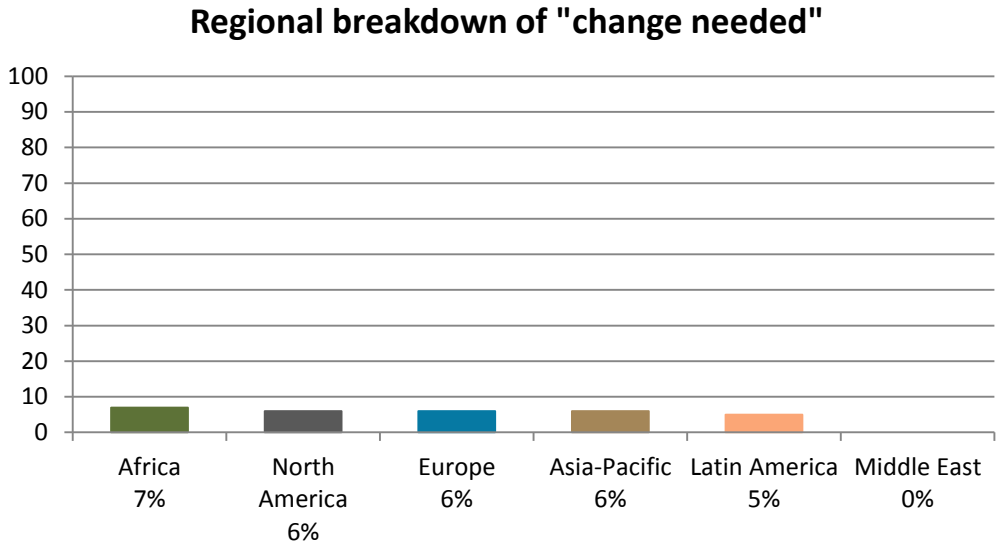
160 Only 8% of the Respondents considered that the IBA Arbitration Committee should revise the Guidelines on Party Representation. The majority of the Respondents (55%) expressed no view on the subject while a considerable amount (36%) stated that there was no need for amendments.

161 Africa had the highest percentage (7%) of Respondents proposing changes to the Guidelines, followed by Europe (6%), the Asia-Pacific region (6%), North America (6%), and Latin America (5%). Interestingly, in the Middle East, none of the 65 Respondents expressed a desire to revise the Guidelines.

should not be amended as opposed to the more significant percentages of 54% for the Rules on Evidence and 52% for the Guidelines on Conflicts of Interest on the other hand.



222. In general, several Respondents argued that all of the Party Representation Guidelines should be dispensed with, given that any aggrieved party could turn to their tribunal or to their relevant bar association. Indeed, many Respondents pointed out an alleged bias for common law within the Party Representation Guidelines. For example, some comments suggested that the Party Representation Guidelines do not represent the ethical standards in civil law systems. Reference was made in particular to the appropriateness of paying witnesses in civil law countries, even if it is only to compensate for the amount of time spent. Other Respondents stated that, although a lawyer cannot lie to an arbitral tribunal, there should be no ethical duty to tell the client to preserve documents that may go against his case. With regard to specific provisions, it was suggested that Guidelines 12, 13, 15, 16, 17, 19, 26 and 27 be eliminated or that the application of these Guidelines be subject to the express consent of the parties.

223. Interesting suggestions were made on the exclusion of party representatives and sanctions on counsel. For instance, it was argued that an arbitral tribunal should not have the right to exclude a party representative, while another Respondent stated that the Party Representation Guidelines should not vest tribunals with the ability to impose sanctions on counsel. Some other interesting proposals included a revision of the provision that contemplates a duty to preserve documents pending arbitration (Guideline 12), since there is no international consensus on such duty; a relaxation of the provisions on interviewing and coaching witnesses (Guidelines 18-25); and the addition of a provision stating that a party representative should be allowed to trust the information he or she receives from the client unless there are extremely compelling reasons to doubt the accuracy of the information provided.

224. In most jurisdictions considered by this Report, neither the judiciary nor arbitration practitioners were familiar with the Party Representation Guidelines. Indeed, in some jurisdictions, the existence of the Party Representation Guidelines was unknown to some Respondents. In respect of legal publications, the Party Representation Guidelines have not yet garnered much attention compared to other IBA Rules and Guidelines.

V. ANALYSIS AND WAY FORWARD

225. The IBA Rules and Guidelines continue to represent the high level of self-regulation which has become one of the defining features of international arbitration. The purpose of the Subcommittee's survey was to gain insight into the application and reception of these Rules and Guidelines amongst practitioners.

226. The Steering Group reviewed with great interest the 845 Meaningful Responses received through the survey. These provide a snapshot of arbitral practice at an international level, as well as trends in regional arbitration markets of varying levels of sophistication. The Steering Group noted that in their comments, Respondents across the globe did not identify any significant gaps or flaws in the IBA Rules and Guidelines. The Steering Group is thus of the opinion that these soft law instruments remain sufficiently robust and relevant to international arbitration practitioners. There is no pressing requirement to consider amending or revising them at the present time.

227. The Steering Group also observed that Respondents from both civil and common law jurisdictions concurred that the IBA Rules and Guidelines are important value additions to their practice toolkit. This is a testimony to the IBA Rules and Guidelines' success in providing a balance between common and civil law traditions– a feature which earned praise from several Respondents who applauded their neutral nature.

228. Indeed, the IBA Rules and Guidelines provide general best practice principles, a *de minimis* standard which may be utilized by parties and practitioners from different regions and legal systems. They are not detailed regulations. The IBA Rules and Guidelines do not aim to address all possible factual and legal scenarios which may be at issue in a given arbitral proceeding. Instead, they consciously leave room for innovation by the users of the arbitral process. This reflects the fundamental characteristic of arbitration itself: a dynamic method of dispute resolution wherein novel scenarios may require parties, counsel, and the arbitral tribunal to act together to find solutions.

229. The Steering Group was mindful of the particular nature of the IBA Rules and Guidelines as described above when it analysed the comments and suggestions for amendments received in the survey. Thus, although some Respondents pointed out specific facts and circumstances which the Rules and Guidelines do not address fully,

these examples are not necessarily indicative of shortcomings. Notwithstanding the foregoing caveat, the Steering Group has identified certain issues highlighted by Respondents, which may provide a useful starting point for potential future work. These are set out in greater detail below.

A. IBA RULE/GUIDELINE(S) SPECIFIC OBSERVATIONS

1. Rules on Evidence

230. The Steering Group views the Rules on Evidence as a successful soft law instrument, as reflected in the survey results where the Rules on Evidence closely followed the Conflicts of Interest Guidelines in terms of being referenced by practitioners.[162] Among the numerous comments received from Respondents, questions regarding the meaning of certain terms, the relevance of the burden of proof in deciding document production requests, the powers of tribunal-appointed experts, and the scope of document production were identified as prevalent subjects.

231. Article 3.3(b) of the Rules on Evidence states that document production requests should refer to documents "relevant to the case and material to its outcome". These terms are repeated in Article 9.2(a) of the Rules on Evidence, according to which an arbitral tribunal can deny a request to produce documents for "lack of sufficient relevance to the case or materiality to its outcome". These articles have been identified as a source of confusion and ambiguity by Respondents.[163] In particular, some of them considered it useful to clarify the scope of and distinction between the terms "relevant" and "material", as neither have been defined in the Rules on Evidence.

232. It is recalled that the aforementioned provisions have already been subject to review, as the 2010 iteration of the Rules on Evidence attests. However, the impact and practical usefulness of this revision, as well as the need to include both terms, appears to be in doubt. Some Respondents viewed the distinction as superfluous and adding little to the standard existing under this provision. Thus, the absence of specificity as to what the terms "relevant" and "material" entail may provide the basis for frivolous objections during document production, which would in turn impact time and costs of the proceedings. It could thus be useful to provide clarity on the meaning of these two terms, and eventually assess whether it is necessary to maintain both.

233. For similar reasons, it was mentioned that the formulation of Article 3.3(a)(ii) of the Rules on Evidence, which requires documents requested to be of a "narrow and specific requested category" warrants clarification. This is because it is unclear what a "category" of documents means, and may also provide an impetus for objections to

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162 See paragraph 19 above.

163 See paragraph 89 above.

requests for production. One Respondent suggested removing "categories" altogether so that requests would have to identify documents individually.[164] It may thus be useful to consider providing an explanation for this term.

234. Respondents also drew attention to the lack of guidance as to the relevance of the burden of proof in the context of a tribunal's decision to grant or deny a document production request.[165] It is difficult to formulate a bright line rule as to whether burden of proof should be a factor in determining the outcome of a request for document production. However, this question has been raised in arbitral practice with parties objecting to the production of documents related to issues that the requesting party did not have the onus to prove.

235. A reference to burden of proof as one of the factors to be considered in the tribunal's analysis of a document production request might thus be apposite. For example, the weight to be given to this element of the request could be decided by the tribunal, rather than being a dispositive ground for denying a request. Burden of proof could thus be viewed as a factor similar to "commercial or technical confidentiality" which, as per Article 9.2(e) of the Rules on Evidence, would constitute grounds for denying a request only when the tribunal determines them to be "compelling".

236. Another area for consideration is Article 6 of the Rules on Evidence, which sets out the terms and conditions related to the work of tribunal-appointed experts. For instance, it has been suggested that these provisions could incorporate language indicating that arbitrators should not delegate their decision-making powers to these experts. Such delegation could be limited to submissions made by party-appointed experts to the arbitral tribunal. In practice, the failure to particularize the scope and function of tribunal-appointed experts could have far-reaching effects on the integrity of the arbitration process. This may include unwarranted interference with the adjudication of the parties' claims—a mandate vested exclusively with the tribunal—and additional costs, as well as unjustified delays and due process concerns.

237. Some Respondents were also of the view that the Rules on Evidence are too broad or too open regarding document production.[166] Since document production has now become a routine practice in international arbitration proceedings, there may be a need to fine-tune Articles 3, 4, and 9 of the Rules on Evidence which provide guidance on this process. However, most of the criticism regarding the expansive nature of document production comes from Respondents with limited experience in the field, and from jurisdictions where international arbitration is still in its nascent stage. As a result, this opinion does not appear to be symptomatic of the international arbitration community in general. In fact, a larger number of Respondents praised the

164 See paragraph 89 above.

165 See paragraph 92 above.

166 See paragraph 89 above.

Rules on Evidence for striking an appropriate balance between civil and common law traditions.

238. Respondents affirmed by an overwhelmingly large margin that there is no need to amend the Rules on Evidence.[167] Accordingly, there is no immediate need for review at the moment. The Arbitration Committee may consider issuing a report on the use of the Rules on Evidence together with the survey results and appropriate clarifications. A full revision may be considered on the ten year anniversary of the Rules on Evidence in 2020. A task force could be set up for this purpose around 2018.

2. Conflicts of Interest Guidelines

239. The survey results show that the Conflicts of Interest Guidelines are the most commonly referenced soft law instrument on international arbitration issued by the IBA.[168] Respondents identified certain aspects of the Conflicts of Interest Guidelines which may make them better suited to the current trends in the arbitration market. These include questions related to the relationship between counsel and arbitrators from the same barristers' chambers, adaptation for smaller jurisdictions, as well as rethinking the distinction between waivable and non-waivable situations.

240. General Standard 6 of the Guidelines sets out the types of conflict issues as regards to the relationship between an arbitrator and his/her law firm. Respondents have urged that the application of this guideline to barristers' chambers be clarified and strengthened.[169]

241. The Explanation to General Standard 6 makes a distinction between barristers' chambers and law firms, stating that "barristers' chambers should not be equated with law firms for the purposes of conflicts, and no general standard is proffered for barristers' chambers, disclosure may be warranted in view of the relationships among barristers, parties and counsel."

242. It could be apt to reformulate this statement since currently, as one Respondent has pointed out, barristers from the same chambers may appear as counsel and arbitrator in the same proceeding.[170] In the present market scenario, where there is little difference in the manner in which law firms and barristers' chambers operate and advertise themselves to the public, there are strong reasons to argue that such a position has become inappropriate and should be addressed.[171]

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167 See paragraph 79 above.

168 See paragraph 101 above.

169 See paragraph 200 above.

170 See paragraph 200 above.

171 M. Polkinghorne, E. Gonin, "Barristers from the same Chambers Appearing as Counsel and Arbitrator: Independence Revisited?", Dispute Resolution International 2, Vol. 5, pp. 175-176.

243. This reality was taken into account in ICSID case *Hrvatska Elektroprivreda v. The Republic of Slovenia*. In that decision, the tribunal rejected a respondent's attempt to instruct, as counsel, a barrister of the same chambers as the chairman.[172] In so doing, the tribunal highlighted the increasingly "collective connotation" of chambers in the market for legal services, a factor which may compromise the independence and impartiality of a barrister.[173]

244. Some Respondents have also argued that the standards set out in the Guidelines should be relaxed in jurisdictions where the pool of arbitrators may be small on account of a nascent arbitration market.[174] However, it could be argued that making any such piecemeal adjustments to the principles of conflicts of interest would run counter to the general purpose of the Guidelines and be unsuitable in view of the other jurisdictions which have well established arbitration markets. Equally, it might be impractical to make regional concessions and exceptions based on market size, as it would be difficult to monitor their growth.

245. Nevertheless, repeat appointments are indeed a genuine issue faced by parties from small jurisdictions. Even in more developed jurisdictions, and although not specifically mentioned by Respondents, parties face a similar problem when seeking a practitioner who specializes in a niche field, such as oil and gas. Again, this reflects the practical difficulty of reconciling absolute standards of disqualification, such as the one set out by the Non-Waivable Red List[175] with the need to appoint competent arbitrators.

246. The Orange List already attempts to address this issue, albeit to a limited extent. It sets out a carve-out from the obligation to disclose repeat appointments in case of certain types of disputes which require arbitrators with very specific specialisations, thus limiting the number of potential arbitrators available. Maritime, sports and commodities arbitrations are specified as examples of such niche arbitrations. It is also specified that disclosure of repeat appointments in such cases is not obligatory only if all parties are familiar with the custom and practice of appointing the same persons in such types of arbitrations.[176] This carve-out may be difficult to implement

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172 *Hrvatska Elektroprivreda d.d. v. Republic of Slovenia*, ICSID Case No. ARB/05/24, Order Concerning the Participation of Counsel, 6 May 2008, p. 15.

173 *Hrvatska Elektroprivreda d.d. v. Republic of Slovenia*, ICSID Case No. ARB/05/24, Order Concerning the Participation of Counsel, 6 May 2008, ¶¶ 17-20.

174 See paragraph 199 above.

175 Conflicts of Interest Guidelines General Standard 2: "*An arbitrator shall decline to accept an Appointment … if he or she has any doubt as to his or her ability to be impartial or independent. … Justifiable doubts necessarily exist as to the arbitrator's impartiality or independence in any of the situations described in the Non-Waivable Red List.*"

176 Conflicts of Interest Guidelines, Orange List, ¶3.1.3, footnote 5: "*It may be the practice in certain types of arbitration, such as maritime, sports or commodities arbitration, to draw arbitrators from a smaller or specialised pool of individuals. If in such fields it is the custom and practice for parties to frequently*

in practice, as it gives rise to additional issues as to how it would be determined that both parties view a certain type of arbitration as being one which requires skills that are limited to certain select individuals, thus making repeat appointments unavoidable. It is also insufficient to resolve the problems faced by parties from jurisdictions where the international arbitration market is still in its nascent stage as described in paragraph 244 above.

247. In order to give due deference to the principle of party autonomy, one solution could be for the Non-Waivable Red List to be eventually assimilated into the Waivable Red List. In view of the continuing move towards casting a wider net in terms of the types of relationships which merit disclosure in international arbitration, such a relaxation of absolute bars would act as an important counterbalance which would respect the will of the parties, and maintain the high quality of professionals engaged as arbitrators. There is support for the proposition that fully informed, sophisticated parties represented by counsel should be able to waive any potential conflicts as they are the ones best placed to be aware of their interests and the extent to which they may be impaired by the appointment of a particular arbitrator. Such a process would be much more suited to market realities, where there is a high demand for a limited number of practitioners. It could be argued that such a revision of the Conflicts of Interest Guidelines would also address to some extent the issues related to developing jurisdictions and niche industries as highlighted above.

248. The present iteration of the Guidelines was adopted in 2014,[177] and is thus relatively recent. With the passage of time, a clearer picture of the pragmatic relevance of the Guidelines will emerge. There is no need to review them at the moment; however the issues noted above may be taken into consideration in a few years.

3. Party Representation Guidelines

249. The Party Representation Guidelines are rarely referenced, and unknown to several Respondents.[178] They have not been taken up by the international arbitration community to the same extent as the other IBA Rules and Guidelines.

250. While the other IBA Rules and Guidelines filled a gap in international arbitration, it is less clear whether the Party Representation Guidelines have served that function. The limited use by the arbitration community of the Party Representation Guidelines seems to suggest that they have not responded to a real gap. However, this may also be explained by the fact that issues of counsel conduct arise far less frequently than

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appoint the same arbitrator in different cases, no disclosure of this fact is required, where all parties in the arbitration should be familiar with such custom and practice."

177 The first version of the Conflicts of Interest Guidelines was issued in 2004.

178 See paragraphs 208 to 210 above.

issues of evidence or conflicts of interest, and may be regulated by other legal or ethical norms.

251. It should be noted that common law practitioners have referenced the Party Representation Guidelines more frequently than their civil law counterparts.[179] Regardless, the Rules on Evidence enjoy much wider acceptance as compared to the Party Representation Guidelines in key common law jurisdictions.[180]

252. The Party Representation Guidelines are also relatively new, as they were adopted in 2013. Given the short timeframe during which they have been in use, it would be premature to consider their revision.

B. GENERAL REMARKS

1. Harmonisation of the IBA Rules and Guidelines

253. The IBA Rules and Guidelines have several areas of overlap, and it is necessary to ensure that with respect to these aspects they are consistent and speak in one voice. Some existing or potential issues which may be addressed through such a harmonisation process are described below.

i. Document Production

254. With respect to document production, there is an overlap between the Party Representation Guidelines and the Rules on Evidence. This overlap could be harmonised as set out below.

255. Guideline 13 on Party Representation bars counsel from raising objections aimed at harassing or causing unnecessary delays during document production. This could be included as a separate ground for denying a document production request, or a particular example of procedural impropriety in Article 9 of the Rules on Evidence.

256. Guidelines 14 and 17 on Party Representation direct counsel to advise the party of the consequences of the failure to produce documents. It could be useful to specify such consequences in this Guideline by stating that an adverse inference as described in Article 9(6) of the Rules on Evidence (if those rules apply to that specific arbitration) could be made against the party on the basis of its failure to produce documents.

257. Guideline 15 on Party Representation directs counsel to ensure that the party conducts a reasonable search for documents and produces all non-privileged responsive documents. An express duty of this nature could be imposed on the party itself and incorporated in Article 3 of the Rules on Evidence as well.

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179 See paragraph 211 above.

180 For instance, compare percentage of references to the Guidelines on Party Representation on one hand and Rules on Evidence on the other hand, see paragraphs 211 and 44 above.

258. Guideline 16 on Party Representation directs counsel to refrain from advising clients to suppress or conceal documents requested or ordered to be produced. This Guideline could also specify that this could lead to an adverse inference as described in Article 9(6) of the Rules on Evidence.

ii. Witness Testimony

259. In addition to the overlaps between the Party Representation Guidelines and the Rules on Evidence in relation to document production, an overlap can also be found in respect of witness testimony.

260. Guidelines 20 and 24 on Party Representation direct counsel to ensure that a witness testimony reflects the witness's own account of events in the process of assisting with the preparation of a witness statement. Such a principle could be incorporated into Article 4(3) of the Rules on Evidence which states broadly that it would not be improper for legal representatives or the parties to discuss the prospective testimony of witnesses with them.

261. Guideline 11 on Party Representation requires counsel to take remedial measures when it comes to light that false witness testimony has been previously submitted in the proceedings. These measures include urging the witness or expert to correct or withdraw the false evidence (Guideline 11(c)). However the Rules on Evidence specify at Article 4(6) that revised and additional witness statements can be submitted so long as revisions "*respond only to matters contained in another Party's Witness Statements, Expert Reports or other submissions that have not been previously presented in the arbitration"*. This would not allow correction of false testimony. This situation could be harmonised with the Party Representation Guidelines to allow correction of statements which have been consequently discovered to be incorrect.

iii. Duty of parties to make disclosures

262. Beyond evidence-related concerns, the Party Representation Guidelines overlap with the Conflicts of Interest Guidelines in respect of disclosure.

263. General Standard 7(c) on Conflicts of Interest mandates that parties perform reasonable enquiries to comply with the requirement under General Standard 7(a) to inform the arbitrator and other party of any relationship with the arbitrator. The duties of counsel in the Party Representation Guidelines could be revised to include advising clients to make these enquiries and disclosures.

264. General Standard 7(b) on Conflicts of Interest requires that a party inform an arbitrator of the identity of its counsel and any relationship between the counsel and the arbitrator, including specifically membership of the same barristers' chambers. Thus this General Standard expressly views membership of the same barristers' chamber as constituting a relationship between counsel and arbitrator. The requirement to disclose such membership by the party arguably should extend to

arbitrators as well. The language of General Standard 6 discussed at paragraph 240 above which only refers to the arbitrator's law firm could be revised to incorporate "barristers' chambers" in the language of the Guideline itself to make it consistent with General Standard 7(b).

iv. Definitions

265. In terms of the definitions there does not seem to be any inconsistency between the three instruments at the moment. However, if and when new items are added to the list of definitions in either the Rules on Evidence or Party Representation Guidelines, such changes should be made consistently.

2. Promotion of the IBA Rules and Guidelines

266. Several Respondents underscored the need to better promote awareness regarding the potential benefits of using the IBA Rules and Guidelines. Others indirectly demonstrated the need to increase awareness by suggesting improvements already implemented in the IBA Rules and Guidelines. Such efforts should be directed towards jurisdictions where the knowledge and application of the IBA Rules and Guidelines is particularly limited. Based on the survey results, this should include Latin America, Middle East, and Africa.[181]

267. The Steering Group proposes that the IBA reach out in particular to law students and young practitioners to ensure the Rules/Guidelines are known by the new generation of arbitration practitioners at an early stage of their career. At IBA events organized in these jurisdictions, the IBA could recruit some of its speakers to liaise with local bar councils and law schools to provide an introduction to the IBA Rules and Guidelines.

3. Timeline for Periodic Review of the IBA Rules and Guidelines

268. The IBA Rules and Guidelines need to keep abreast with the arbitration market to continue to be robust practice tools. It would be useful to set up a timeline for periodic assessments and review. This would ensure that the IBA Arbitration Committee engages with practitioners on an on-going basis to monitor the market and anticipate key issues which may need to be addressed in subsequent iterations of the IBA Rules and Guidelines. A review of the IBA Rules and Guidelines every ten years seems to be an appropriate timeframe.

VI. CONCLUSIONS

269. The survey results affirm that the IBA Rules and Guidelines enjoy the distinctive status of being well-received soft law instruments amongst members of the international arbitration community, albeit to varying degrees. The Conflicts of

[181] See paragraphs 27, 35, 38, 129 and 196 above.

Interest Guidelines are the most-commonly referenced, appearing in more than half (57%) of the arbitrations reported in the survey. The Rules on Evidence come in a close second, having been referenced in almost half (48%) of the arbitrations known to Respondents. By contrast, the Party Representation Guidelines have not yet attracted much attention, appearing in less than a quarter (16%) of the arbitrations reported. Certain interesting trends from the study of the responses and the country reports form the basis of the emerging brief concluding remarks set out in this section. When assessing these trends, it is important to bear in mind that how often the Rules or Guidelines are referred to will depend on how often the relevant issues arise. For example, issues of evidence will arise more regularly than counsel conduct.

270. The most popular of the three IBA Rules and Guidelines—the Conflicts of Interest Guidelines—have been well received across all the regions surveyed. They are of particular importance at the stage of constituting the arbitral tribunal. Respondents noted that counsel consulted the Guidelines in two-thirds (67%) of the cases where conflicts issues arose at the time of appointment of arbitrators. Equally, Decision-makers frequently made reference to the Guidelines when seised with issues involving conflicts of interest (67% of reported cases). Interestingly, no particular provision of the Conflicts of Interest Guidelines stands out as being the most frequently cited.

271. The second most popular IBA soft law instrument is the Rules on Evidence. Unlike the Conflicts of Interest Guidelines, there is a significant level of regional variance in their reception. The Rules appear to be less frequently used in Africa (25%) and Latin America (30%) whilst being relied upon in more cases (over 50%) in all other regions, *i.e.*, Europe, North America, the Middle East and Asia-Pacific. The general view however is that the popularity of the Rules on Evidence will continue to grow. The survey results also highlighted that Article 3 on document production and Article 9 on the admissibility of evidence are the most frequently cited provisions of the Rules on Evidence.

272. Both the Conflicts of Interest Guidelines and the Rules on Evidence were followed by a remarkable majority of Decision-makers who referenced them. The Conflicts of Interest Guidelines were followed in nearly three-fourths (69%) of the cases where they were referenced. The Rules on Evidence were followed in almost all (93%) of the cases in which references were made although they were considered binding in a limited number of instances (20%) in which they were referenced.

273. As compared to the Conflicts of Interest Guidelines and the Rules on Evidence, the Party Representation Guidelines are less frequently cited. Interestingly, common law practitioners seem to have been more welcoming to the Party Representation Guidelines than their civil law counterparts. Although most Respondents did not have a view as to whether the Party Representation Guidelines should be amended, the cause of their limited use can be inferred from the comments. For instance, certain Respondents pointed out that the limited popularity of the Party Representation Guidelines was to be expected given that they were still relatively new.

274. Other Respondents suggested that the Party Representation Guidelines were rarely referenced because the judiciary and arbitration practitioners followed local laws or local institutional rules for conduct in arbitral proceedings and that these might not mirror (and may even depart from) the standards set out in the Party Representation Guidelines. Some also stated that issues of counsel conduct only come up rarely, so the Party Representation Guidelines do not become relevant very often.

275. Certain Respondents from civil law jurisdictions harshly criticized the Party Representation Guidelines on the grounds of overburdening and overregulating the arbitral process, as well as allowing for disruptive applications by the parties. A large number of such Respondents were from Switzerland.

276. For the sake of completeness, it should be mentioned that even the Conflicts of Interest Guidelines and the Rules on Evidence are somewhat less well known in a limited number of regions and/or jurisdictions. This may be attributable to a combination of several factors. First, the survey results suggest that references to them are less common in jurisdictions with a less active international arbitration practice. For example, many Respondents from Latin America, Africa, and the Middle East insisted on a general lack of awareness of the existence of the Rules on Evidence, and pointed to the need to advertise and distribute them more broadly, particularly in regions where arbitration is growing.[182] Second, practitioners in some jurisdictions rely on legislation or arbitral institution rules that might include provisions regulating the issues addressed by the IBA Rules and Guidelines, rendering the latter unnecessary.

277. Similarly, with respect to the Conflicts of Interest Guidelines, it is worth noting that, even in jurisdictions where they are widely used, the Conflicts of Interest Guidelines are not necessarily referenced in the respective terms of reference or appointment, or in awards or court decisions. This may be due to the following factors:

- **Non-binding nature**: because their application is usually not binding, practitioners do not need to explicitly cite to the Guidelines in specific cases, even if they are consulted and used as a reference.

- **Confidentiality of arbitrations**: even when the Guidelines are referenced in awards or terms of reference, these documents are seldom available to the public.

- **Prevalence of domestic ethical codes**: domestic courts and arbitral institutions often apply their own ethical codes or standards to decide on issues of conflicts of interest. As a result, even if the Guidelines have been invoked

[182] Interestingly, a number of Respondents seemed to be unaware that the IBA Rules and Guidelines are currently available in various languages, because they requested the translation of the IBA Rules and Guidelines into languages other than English.

by the Parties, the Decision-maker may ignore these references or omit them in their decisions.

278. A recurring comment in the survey responses and Country Reports was that more efforts should be made to promote all three of the IBA Rules and Guidelines among arbitration users globally, whether by the IBA, by domestic bar associations, by arbitral institutions or by universities. In particular Respondents called for steps to promote the IBA Rules and Guidelines in jurisdictions where arbitration practitioners are unfamiliar with them.

279. The Steering Group is of the view that the above proposal to make sustained and concrete efforts to disseminate information and expertise with respect to the IBA Rules and Guidelines is a useful one, and may be considered by the Subcommittee as part of its mandate. This and certain other interesting recommendations developed on the basis of the survey responses have been set out in this Report in the section entitled "Analysis and Way Forward". These raised food for thought including: better defining phrases such as "relevant" and "material" in Article 3.3(b) of the Rules on Evidence, limiting the scope of work of tribunal appointed experts, and an elimination of absolute standards of disqualification based on the Conflicts of Interest Guidelines. These views reflect the experience of the users of the IBA Rules and Guidelines and thus provide a unique insight into how these instruments are perceived and applied in practice.

VII. DEFINITIONS

280. **Africa**: For Africa, we received data from five countries: Angola, Ethiopia, Ghana, Mozambique and Nigeria.

281. **Asia-Pacific**: For Asia-Pacific, we received data from twelve countries: Australia, China, Hong Kong, India, Indonesia, Japan, Malaysia, Nepal, New Zealand, Singapore, South Korea, Taiwan, and Thailand.

282. **Conflicts of Interest Guidelines**: The IBA Guidelines on Conflicts of Interest in International Arbitration (2014).

283. **Country Report(s)**: Analysis of the IBA Rules and Guidelines survey responses collected in a country and of the use of the IBA Rules and Guidelines as reflected in domestic arbitral jurisprudence and doctrine. The Subcommittee received 23 Country Reports from Europe, 13 from Latin America, 9 from Asia-Pacific, 2 from North America, 8 from the Middle East and 2 from Africa.

284. **Decision-maker**: An umbrella term used to refer to the arbitral institution, local court, or arbitral tribunal.

285. **Europe**: For Europe, we received data from 26 countries: Austria, Belgium, Bosnia, Cyprus, Czech Republic, England, Finland, France, Germany, Greece, Ireland, Italy, Lithuania, Netherlands, Norway, Poland, Portugal, Romania, Russia, Scotland, Slovakia, Slovenia, Spain, Sweden and Switzerland.

286. **IBA Rules and Guidelines**: Collectively, the Rules on Evidence, the Conflicts of Interest Guidelines, and the Party Representation Guidelines.

287. **Latin America**: For Latin America, we received data from 16 countries: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Paraguay, Peru, Uruguay and Venezuela.

288. **Meaningful Response**: A survey response containing an answer to at least one substantive question. *I.e.*, one question beyond those questions identifying the Respondents, his/her jurisdiction, and his/her profession.

289. **Middle East**: For the Middle East, we received data from 9 countries: Egypt, Israel, Jordan, Kuwait, Lebanon, Qatar, Saudi Arabia, Turkey and UAE.

290. **National Survey**: The data set of responses to the IBA Rules and Guidelines survey received from a particular country.

291. **North America**: For North America, we received data from 2 countries: Canada and the United States.

292. **Party Representation Guidelines**: the IBA Guidelines on Party Representation in International Arbitration (2013).

293. **Reporter**: An individual drafting a country report on the IBA Rules and Guidelines.

294. **Respondent**: An individual answering the survey on the IBA Rules and Guidelines.

295. **Rules on Evidence**: The IBA Rules on the Taking of Evidence in International Arbitration (2010).

296. **The Report**: This Report on the Reception of the IBA Arbitration Soft Law Products.

297. **The Subcommittee**: The IBA Arbitration Committee organised the IBA Arbitration Guidelines and Rules Subcommittee to conduct a worldwide survey on the use of the IBA arbitration practice guidelines and rules.

ANNEX I – BIBLIOGRAPHY

CASE LAW

- A.J. v. Ericsson AB, NJA 2007 p. 841.
- *Poland v. Euroko & Stephen M. Schwebel,* Brussels Court of Appeals, Decision, 29 October 2007 (unpublished).
- Dongwoo Mann+Hummel Co Ltd v. Mann+Hummel GmbH [2008] 3 SLR(R) 871.
- OLG Frankfurt, [2008] SchiedsVZ 96.
- Decision of the Swiss Federal Supreme Court No. 4A_506/2007 of 20 March 2008.
- Decisions of the Swiss Federal Supreme Court No 4A_258/2009 of 11 January 2009.
- Decisions of the Swiss Federal Supreme Court No 4A_256/2009 of 11 January 2009.
- Telesat Canada v. Boeing Satellite Systems International Inc., 2010 ONSC 4023.
- AB Fortum Värme v. Korsnäs AB, NJA 2010 p. 317.
- In re Application of Caratube Int'l Oil Co., LLP, 730 F. Supp. 2d 101, 108 (D.D.C. 2010).
- *Wilson Orlando Acosta Paredes v. Ecuador Bottling Company Corp.*, Provincial Court of Pichincha, Case No. 17111-2009-0748, Judgement, 15 January 2010.
- Decision of the Swiss Federal Supreme Court No. 4A_458/2009 of 10 June 2010.
- Decision of the Swiss Federal Supreme Court No. 4A_234/2010 of 29 October 2010.
- [2011] EWHC 2345 (Comm).
- Chantiers de l'Atlantique S.A. v. Gaztransport & Technigaz S.A.S [2011] EWHC 3383 (Comm).
- *In re the Republic of Ecuador*, Nos. C 11-80171 CRB, 2011 WL 4434816, at *3 (N.D. Cal. 2011).
- Bureau Veritas-Inspection-Valuation Assessment and Control-BIVAC B.V./[unknown],Rb Rotterdam, 11 May 2011, ECLUI:NL:RBROT:2011:BQ6204.
- *Delforca 2008, Sociedad de Valores, SA v. Banco Santander, SA*, Madrid Court of Appeals, Case No. 3/2009, Judgment, 30 June 2011.

- Brussels Court of Appeals, 6 December 2011, "Brussel 6 december 2011", 2014 b-Arbitra 215, Vol. 1.

- Euroflon Tekniska Produkter Aktiebolag v. B.A., NJA 2012 p. 289, Case No.Ö 1590-11.

- Shakti Bhog foods Limited v. Kola Shipping Ltd, 21 August 2012, MANU/DE/3955/2012.

- *Química Suiza v. Dongo-Soria, Gaveglio y Asociados*, Lima Commercial High Court, Case No. 155-2012, Decision regarding the annulment of the Arbitral Award, 6 June 2012.

- Decision of the Swiss Federal Supreme Court No. 4A_110/2012 of 9 October 2012.

- Decision of the Swiss Federal Supreme Court No. 4A_596/2012 of 15 April 2013.

- *SACYR Concesiones, SL v. Inprisma, SL*, Superior Court of Justice of Madrid, Judgment No. 83/2012, 16 July 2013.

- OLG Frankfurt, [2014] BeckRS 12967.

- *Landmark Ventures, Inc. v. Insightec, Ltd.*, 63 F. Supp. 3d 343, 348 and 352 (S.D.N.Y. 2014).

- Perma Container (U.K) Line Limited v. Perma Container Line (India) Ltd, MANU/MH/0615/2014.

- Child Cancer Foundation Inc. v. Piesse, 21 March 2014, DRS Ref. 897.

- *Indispensable Europea, SL v. Technology Hotels, SL*, Superior Court of Justice of Madrid. Judgment, 24 September 2014 (Claim No. 15/2014).

- *Sativa Group" OÜ v. UAB "Galinta ir parteriai*, Court of Appeal of Lithuania, civil case No. 2T-84/2014, Ruling, 29 September 2014.

- Decision of the Supreme Court of the Czech Republic No. 23 Cdo 3150/2012 of 30 September 2014.

- Yang v. Majestic Blue Fisheries, LLC, 2015 WL 5003606 (D. Guam. 2015).

- In re Application of Republic of Ecuador v. Douglas, 2015 WL 9272853, *3 (D. Mass. 2015).

- *Repos i Repàs, SL v. BBVA*, Superior Court of Justice of Madrid, Case No. 20/2014, Judgment, 28 January 2015.

- *Constructora de Viviendas Unifamiliares, SL, v. BBVA*, Superior Court of Justice of Madrid, Case No. 63/2011, Judgment, 26 May 2015.

- Iberpistas S.A.C.E., Corporación Industrial Bankia, SAU v. Desarrollo de Concesiones Viarias Uno, SL, Corporación Industrial Bankia, SA, SACYR, SA, Superior Court of Justice of Madrid, Case No. 64/2014, Judgment, 2 September 2015.

- *Frio Montrans, SL v. Telecomunicaciones Palomo*, SL, Superior Court of Justice of Madrid, Case No. 106/2014, Judgment, 17 September 2015.

- Consultores Integrales de Telecomunicacion Consulintel SL v. Telefónica Investigación y Desarrollo, SAU, Superior Court of Justice of Madrid, Case No. 14/2015, Judgment, 6 October 2015.

- Cárnicas 7 Hermanos, S.A. v. Compañía Española de Seguros de Crédito a la Exportación (CESCE), S.A., Superior Court of Justice of Madrid, Case No. 11/2015, Judgment, 17 December 2015.

- [2016] EWHC 422 (Comm).

- Jacob Securities Inc. v. Typhoon Capital B.V., 2016 ONSC 604.

ARBITRAL AWARDS

- ICC case no. 12260, Final Award, September 2005.

- *Clayton v. Canada*, PCA Case No. 2009-04, Procedural Order No. 1, 9 April 2009.

- *Vito G. Gallo v. Canada*, UNCITRAL, PCA Case No. 55798, Decision on Challenge to Arbitrator's Appointment, 14 October 2009.

- *WADA and UCI v. Alejandro Valverde & RFEC*, CAS 2007/A/1396 & 1402, Final Award, 31 May 2010.

- Union des Associations Européennes de Football (UEFA) v. FC Sion/Olympique des Alpes SA, CAS 2011/O/2574, Award, 31 January 2012.

- *Mesa Power Group, LLC v. Canada*, UNCITRAL, PCA Case No. 2012-17, Procedural Order No. 1, 21 November 2012.

- *Mesa Power Group, LLC v. Canada*, UNCITRAL, PCA Case No. 2012-17, Procedural Order No. 4, 12 July 2013.

- *Windstream Energy LLC v. Canada*, UNCITRAL, PCA Case No. 2013-22, Procedural Order No. 1, 16 September 2013

- *ECE Projektmanagement v. The Czech Republic*, UNCITRAL, PCA Case No. 2010-5, Award, 19 September 2013.

- *Windstream Energy LLC v. Canada*, PCA Case No. 2013-22, Procedural Order No. 1, Procedural Order No. 2, 12 January 2014.

- *Mesa Power Group, LLC v. Canada*, UNCITRAL, PCA Case No. 2012-17, Procedural Order No. 6, 5 March 2014.

- *Eli Lilly and Company v. Canada*, ICSID Case No. UNCT/14/2, Procedural Order No. 1, 26 May 2014.

- *Lone Pine Resources Inc v. Canada*, ICSID Case No. UNCT/15/2, Procedural Order No. 1, 11 March 2015.

- Autoridad Portuaria de Manta v. Terminales Internacionales de Ecuador SA – En Liquidación, IIHC Limited, Hutchinson Port Holdings Limited, Center of Arbitration and Mediation of the Chamber of Commerce of Quito, Case No. 091-13, Final Award, 30 November 2015.

LAWS, RULES AND REGULATIONS

International sources

- International Chamber of Commerce, Rules of Arbitration.

- IBA Rules on Evidence.

National sources

- Belgian Judicial Code.

- Dutch Code of Civil Procedure.

- French Code of Civil Procedure.

JOURNALS

- A. El Ahdab, "Impartiality and Independency of Arbitrators", *Encyclopedia of Arbitration, International Arbitration* 214, Vol. 3.

- S.F. Ali, “The Morality of Conciliation: An Empirical Examination of Arbitrator "Role Moralities" in East Asia and the West”, 2011 Harv. Negot. L. Rev. 1, Vol. 16.

- D. D'Allaire, R. Trittmann, “Disclosure Requests in International Commercial Arbitration: Finding A Balance Not Only Between Legal Traditions but Also Between the Parties' Rights”, 2011 Am. Rev. Int'l Arb. 119, Vol. 22.

- G. Arribas “Designando Árbitros”, 2015 Enfoque derecho, http://enfoquederecho.com/internacional/designando-arbitros/.

- P. Ashford, “Document Production in International Arbitration: A Critique from "Across the Pond"”, 2012 Loy. U. Chi. Int'l L. Rev. 1, Vol. 10.

- E. Barros Bourie, A. Germain Ronco, “Los Conflictos de Interés en el Arbitraje Internacional”, 2015 Santiago Arbitration and Mediation Center, ADR Papers.

- D. Bensaude, “Présentation des Règles IBA 2010 sur l'administration de la preuve, par Denis Bensaude”, 2011 Revue de l'Arbitrage 1113, Issue 4.

- C. Benson, “The IBA Guidelines on Party Representation: An Important Step in Overcoming the Taboo of Ethics in International Arbitration”, 2014 Les Cahiers de l'Arbitrage 47, Vol. 1.

- G. Bertrou, Q. De Margerie, “Obligation de révélation de l’arbitre : tentative de synthèse après la publication des nouvelles règles de l’IBA”, 2015 Les Cahiers de l’Arbitrage 33, Vol. 1.

- G. Blanke, C. Abi Habib Kanakr, “Arbitration in Dubai: A Basic Primer”, 2011 Austrian Yearbook on International Arbitration 217.

- K.M. Blankley, “Lying, Stealing, and Cheating: The Role of Arbitrators As Ethics Enforcers”, 2014 U. Louisville L. Rev. 443, Vol. 52.

- M. de Boisséson, “La ‘Soft Law’ dans l’arbitrage”, 2014 Les Cahiers de l’Arbitrage 520, Vol. 3.

- A.T.deA.C. Boscola, G.V.Benetti, “O Consensualismo como Fundamento da Arbitragem e os Impasses Decorrentes do Dissenso”, 2014 Revista de Direito Empresarial 303, Vol. 2.

- J. Bosco Lee, M.C. Procopiak. “A Obrigação da Revelação do Árbitro – Está Influenciada por Aspectos Culturais ou Existe um Verdadeiro Standard Universal?”, 2007 Revista Brasileira de Arbitragem 9, Vol. 4, Issue 14.

- G. Bottini, “Should Arbitrators Live on Mars? Challenge of Arbitrators in Investment Arbitration”, 2009 Suffolk Transnat'l L. Rev. 341, Vol. 32.

- M. Bou Saber, “Appointment of an Arbitrator, his independency and impartiality”, 2010 Journal of Arab Arbitration 649, Vol. 8 bis.

- D. Bubliene, Dr. P. Zapolskis, “The process of electronic disclosure (E-Disclosure) and data protection in international arbitration”, 2015, Arbitration: Theory and practice 26, Vol. 1.

- R.J. Caivano, “Independencia e imparcialidad de los árbitros y buena fe procesal”, [2013] Revista La Ley F-175.

- R.J. Caivano, V. Sandler Obregón, “El contrato entre las partes y los árbitros en el Código Civil y Comercial”, [2015] RCCyC 143.

- C.A. Carmona, “Em Torno do Árbitro”, 2011 Revista de Arbitragem e Mediação 47, Vol. 28.

- T. Cavalieri. “Imparcialidade na Arbitragem”, 2014 Revista de Arbitragem e Mediação 117, Vol. 41.

- L.S. Chan, “Arbitrators’ Conflicts of Interest: Bias By Any Name”, 2007 Singapore Academy of Law Journal 245, Vol. 19.

- S. Chong, “Singapore Institute of Arbitrators Annual Dinner 6 November 2013 – Speech by the Attorney General”, 2013 Singapore Institute of Arbitrators Newsletter 3, Issue 8.

- N.M. Crystal, F. Giannoni-Crystal, “"One, No One and One Hundred Thousand" . . . Which Ethical Rule to Apply? Conflict of Ethical Rules in International Arbitration”, 2013 Miss. C. L. Rev. 283, Vol. 32.

- R. Dendorfer, “Aktives Vergleichsmanagement – Best Practice oder Faux pas schiedsrichterlicher Tätigkeit?”, [2009] SchiedsVZ 276.

- Y. Derains, “Le Professionnalisme des arbitres”, 2012 Cahiers de droit de l’entreprise dossier 19, Vol. 4.

- J. Dolinger, “O Árbitro da Parte - Considerações Éticas e Práticas”, 2005 Revista Brasileira de Arbitragem 29, Vol. 2.

- S.H. Elsing, “Procedural Efficiency in International Arbitration: Choosing the Best of Both Legal Worlds” [2011] SchiedsVZ 114.

- R.C. Figueiredo “Urbaser S.A. e Consorcio de Aguas Bilbao Bizkaia, Bilbao Biskaia Ur Partzuergoa vs. Argentina (ICSID case n. ARB/07/26): A Decisão Sobre o Pedido de Desqualificação de Árbitro de 12.08.2010”, 2011 Revista de Arbitragem e Mediação 313, Vol. 29.

- S.P. Finizio, “Discovery in International Arbitration: Frankenstein’s Monster in the Digital Age,” 2010 DIS-Schriftenreihe 57, Vol. 26.

- F. Formento, V. Nuñez, “Conflicto de Interés y Exequatur de Laudos Arbitrales Extranjeros”, 2014 Revista de Derecho de la Universidad de Montevideo 249, Vol. 26.

- W. Friedl, “Tackling Corruption in Arbitration”, 2015 Slovenian Arbitration Review 36, Vol. 4, Issue 3.

- J. Fry, S. Greenberg, “The Arbitral Tribunal: Applications of Articles 7-12 of the ICC Rules in Recent Cases”, 2009 ICC Bulletin, Vol. 20, Issue 2.

- O.E. García-Bolívar, “Comparing Arbitrator Standards of Conduct in International Commercial Trade Investment Disputes”, 2006 Disp. Resol. J. 76, Vol. 60.

- B. Giaretta, “Duties of Arbitrators and Emergency Arbitrators under the SIAC Rules”, 2012 Asian International Arbitration Journal 196, Vol. 8, Issue 2.

- G. Giusti. “A Ética das Instituições de Arbitragem”, 2013 Revista Brasileira de Arbitragem 78, Vol. 10, Issue 40.

- B. Gottlieb, “Authority of Para-Regulatory Texts in International Arbitration” 2012 Selected Papers on International Arbitration 35, Vol. 2.

- S. Greenberg, J.R. Feris, “References to the IBA Guidelines on Conflicts of Interest in International Arbitration (‘IBA Guidelines’) when Deciding on Arbitator Independence in ICC Cases,” 2009 ICC Bulletin, Vol. 20, Issue 2.

- H. Grigera Naón, “La ley modelo sobre arbitraje comercial internacional y el derecho argentino”, [1989] La Ley 1989-A, 1021

- R.A. Holtzman, “The Role of Arbitrator Ethics”, 2009 DePaul Bus. & Com. L.J. 481, Vol. 7; P. Horn, “A Matter of Appearances: Arbitrator Independence and Impartiality in ICSID Arbitration”, 2014 N.Y.U. J.L. & Bus. 349, Vol. 11.

- J.M. Júdice, D.G. Henriques, “Regras para Nomeação de Árbitros: O Exemplo do Centro de Arbitragem Comercial da Câmara de Comércio e Indústria Portuguesa”, 2015 Revista de Arbitragem e Mediação 241, Vol. 12, Issue 46.

- Jones, “Comments on the Speech of the Singapore Attorney General” in ICCA Congress Series No 17 (2013), p. 29.

- A.C. Kläsener, A.Dolgorukow, “Die Überarbeitung der IBA-Regeln zur Beweisaufnahme in der internationalen Schiedsgerichtsbarkeit”, [2010] SchiedsVZ 302.

- S. Lazareff, “De l'immoralité présumée de l'arbitre”, 2009 Gazette du Palais 3, Vol. 199.

- J.B. Lee, M.C. Procopiak. “A Obrigação da Revelação do Árbitro – Está Influenciada por Aspectos Culturais ou Existe um Verdadeiro Standard Universal?”, 2007 Revista Brasileira de Arbitragem 9, Vol. 4, Issue 14.

- M. Leemann, “Challenging international arbitration awards in Switzerland on the ground of lack of independence and impartiality of an arbitrator”, 2011 ASA Bulletin 10, Vol. 29.

- S.M.F. Lemes, “A independência e a Imparcialidade do Árbitro e o Dever de Revelação”, 2010 Revista Brasileira de Arbitragem 21, Vol. 7, Issue 26.

- J. Levine, “Dealing with Arbitrator "Issue Conflicts" in International Arbitration”, 2006 Disp. Resol. J. 60, Vol. 61.

- P.H. Lucon, “Imparcialidade na Arbitragem e Impugnação aos Árbitros”, 2013 Revista de Arbitragem e Mediação 39, Vol. 39.

- R.D. Marques, “Breves Apontamentos sobre a Extensão do Dever de Revelação do Árbitro”, 2011 Revista Brasileira de Arbitragem 59, Vol. 8, Issue 31.

- R.D. Marques, M.M. Muchiuti, “As Diretrizes da IBA relativas a Conflitos de Interesses em Arbitragem Internacional”, 2014 Migalhas, <http://www.migalhas.com.br/dePeso/16,MI213334,21048-As+diretrizes+da+IBA+relativas+a+conflitos+ de+interesses+em>.

- A.C. Martins, “Deveres de Imparcialidade e Independência dos Peritos em Arbitragem: Uma Reflexão sob a Perspectiva da Prática Internacional”, 2013 Revista de Arbitragem e Mediação 99, Vol. 39.

- S. Menon, “Keynote Address – International Arbitration: The Coming of a New Age for Asia (and Elsewhere)” in ICCA Congress Series No 17 (2013), p. 3.

- R. Mohtashami, “Recent Arbitration-related Developments in the UAE”, 2008 Journal of International Arbitration 631, Vol. 25, Issue 5.

- N.F.C. Moreira, “The Arbitrators' Duty of Disclosure Analyzed Through Case-law: Are the IBA Guidelines on Conflict of Interest in International Arbitration Enough to Create Consistency?”, 2014 Revista de Arbitragem e Mediação 115, Vol. 40.

- M.L. Moses, “Ethics in International Arbitration: Traps for the Unwary”, 2012 Loy. U. Chi. Int'l L. Rev. 73, Vol. 10.

- J.H. Nedden, J. Büstgens, “Die Beratung des Schiedsgerichts – Konfliktpotential und Lösungswege”, [2015] SchiedsVZ 169.

- M.K. Niedermeyer, “Ethics for Arbitrators at the International Level: Who Writes the Rules of the Game?”, 2014 Am. Rev. Int'l Arb. 481, Vol. 25.

- Osterling, G. Miró Quesada , “Conflicto De Intereses: El Deber De Declaración Y Revelación De Los Árbitros”, [2013] Osterling Firm 14.

- K. Pörnbacher, P. Duncker, S. Baur, “Gaspreisanpassungs-Schiedsverfahren – Hintergründe und prozessuale Besonderheiten”, [2012] SchiedsVZ 289.

- M.C. Procopiak, “As Diretrizes do International Bar Association sobre Conflitos de Interesses na Arbitragem Internacional”, 2007 Revista Brasileira de Arbitragem 7, Vol. 4, Issue 16.

- H. Raeschke-Kessler, “The Taking of Evidence in International Commercial Arbitration”, 2010 DIS-Schriftenreihe 45, Vol. 26.

- J.C. Rivera, “Arbitraje Comercial Internacional y Doméstico”, Lexis-Nexis (2007).

- F.S.M. dos Santos , “Impedimento e Suspeição do Árbitro: O Dever de Revelação”, 2012 Revista de Arbitragem e Mediação 35, Vol. 35.

- M.E. Schneider, “President's Message: Yet another Opportunity to Waste Time and Money on Procedural Skirmishes: The IBA Guidelines on Party Representation”, 2013 ASA Bulletin 497, Vol. 31.

- Sessler, “Reducting Costs in Arbitration – The Perspective of In-house Counsel”, [2012] SchiedsVZ 15.

- W. Sun, M. Willems, *Arbitration in China: a practitioner's guide* (2015); A. Ye, H.H. Liu, “论限制担任仲裁员的律师代理案件之规定的存 废” (Whether to abolish the prohibition of lawyers from representing clients in arbitration administered by the arbitration commission(s) where the lawyer used to act or still currently acts as an arbitrator), published/posted on the Chinalawinsight.com on 15 July 2013.

- F. de Trazegnies “Conflictuando el conflicto: los conflictos de interés en el arbitraje”, 2015 Revista de Derecho Themis 57, Vol. 53.

- M.L. Velazco, “La causal genérica de recusación en el Reglamento CEMA”, [2013] MEDyAR Centro de Mediación y Arbitraje.

- N. Voser, A.M. Petti, “The Revised IBA Guidelines on Conflicts of Interest in International Arbitration” 2015 ASA Bulletin 6, Vol. 33.

- A. Wald, "A Ética e a Imparcialidade na Arbitragem", 2013 Revista de Arbitragem e Mediação 17, Vol. 39.

- C. Wallgren-Lindholm, "Predictability of Proceedings in International Commercial Arbitration – And is there a Nordic Way?", 2011 Tidskrift utgiven av Juridiska Föreningen i Finland 705, Vol. 4–5.

- A-M. Whitesell, "Independence in ICC Arbitration: ICC Court Practice concerning the Appointment, Confirmation, Challenge and Replacement of Arbitrators" in [2008] ICC Bulletin, Special Supplement 2007 Independence of Arbitrators 36.

- C. von Wobeser, "Mexico", 2013 Arbitration Guide, IBA Arbitration Committee.

- Ye, H.H. Liu, "论限制担任仲裁员的律师代理案件之规定的存 废" (Whether to abolish the prohibition of lawyers from representing clients in arbitration administered by the arbitration commission(s) where the lawyer used to act or still currently acts as an arbitrator), 15 July 2013, <www.chinalawinsight.com/>.

- Z. Zhang, "一文轻松读懂2014年IBA利益冲突指南（按颜色排版）" (a brief summary in Chinese to help the readers understand the IBA Guidelines on Conflicts of Interest in International Arbitration), published/posted on huanzhonglaw.com on 5 November 2015.

- P. N. Ziade "The Conflicts of Interests in International Arbitration in theory and Practice", 2013 Journal of Arab Arbitration 71. Vol. 20.

BOOKS AND CONTRIBUTIONS

- A. Abbud, Soft Law e Produção de Provas na Arbitragem Internacional (2014).

- A. El Ahdab, "Impartiality and Independency of Arbitrators", *Encyclopedia of Arbitration* (3rd ed, 1998).

- M. Arroyo (ed.), Arbitration in Switzerland: the Practitioner's Guide (2013).

- B. Berger, F. Kellerhals, International and Domestic Arbitration in Switzerland (2nd ed, 2010).

- J. Casey, Arbitration Law of Canada: Practice and Procedure (2nd ed. 2011).

- L.S. Chan, Singapore Law on Arbitral Awards (2011).

- K. Fan, Arbitration in China : a legal and cultural analysis (2013).

- P. Fouchard, E. Gaillard, B. Goldman, *Traité de l'arbitrage commercial international* (1996).
- B. Gessel-Kalinowska vel Kalisz (ed.), The Challenges and the Future of Commercial and Investment Arbitration. Liber Amicorum Professor Jerzy Rajski (2015).
- T. Göksu, Schiedsgerichtsbarkeit (2014).
- Instituto Mexicano de Arbitraje, Legislación Mexicana de Arbitraje Comercial Comentada (2015).
- G. Kaufmann-Kohler, A. Rigozzi, International Arbitration – Law and Practice in Switzerland (2015).
- J. Kenneth McEwan, L.B. Herbst, Commercial Arbitration in Canada: A Guide to Domestic and International Arbitrations (2014).
- G. Knuts, "Asiakirjakategorian esittämispyyntö kansainvälisessä välimiesmenettelyssä International Bar Associationin Rules of Evidencen mukaan", in E. Havansi, R. Koulu, H. Lindfors, *Oikeudenkäyntejä ja tuomioistuimia – Juhlakirja Juha Lappalainen 60 vuotta* (2007).
- M. Łaszczuk et al. (eds.), Arbitraż i mediacja. Księga jubileuszowa dedykowana doktorowi Andrzejowi Tynelowi (2012).
- S. Menon, D. Brock (eds), Arbitration in Singapore: A Practical Guide (2014).
- J. Münch, in T. Rauscher, P. Wax, J. Wenzel (eds.) *Münchener Kommentar zur Zivilprozessordnung*, s. 1049.
- J.H. Nedden, in J.H. Nedden, A.B. Herzberg (eds.), *Praxiskommentar zu den Schiedsgerichtsordnungen*, Art. 14 ICC Rules.
- J. Okolski et al. (eds.), Księga pamiątkowa 60-lecia Sądu Arbitrażowego przy Krajowej Izbie Gospodarczej w Warszawie (2010).
- Q. Ren, "国际投资仲裁仲裁员回避制度析论", 'Arbitrators' Recusals in International Investment Arbitration (2012).
- J.C. Rivera, Arbitraje Comercial Internacional y Doméstico (2007).
- C. Seraglini, J. Ortscheidt, Droit de l'Arbitrage Interne et International (2013).
- W. Sun, M. Willems, Arbitration in China: a practitioner's guide (2015).
- A. Szumański (ed.), System Prawa Handlowego. Tom 8. Arbitraż Handlowy (2015).

- C. Verbruggen, “The Arbitrator as a Neutral Third Party” in G. Keutgen (ed.), in *Walking a Thin Line. What an Arbitrator Can do, Must Do, or Must Not Do* (2010).

- W. Voit, in H-J. Musielak, W. Voit (eds.), *Zivilprozessordnung*, s. 1036.

- S. Wilske, L. Markert, in V. Vorwerk, C. Wolf (eds.), *Beck’scher Online-Kommentar zur ZPO*, s. 1049.

- D.A.R Williams QC, A. Kawharu, *Williams & Kawharu on Arbitration* (2011).

- C. Wolf, N. Eslami, in V. Vorwerk, C.Wolf (eds.), *Beck’scher Online Kommentar zur ZPO*, s. 1036.

ANNEX II – SURVEY

IBA Arbitration Committee – IBA Arbitration Guidelines and Rules Subcommittee

Survey Instructions

Greetings,

Thank you for agreeing to participate in the survey of the Arbitration Guidelines and Rules Subcommittee of the Arbitration Committee of the International Bar Association. We have sought your participation because the Arbitration Committee has endeavored to review the use of the IBA practice rules and guidelines for arbitration worldwide and to learn how they are being applied in different jurisdictions.

Compiled below is a brief survey concerning the use of three IBA practice rules and guidelines: the IBA Rules on the Taking of Evidence in International Arbitration (2010), the IBA Guidelines on Party Representation in International Arbitration (2013), and the IBA Guidelines on Conflicts of Interest in International Arbitration (2014) – all of which are available online at http://www.ibanet.org/Publications/publications_IBA_guides_and_free_materials.aspx.

Your response to this survey will help the IBA Arbitration Committee, through its Arbitration Guidelines and Rules Subcommittee, to better understand local practices and developments involving or impacting the practice rules and guidelines. With this understanding, the Subcommittee will endeavor to identify potential areas of clarification or improvement to the IBA practice rules and guidelines. The Subcommittee will then periodically make recommendations it deems necessary or when requested to do so to the Arbitration Committee for adjustments to the practice rules and guidelines.

The survey may be accessed electronically by navigating to this web address:

https://www.surveymonkey.com/r/IBAGuidelines

Due to the nature of the survey platform, the survey must be completed in its entirety as partial progress cannot be saved. We therefore recommend reviewing the questions in the survey below, or reviewing online all four pages of the survey in advance of completing it.

You are free to identify yourself or not identify yourself in providing a response to the survey. We ask, however, that you at least identify the jurisdiction in which you primarily practice as to permit us to gather data about the local practices and developments within that jurisdiction. The collective and collated answers received by the Subcommittee will be made available on the IBA website and published on an ongoing basis.

We would very much appreciate your prompt response to the survey. You have the Arbitration Committee and Subcommittee's sincere appreciation and thanks for your assistance in this important endeavor. If you have any questions, please feel free to contact the Reporter from whom you received these instructions.

RESPONDENT INFORMATION

As mentioned on the preceding page, your responses to the below questions are entirely voluntarily, except to the extent that we ask you **please to identify your country of primary practice** as this information will allow us to develop data about the global, regional, and national use of the IBA practice guidelines and rules. You may provide further identifying information if you wish to do so. To the extent that further information is (or is not) provided, you will be aiding us in gathering data about a number of topics which will be of use in further studies, including the rate of response for individuals versus institutions, and preferences with respect to anonymity versus identification. Information about your identity will not be shared without your permission (aside from information about your country of practice, which was detailed above, shall be aggregated to develop certain data). However, to the extent you would like your contribution to be acknowledged publicly, you can indicate as much in your response to Question no. 3 below. You may also indicate there whether you would prefer to be identified privately, and not publicly (that is, identified only to the IBA Arbitration Committee/Arbitration Guidelines and Rules Subcommittee), or not to be identified at all (and submit this information anonymously, except with respect to your country of primary practice).

1. (REQUIRED) Country of primary practice?

2. Respondent's information:

   (a) Name

   (b) Company

   (c) City/Town

   (d) State/Province

3. I wish my contribution to be acknowledged as follows:

   (a) Publicly – please include me on the IBA Arbitration Guidelines and Rules Subcommittee website as having contributed to this endeavor

   (b) Privately – please identify my contribution to this endeavor only internally within the IBA Arbitration Guidelines and Rules Subcommittee, and to the IBA Arbitration Committee

   (c) Anonymously – please do not publicly or privately provide any identifying information in connection with this response (except as to my country of primary practice)

IBA RULES ON THE TAKING OF EVIDENCE IN INTERNATIONAL ARBITRATION (2010)

1. In how many of the arbitrations known to you over the last five years (and in your jurisdiction) have the Rules on the Taking of Evidence been referenced?

    a) Total number of arbitrations known to you: .

    b) _____ of those cases referenced the Rules on the Taking of Evidence.

2. What provisions of the Rules on the Taking of Evidence were referenced?

3. Of those arbitrations that referenced the Rules on the Taking of Evidence, in how many of those decisions was the tribunal bound by the Rules and in how many of those decisions did the tribunal simply consult the Rules?

    a) _____ bound by Rules on the Taking of Evidence.

    b) _____ consulted Rules on the Taking of Evidence.

4. Of those arbitrations where the tribunal was bound by the Rules on the Taking of Evidence, in how many of those arbitrations were the Rules on the Taking of Evidence made applicable in the arbitration agreement, in the Terms of Reference (or equivalent document), or in the first procedural order?

    a) _____ Rules on the Taking of Evidence stated in arbitration agreement.

    b) _____ Rules on the Taking of Evidence stated in Terms of Reference (or equivalent document).

    c) _____ Rules on the Taking of Evidence stated in first procedural order.

5. In how many of those decisions in which the tribunal referenced the Rules on the Taking of Evidence did the tribunal follow the Rules or decline to follow the Rules?

    a) _____ followed Rules on the Taking of Evidence.

    b) _____ declined to follow Rules on the Taking of Evidence.

6. How many of those arbitrations that referenced the Rules on the Taking of Evidence were investment arbitrations? How many of those arbitrations were commercial arbitrations?

    a) _____ Investment Arbitrations.

b) _____ Commercial Arbitrations.

7. Please provide a brief summary of any decisions by arbitral institutions or courts citing the Rules on the Taking of Evidence:

8. Based on your survey, should the IBA Arbitration Committee revise the Rules on the Taking of Evidence?

   a) Yes

   b) No

9. If your answer to the previous question was 'yes', please explain which provisions should be revised and how:

10. Please provide any additional comments or questions about the IBA Rules on the Taking of Evidence:

IBA GUIDELINES ON PARTY REPRESENTATION IN INTERNATIONAL ARBITRATION (2013)

1. Of the arbitrations known to you over the last five years (and in your jurisdiction) in which issues of counsel conduct have arisen, how many of those arbitrations have referenced the Guidelines on Party Representation?

    a) Total number of arbitrations known to you and involving issues of counsel conduct: _____

    b) _____ that referenced the Guidelines on Party Representation.

2. What provisions of the Guidelines on Party Representation were referenced?

3. Of those arbitrations that referenced the Guidelines on Party Representation, in how many of those decisions was the tribunal bound by the Guidelines in making its decision and in how many of those decisions did the tribunal simply consult the Guidelines in making its decision?

    a) _____ bound by Guidelines on Party Representation.

    b) _____ consulted Guidelines on Party Representation.

4. Of those arbitrations where the tribunal was bound by the Guidelines on Party Representation, in how many of those arbitrations were the Guidelines on Party Representation made applicable in the arbitration agreement, in the Terms of Reference (or equivalent document), or in the first procedural order?

    a) _____ Guidelines on Party Representation stated in arbitration agreement.

    b) _____ Guidelines on Party Representation stated in Terms of Reference (or equivalent document).

    c) _____ Guidelines on Party Representation stated in first procedural order.

5. Of those arbitrations where the tribunal was not bound by the Guidelines on Party Representation, in how many of those arbitrations was there a request by a party (or the tribunal) to abide by the Guidelines on Party Representation that was ultimately rejected?

    a) _____ request to abide by Guidelines on Party Representation rejected.

6. In how many of those decisions where the tribunal consulted the Guidelines on Party Representation did the tribunal follow the Guidelines or decline to follow the Guidelines?

    a) _____ followed Guidelines on Party Representation.

    b) _____ declined to follow Guidelines on Party Representation.

7. Please provide a brief summary of any decisions by arbitral institutions or courts citing the Guidelines on Party Representation:

8. Should the IBA Arbitration Committee revise the Guidelines on Party Representation?

    a) Yes

    b) No

9. If your answer to the previous question was 'yes', please explain which provisions should be revised and how:

10. Please provide any additional comments or questions about the IBA Guidelines on Party Representation:

IBA GUIDELINES ON CONFLICTS OF INTEREST IN INTERNATIONAL ARBITRATION (2014)

1. Of the arbitrations known to you over the last five years (and in your jurisdiction) in which conflicts of interests issue have arisen at the time of constitution of the tribunal, in how many of those arbitrations have the Guidelines on Conflicts of Interest been referenced?

    a) Total number of arbitrations known to you and involving issues of arbitrator conflicts of interest: .

    b) _____ that referenced the Guidelines on Conflicts of Interest.

2. What provisions of the Guidelines on Conflicts of Interest were referenced?

3. When acting as counsel, in how many of those arbitrations involving arbitrator conflicts of interest did you consult or rely on the Guidelines on Conflicts of Interest in selecting arbitrators for international tribunals?

    a) Total number of instances acting as counsel: .

    b) _____ consulted or relied on Guidelines on Conflicts of Interest.

4. When acting as arbitrator, in how many of those arbitrations involving arbitrator conflicts of interest did you consult or refer to the Guidelines on Conflicts of Interest in deciding to take on an appointment?

    a) Total number of instances acting as arbitrator: .

    b) _____ consulted or referred to Guidelines on Conflicts of Interest.

5. When acting as an arbitrator, in how many of those arbitrations involving arbitrator conflicts of interest did you consult or refer to the Guidelines on Conflicts of Interest in making your disclosure to the parties and the arbitral institution?

    a) _____ consulted or referred to Guidelines on Conflicts of Interest.

6. Of the arbitrations and cases known to you over the last five years (and in your jurisdiction) in which conflicts of interests issue have arisen at the time of constitution of the tribunal, in how many of those arbitrations did the arbitral institution, the tribunal or a court reference the Guidelines on Conflicts of Interest in making its decision as to the existence of a conflict of interest?

    a) Total number of decisions on conflicts of interest: _____

b) _____ referenced Guidelines on Conflicts of Interest.

7. In how many of those decisions referencing the Guidelines on Conflicts of Interest did the arbitral institution, the tribunal or the court follow the Guidelines, decline to follow the Guidelines, or take no stance on them?

   a) followed Guidelines on Conflicts of Interest.

   b) declined to follow Guidelines on Conflicts of Interest.

   c) neutral on Guidelines on Conflicts of Interest.

8. Please provide a brief summary of any decisions by arbitral institutions or courts citing the Guidelines on Conflicts of Interest:

9. Should the IBA Arbitration Committee revise the Guidelines on Conflicts of Interest?

   a) Yes

   b) No

10. If your answer to the previous question was 'yes', please explain which provisions should be revised and how:

11. Please provide any additional comments or questions about the IBA Guidelines on Conflicts of Interest:

ANNEX III – GLOBAL LIST OF PUBLICATIONS

During the data collection phase, Reporters were asked to list the important publications concerning the IBA Rules and Guidelines in their jurisdiction.

These country lists received from each Reporter, have been included in three sections below: I. Conflicts of Interest Guidelines; II. Rules on Evidence; and III. Pary Representation Guidelines.

I. CONFLICTS OF INTEREST GUIDELINES

o JUDICIAL CASE LAW

Belgium

- Court of Appeal Brussels, 6 December 2011, b-Arbitra 2014/1, pp. 215 et seq.
- *Poland v. Eureko & Stephen M. Schwebel*, Court of Appeal Brussels, 29 October 2007, unpublished (A (correct) summary of the relevant facts and findings can, however, be found at C. VERBRUGGEN, "The Arbitrator as a Neutral Third Party" in G. KEUTGEN (ed.), *Walking a Thin Line. What an Arbitrator Can do, Must Do, or Must Not Do*, Brussels, Bruylant, 2010, pp. 68–69).

Canada

- *Jacob Securities Inc. v. Typhoon Capital B.V.*, 2016 ONSC 604.
- *Telesat Canada v. Boeing Satellite Systems International,Inc.*, 2010 ONSC 4023.

Czech Republic

- Decision of the Supreme Court of the Czech Republic No. 23 Cdo 3150/2012 of 30 September 2014.

England and Wales

- *A v B* [2011] EWHC 2345 (Comm).
- *ASM Shipping Ltd of India v TTMI Ltd of England* [2005] EWHC 2238 (Comm).
- *Cofely Ltd v Anthony Bingham* [2016] EWHC 240 (Comm).
- *Sierra Fishing Co. v Hasan Said Farran* [2015] EWHC 140 (Comm).
- *W Limited v M Sdn Bhd* [2016] EWHC 422 (Comm).

Finland

- *Koponen and Nevanlinna v. Aina Group Oyj*, Helsinki District Court, Case No. L 13/27848, 27 June 2014.

- *Skanska Talonrakennus Oy v. The Bankruptcy Estate of Finnprotein Oy*, Helsinki District Court, Case No. L 13/32315, 18 March 2015.

Germany

- OLG Frankfurt, decision of 4 October 2007, docket no. 26 Sch 8/07, published in SchiedsVZ 2008, 96 *et seq*.
- OLG Frankfurt, decision of 13 February 2012, docket no. 26 SchH 15/11, published in BeckRS 2014, 12967.

India

- *Perma Container (U.K) Line Limited vs. Perma Container Line (India) Ltd,* MANU/MH/0615/2014.
- *Shakti Bhog foods Limited Versus Kola Shipping Ltd***,** MANU/DE/3955/2012.

Lithuania

- "Sativa Group" OÜ v. UAB "Galinta ir parteriai", ruling of the Court of Appeal of Lithuania in civil case No. 2T-84/2014, dated 29 September 2014.

Malaysia

- *MMC Engineering Group Bhd & Anor v Wayss & Freytag (Malaysia) Sdn Bhd & Anor* [2015] 1 LNS 705.

New Zealand

- *Child Cancer Foundation Inc. v Piesse*, 21 March 2014, DRS Ref 897.

Peru

- Case No. 155-2012 – Court Order No. 43 of the Lima Commercial High Court – Decision regarding the annulment of the Arbitral Award dated June 06th, 2012, in the proceedings between Química Suiza vs. Dongo-Soria, Gaveglio y Asociados.

Poland

- **Postanowienie Sądu Apelacyjnego w Gdańsku z dnia 11 lutego 2014 r., sygn. akt I ACz 1475/13** (opublikowane na stronie internetowej Sądu) [Decision of the Court of Appeal in Gdańsk on February 11, 2014, I ACz 1475/13 (published on the Court's website)]
http://orzeczenia.gdansk.sa.gov.pl/content.pdffile/$002fneurocourt$002fpublished$002f15$002f100000$002f0000503$002fACz$002f2013$002f001475$002f151000000000503_I_ACz_001475_2013_Uz_2014-02-11_001-publ.xml?t:ac=$N/151000000000503_I_ACz_001475_2013_Uz_2014-02-11_001

Portugal

- Supremo Tribunal de Justiça, Processo n.º 170751/08.7YIPRT.L1.S1, 12.07.2011, made available at http://www.dgsi.pt/jstjf.nsf/954f0ce6ad9dd8b980256b5f003fa814/7b883192d7b22be380257b900033ed1e?OpenDocument
- Tribunal da Relação de Lisboa, Processo n.º 1361/14.0YRLSB.L1-1, 24.03.2015, made available at http://www.dgsi.pt/jtrl.nsf/33182fc732316039802565fa00497eec/d7f471fde47d350980257e2a004b026c?OpenDocument
- Tribunal da Relação do Porto, Processo n.º 583/12.2TVPRT.P1, 03.06.2014, made available at http://www.dgsi.pt/jtrp.nsf/56a6e7121657f91e80257cda00381fdf/55fc83b4d067572280257d47003b6b91?OpenDocument

Russia

- Information Letter of the Supreme Arbitrazh Court No. 156 dated 26 February 2013 "Review of Arbitrazh Court Practice in Applying the Public Policy Exception as a Ground for Refusal to Recognize and Enforce Foreign Judgments and Arbitral Awards".

Spain

- *Cárnicas 7 Hermanos, S.A. v. Compañía Española de Seguros de Crédito a la Exportación (CESCE), S.A.*, Superior Court of Justice of Madrid, Case No. 11/2015, Judgment, 17th December 2015 (full text in Spanish available here).
- *Constructora de Viviendas Unifamiliares, SL, v. BBVA*, Superior Court of Justice of Madrid, Case No. 63/2011, Judgment, 26th May 2015 (full text in Spanish available here).
- *Consultores Integrales de Telecomunicacion Consulintel SL v. Telefónica Investigación y Desarrollo, SAU*, Superior Court of Justice of Madrid, Case No. 14/2015, Judgment, 6th October 2015 (full text in Spanish available here).
- *Delforca 2008, Sociedad de Valores, SA v. Banco Santander, SA*, Madrid Court of Appeals, Case No. 3/2009, Judgment, 30th June 2011 (full text in Spanish available here).
- *Frio Montrans, SL v. Telecomunicaciones Palomo, SL*, Superior Court of Justice of Madrid, Case No. 106/2014, Judgment, 17th September 2015 (full text in Spanish available here).
- *Iberpistas S.A.C.E., Corporación Industrial Bankia, SAU v. Desarrollo de Concesiones Viarias Uno, SL, Corporación Industrial Bankia, SA, SACYR, SA*, Superior Court of Justice of Madrid, Case No. 64/2014, Judgment, 2nd September 2015 (full text in Spanish available here).
- *Indispensable Europea, SL v. Technology Hotels, SL*, Superior Court of Justice of Madrid, Case No. 15/2014, Judgment, 24th September 2014 (full text in Spanish available here).
- *Repos i Repàs, SL v. BBVA*, Superior Court of Justice of Madrid, Case No. 20/2014, Judgment, 28th January 2015 (full text in Spanish available here).

Sweden

- NJA 2007 p. 841
- NJA 2010 p. 317

Switzerland

- *Adrian Mutu v. Chelsea Football Club Limited*, decision by the Swiss Federal Supreme Court No. 4A_458/2009 of 10 June 2010.
- *Alejandro Valverde Belmonte v. Comitato Olimpico Nazionale Italiano (CONI), Agence Mondiale Antidopage (AMA) and Union Cycliste Internationale (UCI)*, BGE/ATF 136 III 605, 29 October 2010.
- *X. v. Association Y.*, decision by the Swiss Federal Supreme Court No. 4A_506/2007 of 20 March 2008.
- *X. v. AY. Holding B.V.*, decision by the Swiss Federal Supreme Court No. 4A_256/2009 of 11 January 2010.
- *X. v. Union Cycliste Internationale (UCI) and Fédération Z.*, decision by the Swiss Federal Supreme Court No. 4A_110/2012 of 9 October 2012.
- *X. v. Y.*, decision by the Swiss Federal Supreme Court No. 4A_258/2009 of 11 January 2010.

Uruguay

- Univen Refinaria de Petróleo Ltda. Recurso de Anulación contra Laudo CCI 13.967/05. IUE 2-1821/2008. Judgment No. i74/2011, Civil Court of Appeal 1st Circuit.

- **ARBITRAL AWARDS**

Canada

- *Clayton v. Canada*, PCA Case No. 2009-04, Procedural Order No. 1, 9 April 2009, www.italaw.com/sites/default/files/case-documents/italaw1146.pdf.
- *Gallo v. Canada*, PCA Case No. 55798, Decision on Challenge to Arbitrator's Appointment, 14 October 2009, www.italaw.com/sites/default/files/case-documents/ita0352.pdf.
- *Lone Pine Resources Inc v. Canada*, ICSID Case No. UNCT/15/2, Procedural Order No. 1, 11 March 2015, www.italaw.com/sites/default/files/case-documents/italaw4252.pdf.
- *Mesa Power Group, LLC v. Canada*, PCA Case No. 2012-17, Procedural Order No. 1, 21 November 2012**,** www.italaw.com/sites/default/files/case-documents/italaw1200.pdf.
- *Windstream Energy LLC v. Canada*, Procedural Order No. 1, 16 September 2013, www.italaw.com/sites/default/files/case-documents/italaw1588.pdf.

Czech Republic

- ECE Projektmanagement v. The Czech Republic, Award of 19 September 2013, UNCITRAL, PCA Case No. 2010-5.

Ecuador

- *Juan Carlos Chaparro Álvares v. The Republic of Ecuador*, Ad-hoc Tribunal, Decision on Challenge to the Arbitrator Santiago Cuesta-Caputti, Gaceta Arbitral No. 1, 2013, Quito Ecuador.
- *Pablo Punina Vásquez v. Gonzalo Dueñas Iturralde*, Case No. 004-13, Center of Arbitration of Amcham-Quito, Decision on Challenge to the Arbitrations Patrick Barrera-Sweeney, Alfredo Corral-Borrero and Sasha Mandakovic-Falconí.

Peru

- AmCham Court - Disqualification Decision dated 1st July 2014.
- AmCham Court - Disqualification Decision dated 5th November 2008.
- CCL Case N° 1451-083-2008 dated 14th December 2011.
- CCL Case N° 1769-018-2010 dated 5th June 2013.
- CCL Case N° 1861-110-2010 dated 1st June 2012.
- CCL Case N° 2251-2012-CCL dated 27th March 2013.
- CCL Case N° 2277-2012-CCL dated 22th August 2012.
- CCL Case N° 2367-2012-CCL dated 15th August 2012.
- CCL Case N° 2373-2012-CCL dated 5th September 2012.
- CCL Case N° 2518-2013-CCL dated 26th June 2013.
- CCL Case N° 2594-2013-R dated 18th September 2013.
- CCL Case N° 2609-2013-CCL dated 2nd October 2013.
- CCL Case N° 2806-2014-CCL dated 30th April 2014.
- CCL Case N° 2913-2014-CCL dated 20th August 2014.
- OSCE Case No 310-2015-OSCE/PRE – Disqualification Decision dated 18th September 2015.

Switzerland

- *Union des Associations Européennes de Football (UEFA) v. FC Sion/Olympique des Alpes SA*, CAS 2011/O/2574, Award, 31 January 2012, Lausanne.

- **PUBLICATIONS**

Argentina

- Horacio Grigera Naón, "La ley modelo sobre arbitraje comercial internacional y el derecho argentino", [1989] La Ley 1989-A, 1021, Buenos Aires.
- Julio César Rivera, *Arbitraje Comercial Internacional y Doméstico*, Lexis-Nexis, Buenos Aires, 2007, p. 238 *et seq.*
- María Laura Velazco, "La causal genérica de recusación en el Reglamento CEMA", [2013], published in MEDyAR Centro de Mediación y Arbitraje, www.medyar.org.ar
- Roque J. Caivano – Verónica Sandler Obregón, "El contrato entre las partes y los árbitros en el Código Civil y Comercial", [2015] RCCyC, p. 143, Buenos Aires.
- Roque J. Caivano, "Independencia e imparcialidad de los árbitros y buena fe procesal", [2013] La Ley 2013-F, 175, Buenos Aires.

Belgium

- C. VERBRUGGEN, "The Arbitrator as a Neutral Third Party" in G. KEUTGEN (ed.), *Walking a Thin Line. What an Arbitrator Can do, Must Do, or Must Not Do,* Brussels, Bruylant, 2010, pp. 37 *et seq*.
- D. DEMEULEMEESTER & H. VERBIST, *Arbitrage in de Praktijk,* Brussels, Bruylant, 2013.
- F. HENRY, *Les procédures de récusation et dessaisissement*, Brussels, Larcier, 2009;
- G. KEUTGEN, G.A. DAL, M. DAL & G. MATRAY, *L'arbitrage en droit belge et international. Tome 1: Le droit belge*, 3rd ed., Brussels, Bruylant, 2015.
- G. MATRAY, "L'obligation d'indépendance de l'arbitre se double-t-elle d'une obligation générale de révélation, d'impartialité, d'objectivité et de neutralité ?", *Hommage à Guy Keutgen – Hommage aan Guy Keutgen*, Brussels, Bruylant, 2013, pp. 587 *et seq*.
- G. ZEYEN, "Indépendence et impartialité d'un arbitre: entre doutes 'légitmes' (Belgique) et doutes 'raisonnables' (France)", *b-Arbitra* 2015/1, pp. 157 *et seq*.
- H. VAN HOUTTE, K. COX & S. COOLS, "Overzicht van rechtspraak: Arbitrage (1972-2006)", *R.D.C./T.B.H.,* 2007/2.
- H. VERBIST, "Rechtsbescherming van partijen in arbitrageprocedures naar Belgisch recht", *b-Arbitra*, 2014/2, pp. 257 *et seq*.
- M. DRAYE, "Article 1686", in N. BASSIRI & M. DRAYE (eds.), *Arbitration in Belgium. A Practitioner's Guide,* The Hague, Kluwer Law International, 2016.
- M. FONTAINE, "Impartialité et Indépendance de l'Arbitre", in X., *Hommage à Guy Keutgen – Hommage aan Guy Keutgen*, Brussels, Bruylant, 2013, pp. 621 *et seq*.

Brazil

- BOSCOLO, Ana Teresa de Abreu Coutinho; BENETTI, Giovana Valentiniano. O Consensualismo como Fundamento da Arbitragem e os Impasses Decorrentes do Dissenso. *Revista de Direito Empresarial*, vol. 2/2014, p. 303, March 2014.
- CARMONA, Carlos Alberto. Em Torno do Árbitro. *Revista de Arbitragem e Mediação*, vol. 28/2011, pp. 47 – 63, Jan – Mar. 2011.
- CAVALIERI, Thamar. Imparcialidade na Arbitragem. *Revista de Arbitragem e Mediação*, v. 41/2014, pp. 117 – 171, Apr – Jun 2014.
- DOLINGER, Jacob. O Árbitro da Parte - Considerações Éticas e Práticas, *Revista Brasileira de Arbitragem*, (Comitê Brasileiro de Arbitragem (CBAr) & IOB; © Comitê Brasileiro de Arbitragem (CBAr) & IOB 2005, Volume II Issue 6), pp. 29 – 45.
- FIGUEIREDO, Roberto Castro. Urbaser S.A. e Consorcio de Aguas Bilbao Bizkaia, Bilbao Biskaia Ur Partzuergoa vs. Argentina (ICSID case n. ARB/07/26): A Decisão Sobre o Pedido de Desqualificação de Árbitro de 12.08.2010. *Revista de Arbitragem e Mediação*, vol. 29/2011, pp. 313 – 339, Apr – Jun. 2011.
- GIUSTI, Gilberto. A Ética das Instituições de Arbitragem. *Revista Brasileira de Arbitragem*, n° 40, São Paulo, Oct-Dec 2013.
- JÚDICE, José Miguel; HENRIQUES, Duarte Gorjão. Regras para Nomeação de Árbitros: O Exemplo do Centro de Arbitragem Comercial da Câmara de Comércio e

Indústria Portuguesa. *Revista de Arbitragem e Mediação*, vol. 46/2015, pp. 241 – 254, Jul – Aug. 2015.

- LEE, João Bosco. PROCOPIAK, Maria Claudia de Assis. A Obrigação da Revelação do Árbitro – Está Influenciada por Aspectos Culturais ou Existe um Verdadeiro Standard Universal?, *Revista Brasileira de Arbitragem*, (Comitê Brasileiro de Arbitragem CBAr & IOB; Comitê Brasileiro de Arbitragem CBAr & IOB 2007, Volume IV Issue 14), pp. 9 – 22.
- LEMES, Selma Maria Ferreira. A independência e a Imparcialidade do Árbitro e o Dever de Revelação. *Revista Brasileira de Arbitragem, n° 26*, São Paulo, Apr-Jun. 2010.
- LUCON, Paulo Henrique dos Santos. Imparcialidade na Arbitragem e Impugnação aos Árbitros. *Revista de Arbitragem e Mediação*, v. 39/2013, pp. 39-51, Oct-Dec 2013.
- MARQUES, Ricardo Dalmaso. Breves Apontamentos sobre a Extensão do Dever de Revelação do Árbitro. *Revista Brasileira de Arbitragem*, n° 31, São Paulo, Jul-Sep. 2011.
- MARQUES, Ricardo Dalmaso; MUCHIUTI, Marília Machado. As Diretrizes da IBA relativas a Conflitos de Interesses em Arbitragem Internacional. *Migalhas*, January 2014. Available at: <http://www.migalhas.com.br/dePeso/16,MI213334,21048-As+diretrizes+da+IBA+relativas+a+conflitos+de+interesses+em>.
- MARTINS, André Chateaubriand. Deveres de Imparcialidade e Independência dos Peritos em Arbitragem: Uma Reflexão sob a Perspectiva da Prática Internacional. *Revista de Arbitragem e Mediação*, v. 39/2013, pp. 99-119, Oct-Dec 2013.
- MOREIRA, Natali Francine Cinelli. The Arbitrators' Duty of Disclosure Analyzed Through Case-law: Are the IBA Guidelines on Conflict of Interest in International Arbitration Enough to Create Consistency? *Revista de Arbitragem e Mediação*, vol. 40/2014, pp. 115 – 149, Jan - Mar 2014.
- PROCOPIAK, Maria Claudia de Assis. As Diretrizes do International Bar Association sobre Conflitos de Interesses na Arbitragem Internacional. *Revista Brasileira de Arbitragem*, Year IV, n° 16, São Paulo, Oct-Dec 2007.
- SANTOS, Fernando Silva Moreira dos. Impedimento e Suspeição do Árbitro: O Dever de Revelação. *Revista de Arbitragem e Mediação*, vol. 35/2012, pp. 35 – 68, Oct – Dec. 2012.
- WALD, Arnoldo. A Ética e a Imparcialidade na Arbitragem. *Revista de Arbitragem e Mediação*, vol. 39/2013, pp. 17 – 37, Oct-Dec. 2013.

Canada

- J. Brian Casey, *Arbitration Law of Canada: Practice and Procedure* (2nd ed., 2011).
- J. Kenneth McEwan & Ludmila B. Herbst, *Commercial Arbitration in Canada* (loose-leaf release no. 12, December 2014).

China

(Mainland China)

- FAN, Kun, Arbitration in China : a legal and cultural analysis (Hart Publishing, 2013)

- REN Qianmi, "国际投资仲裁仲裁员回避制度析论" ("Arbitrators' Recusals in International Investment Arbitration", a Master's dissertation in Chinese submitted to Southwest University of Political Science & Law in 2012.
- SUN, Wei and Melanie Willems, Arbitration in China: a practitioner's guide (Kluwer Law International, 2015).
- YE Ariel and LIU Harry Haitao, "论限制担任仲裁员的律师代理案件之规定的存废" (Whether to abolish the prohibition of lawyers from representing clients in arbitration administered by the arbitration commission(s) where the lawyer used to act or still currently acts as an arbitrator), published/posted on the Chinalawinsight.com on 15 July 2013.
- ZHANG Zishi, "一文轻松读懂2014年IBA利益冲突指南（按颜色排版）" (a brief summary in Chinese to help the readers understand the IBA Guidelines on Conflicts of Interest in International Arbitration), published/posted on *huanzhonglaw.com* on 5 November 2015.

(Hong Kong SAR)

- Geoffrey Ma (ed), *Arbitration in Hong Kong: A Practical Guide*, 3rd ed, Hong Kong: Sweet & Maxwell/Thomson Reuters Hong Kong Ltd., 2014.
- John Choong and J. Romesh Weeramantry (eds), *The Hong Kong Arbitration Ordinance: Commentary and Annotations*, Hong Kong: Sweet & Maxwell/Thomson Reuters, 2011.

Czech Republic

- Bělohlávek, A., Arbitration Law of Czech Republic: Practice and Procedure, JurisNet 2013.
- Bělohlávek, A., Hótová, R., Znalci v mezinárodním prostředí: v soudním řízení civilním a trestním, v rozhodčím řízení a v investičních sporech (Experts in international environment: in civil and criminal proceedings, in arbitration and investment disputes), C. H. Beck 2011.
- Bělohlávek, A., Rozehnalová, N. and Černý, F. (editors), Independence and Impartiality of Arbitrators, Czech & Central Europe Yearbook of Arbitration, Vol. IV, Juris publishing 2014.
- Makarius, V., Rozhodčí smlouvy v mezinárodním obchodě (International Agreements in International Trade)", C. H. Beck 2015.
- Rozehnalová, N., Rozhodčí řízení v mezinárodním a vnitrostátním obchodním styku (Arbitration in international and domestic commercial relations), 3. ed., Wolters Kluwer Czech Republic 2013.
- Šturma, P., Balaš, V., Mezinárodní ekonomické právo (International Economic Law), 2. ed., C. H. Beck 2013.

England and Wales

- Francisco Blavi, Towards A Uniform Regulation Of Third Party Funding In International Arbitration, Int. A.L.R. 2015, 18(6), 143-150.
- Hew R. Dundas, Arbitral Rarities: Recent Arbitration Cases In The English Courts With A Scottish Postscript, [2015] Arbitration 2015, 81(3), 332-342.

Finland

- P. Inkeroinen, "Kansainvälinen välimiesmenettely eritystapauksena" in S. Turunen, *Välimiesmenettely lainkäyttönä ja lainkäytössä 2007* (2007).
- R. Koulu, "Välimieslainkäytön oikeudellinen kontrolli", 2007, Publications of the University of Helsinki Conflict Management Institute.
- T. Lindholm, "Näkökohtia välimiehen esteellisyydestä – erityisesti asianajajan näkökulmasta" in H. Halila, M. Hemmo and L. Sisula-Tulokas, *Juhlakirja: Esko Hoppu 1935 – 15/1 – 2005* (2005).

France

- G. Bertrou et Q. De Margerie, "Obligation de révélation de l'arbitre : tentative de synthèse après la publication des nouvelles règles de l'IBA", Les Cahiers de l'Arbitrage, 2015, Vol. 1.

Germany

- Abt, commentary on sec. 1036 ZPO, in Böckstiegl/Kröll/Nacimiento (eds.), *Arbitration in Germany, The Model Law in Practice* (2nd ed. 2014).
- Dendorfer, „*Aktives Vergleichsmanagement - Best Practice oder Faux Pas schiedsrichterlicher Tätigkeit?*", SchiedsVZ 2009, 276.
- Elsing, „*Procedural Efficiency in International Arbitration: Choosing the Best of Both Legal Worlds*", SchiedsVZ 2011, 114.
- Escher/Reichert, „*Petersberger Schiedstage 2005: Globalization of Dispute Resolution - Arbitration and ADR in the Focus of International Harmonization and Competition*", SchiedsVZ 2005, 208.
- Knieper, „*Rethinking Investment Arbitration*", SchiedsVZ 2015, 25.
- Martens, „*Die Organisation von Schiedsverfahren im Bereich des Sports aus der Sicht der Schiedsrichter*", SchiedsVZ 2009, 99.
- Nedden, commentary on art. 14 ICC Rules, in Nedden/Herzberg (eds.), *ICC-SChO/DIS-SchO, Praxiskommentar zu den Schiedsgerichtsordnungen* (2013).
- Nedden/Büstgens, „*Die Beratung des Schiedsgerichts – Konfliktpotential und Lösungswege*", SchiedsVZ 2015, 169.
- Pörnbacher/Duncker/Baur, „*Gaspreisanpassungs-Schiedsverfahren - Hintergründe und prozessuale Besonderheiten*", SchiedsVZ 2012, 289.
- Sachs, „*The IBA Rules of Ethics of International Arbitrators and Guidelines on Conflicts of Interest in International Arbitration*", in Böckstiegel/Berger/Bredow (eds.), *Schriftenreihe der Deutschen Institution für Schiedsgerichtsbarkeit, Vol. 23, Verhaltensstandards für Schiedsrichter* (2008), 61.
- Schuett, „*The Independence and Impartiality of Arbitrators*", SchiedsVZ 2011, 276
- Voit, commentary on sec. 1036, in Musielak/Voit (eds.), *Zivilprozessordnung* (12th ed. 2015).

- Voser, „*Interessenkonflikte in der internationalen Schiedsgerichtsbarkeit - die Initiative der International Bar Association (IBA)*“, SchiedsVZ 2003, 59.
- Wolf/Eslami, commentary on sec. 1025 and 1036 ZPO, in Vorwerk/Wolf (eds.), *Beck'scher Online-Kommentar ZPO* (19th ed. 2015).

Kuwait

- Gordon Blanke and Celine Abi Habib Kanakr, (2011): *Austrian Yearbook on International Arbitration 2011*, Volume 2011 in, pp. 217-255 chapter “Arbitration in Dubai: A Basic Primer”.

  (http://www.kluwerarbitration.com/CommonUI/document.aspx?id=kli-ka-1135313-n#a0001)
- Reza Mohtashami, (2008): *Journal of International Arbitration*, (Kluwer Law International 2008, Volume 25 Issue 5) pp. 631 - 640 the article “Recent Arbitration-related Developments in the UAE”.
  (http://www.kluwerarbitration.com/CommonUI/document.aspx?id=ipn30634)

Lebanon

- A. EL AHDAB, “Impartiality and Independency of Arbitrators”, Encyclopedia of Arbitration, International Arbitration, p. 214, Vol. 3.
- Dr. M. BOU SABER, “Appointment of an Arbitrator, his independency and impartiality”, 2010 Journal of Arab Arbitration, p. 649, Vol. 8 Bis.
- P. N. ZIADE, “The Conflicts of Interests in International Arbitration in theory and Practice”, 2013 Journal of Arab Arbitration, p. 71 Vol. 20.

Lithuania

- R. Daujotas, “Challenge of arbitrators in international investment arbitration”, 2015, Teisė, page 200, Vol. 95.

Mexico

- C. von Wobeser, “Mexico”, 2013, *Arbitration Guide*, IBA Arbitration Committee, May 2013.
- Instituto Mexicano de Arbitraje, *Legislación Mexicana de Arbitraje Comercial Comentada* (Editorial Porrúa, 2015).

New Zealand

- Chapter 24, Williams & Kawharu on Arbitration by David A R Williams QC and Amokura Kawharu, 2011, Lexis Nexis, Wellington, New Zealand.
- New Zealand International Arbitration Centre (NZIAC) Rules for International Commercial Arbitration (art. 5.6).

Peru

- ARRIBAS, Guilliermo 2015 “Designando Árbitros”. Enfoque derecho. Lima, 2015 <http://enfoquederecho.com/internacional/designando-arbitros/> Accessed on: 29/01/2016.
- DE TRAZEGNIES, Fernando 2007 “Conflictuando el conflicto: los conflictos de interés en el arbitraje. Revista de Derecho Themis – No. 53. Lima, 2015. <http://revistas.pucp.edu.pe/index.php/themis/article/view/8848> Accessed on: 30/01/2016.
- OSTERLING, Felipe y Gustavo MIRÓ QUESADA 2013 “Conflicto De Intereses: El Deber De Declaración Y Revelación De Los Árbitros”. Osterling Firm. Lima, 2013, pp. 14-17. <http://www.osterlingfirm.com/Documentos/articulos/El%20Deber%20de%20Declaraci%C3%B3n%20de%20%C3%81rbitros.pdf > Accessed on 29/01/2016.

Poland

- A. Kąkolecki, „Kwalifikacje i wyłączanie sędziów sądu polubownego (arbitrów)” [“Qualifications and Challenge of Arbitrators”], 2006 Radca Prawny, No. 4, pp. 82-95.
- A. Kąkolecki, „Źródła prawa, wytyczne, regulaminy” [“Sources of law, guidelines, rules”], pp. 92-95, 111-113.
- A. Krysiak, M. Wierzbowski, „Bezstronność i niezależność jako kluczowe cechy każdego arbitra” [“Impartiality and Independence as an Arbitrator’s Key Characteristics”] in J. Okolski et al. (eds.), *Księga pamiątkowa 60-lecia Sądu Arbitrażowego przy Krajowej Izbie Gospodarczej w Warszawie* [*Essays to Mark 60 Years of the Court of Arbitration at the Polish Chamber of Commerce in Warsaw*] (2010), pp. 359-375.
- A. Krysiak, M. Wierzbowski, „Znaczenie i stosowanie w praktyce Wytycznych IBA w ramach arbitrażu krajowego” [“The Significance and Practical Application of the IBA Guidelines in Domestic Arbitration”] in M. Łaszczuk et al. (eds.), *Arbitraż i mediacja. Księga jubileuszowa dedykowana doktorowi Andrzejowi Tynelowi* [*Arbitration and Mediation. Essays for Dr. Andrzej Tynel*] (2012), pp. 254-264.
- A. Szumański (ed.), *System Prawa Handlowego. Tom 8. Arbitraż Handlowy* [*System of Commercial Law. Vol. 8. Commercial Arbitration*] (2015);
- A. Szumański, „Wytyczne IBA dotyczące konfliktu interesów w międzynarodowym arbitrażu” [“IBA Guidelines on Conflicts of Interest in International Arbitration”], pp. 435-441.
- A.W. Wiśniewski, „Niezależność i bezstronność arbitrów w świetle prawa polskiego i praktyki międzynarodowej” [“Independence and Impartiality of Arbitrators in Light of Polish and International Practice”], in J. Gudowski et al. (eds.), *Aurea praxis, aurea theoria. Księga pamiątkowa ku czci Profesora Tadeusza Erecińskiego* [*Aurea praxis, aurea theoria. Essays in Honour of Professor Tadeusz Ereciński*] (2011), Vol. II, pp. 1961-1986.
- K. Bilewska, D. Paczoska, „Bezstronność oraz niezależność arbitra” [“The Impartiality and Independence of an Arbitrator”], 2009 ADR. Arbitraż i Mediacja, No. 1 (5), pp. 15-25.
- M. Asłanowicz, “Procedure for Disqualification of an Arbitrator – Comments Based on the Practice of the Court of Arbitration at the Polish Confederation Lewiatan”, 2013 Arbitration e-Review, Vol. 3-4 (14-15), pp. 6-16.

- M. Asłanowicz, „Postępowanie o wyłączenie arbitra - analiza spraw toczonych przed Sądem Polubownym (Arbitrażowym) przy Związku Banków Polskich" ["Proceedings Concerning Disqualification of an Arbitrator. Analysis of Cases Pending before the Arbitration Court at the Polish Bank Association"], 2013 Przegląd Ustawodawstwa Gospodarczego, Vol. 12, pp. 26-31.
- M. Asłanowicz, „Postępowanie o wyłączenie arbitra – analiza spraw toczonych przed Sądem Arbitrażowym przy Krajowej Izbie Gospodarczej w Warszawie" ["Proceedings to Exclude an Arbitrator – Analysis of Cases before the Court of Arbitration at the Polish Chamber of Commerce in Warsaw"], 2011 Przegląd Ustawodawstwa Gospodarczego, Vol. 11, pp. I-XVI.
- M. Asłanowicz, „Sposób powołania arbitra a jego bezstronność i niezależność" ["Appointment of an Arbitrator and Their Impartiality and Independence"], 2015 Przegląd Prawa Handlowego, No. 4, pp. 11-16.
- M. Asłanowicz, „Wyłączenie sędziego a wyłączenie arbitra" ["Disqualification of a Judge and Disqualification of an Arbitrator"], 2014 Przegląd Prawa Handlowego, No. 6, pp. 36-40.
- M. Asłanowicz, „Zakres ujawnienia a bezstronność i niezależność arbitra w postępowaniu arbitrażowym" ["Extent of Disclosure in the Light of an Arbitrator's Impartiality and Independence in Arbitration"], 2014 Przegląd Ustawodawstwa Gospodarczego, Vol. 4, pp. 22-32.
- M. Łaszczuk, „Kilka uwag o obowiązkach, niezależności i bezstronności arbitrów" ["A Few Remarks on the Duties, Independence and Impartiality of Arbitrators"] in M. Łaszczuk et al. (eds.), *Arbitraż i mediacja. Księga jubileuszowa dedykowana doktorowi Andrzejowi Tynelowi* [*Arbitration and Mediation. Essays for Dr. Andrzej Tynel*] (2012), pp. 321-332.
- M. Tomaszewski, „Przyczyny wyłączenia arbitra w świetle prawa polskiego" ["Grounds for Disqualification of an Arbitrator under Polish Law"], in P. Nowaczyk et al. (eds.), *Międzynarodowy i krajowy arbitraż handlowy u progu XXI wieku. Księga pamiątkowa dedykowana doktorowi habilitowanemu Tadeuszowi Szurskiemu* [*International and Domestic Commercial Arbitration on the Threshold of the 21st Century. Liber Amicorum A Tribute to Professor Tadeusz Szurski*] (2008), pp. 245-260.
- P. Pietkiewicz, "Legal and Organizational Framework of Arbitration in Poland" in *Arbitration in Poland* (2011), pp. 15-40, in particular pp. 30-31.
- S.H. Elsing, "The Disqualification of Arbitrators in ICSID Arbitration" in B. Gessel-Kalinowska vel Kalisz (ed.), *The Challenges and the Future of Commercial and Investment Arbitration. Liber Amicorum Professor Jerzy Rajski* (2015), pp. 48-62.

Portugal

- A.M. CORDEIRO, *Tratado da Arbitragem. Comentário à Lei 63/2011, de 14 de Dezembro* (2015), pp. 153-165.
- A.P. MIRANDA / P.S. UVA, "As Diretrizes da IBA sobre Conflitos de Interesses na Arbitragem Internacional: 10 Anos Depois", in (eds.) *Estudos de Direito da Arbitragem em Homenagem a Mário Raposo* (2015) 21, pp. 21-31.
- A.P. MIRANDA, "Investir em Virtude: o Dever de Revelação do Árbitro", 2013 Revista Internacional de Arbitragem e Conciliação 9, Vol. 6, pp. 16-18.
- B. REIS, "Reflexões Práticas sobre a Ética na Arbitragem: Perspetiva de Árbitro", 2013 VI Congresso do Centro de Arbitragem Comercial - Intervenções 75, Vol. 6, pp. 84-86.

- J.M. JÚDICE, D. CALADO, "Independencia e Imparcialidad del Árbitro: Algunos Aspectos Polémicos, Mediante una Visión Ibérica", 2015 Arbitraje - Revista de arbitraje comercial y de inversiones 749, Vol. 8 (3), pp. 753, 757-758.
- M.F. GOUVEIA, *Curso de Resolução Alternativa de Litígios* (3rd ed. 2014), pp. 107, 205-206.
- R. ALVES, "Anotação ao Acórdão Commonwealth Coatings v. Continental Cas. Co.", in (eds.) *100 Anos de Arbitragem - os casos essenciais comentados* (2015) 61, pp. 71-87.

Russia

- A.A. Korchin, "The Fight Against "Pocket" International Commercial Arbitrations and Issues of Independence and Impartiality of Arbitrators in Russian Judicial Practice", International Commercial Arbitration Newsletter, 2013, No. 1.
- R.M. Khodykin, "Independence and Impartiality of Arbitrators in Investment Disputes", Treteyskiy Sud, 2011, No. 4.
- R.O. Zykov, "International Arbitration in Sweden: Law and Practice", Statut, 2014.

Singapore

- L.S. Chan, *Singapore Law on Arbitral Awards* (2011), pp. 152, 172.
- S. Menon and D. Brock (eds), *Arbitration in Singapore: A Practical Guide* (2014), pp. 184-185, 521-525.
- S. Menon, "Keynote Address – International Arbitration: The Coming of a New Age for Asia (and Elsewhere)" in *ICCA Congress Series No 17* (2013).
- D. Jones, "Comments on the Speech of the Singapore Attorney General" in *ICCA Congress Series No 17* (2013).
- B. Giaretta, "Duties of Arbitrators and Emergency Arbitrators under the SIAC Rules" 2012 Asian International Arbitration Journal 196, Vol. 8, Issue 2.
- L.S. Chan, "Arbitrators' Conflicts of Interest: Bias By Any Name" 2007 Singapore Academy of Law Journal 245, Vol. 19.
- S. Chong, "Singapore Institute of Arbitrators Annual Dinner 6 November 2013 – Speech by the Attorney General" 2013 Singapore Institute of Arbitrators Newsletter 3, Issue 8.

Slovenia

- N. Okretič, "Sanctions against Russia Draw New Lines on the Arbitration Map", 2015 Slovenian Arbitration Review 100, Vol. 4, Issue 3.

Spain

- Félix J. Montero, "Impartiality of arbitrators and conflicts of interest", 2010 Spain Arbitration Review | Revista del Club Español del Arbitraje 11, Issue 7.
- José Carlos Fernández Rozas, "Clearer Ethics Guidelines and Comparative Standards for Arbitrators", *Liber Amicorum Bernardo Cremades* (2010) 413.

- José María Alonso, "Transparencia en la designación de árbitros y la prevención de conflictos de intereses", 2013 Revista Jurídica de Castilla y León, Vol. 29 (available here).
- Oliver Cojo, "Arbitraje y financiación procesal parciaria (third-party funding) en España: un análisis bajo el prisma de las nuevas Directrices de la IBA sobre Conflictos de Interés", 2014 La Ley Mercantil 68, Vol. 8.
- Ramón Mullerat, "Compendio de la independencia e imparcialidad de los árbitros en el arbitraje internacional", Miquel Montañá and Jordi Sellarés (coord.), *Arbitraje. Comentarios prácticos para la empresa* (2011) 305.

Sweden

- Dahlberg Kolga, Hans; Rylander, Robin, *Betydelsen av IBA:s riktlinjer vid obehörighetsprövning enligt lagen om skiljeförfarande*, Juridisk tidskrift 2010/11 pp. 942-947.
- Dahlberg, Silvia; Rosengren, Jonas, *Etiska regler för ombud i internationella skiljeförfaranden*. Published on InfoTorg Juridik's website, 19 May 2015. [http://www.infotorgjuridik.se/premium/mittijuridiken/praktikerartiklar/article215256.ece].
- Lindell, Bengt, *Civilprocessen: rättegång samt skiljeförfarande och medling*, 3rd ed., Iustus Förlag, 2012.
- Lindskog, Stefan, *Skiljeförfarande: en kommentar*, 2nd [rev.] ed., Norstedts Juridik AB, 2012.
- Madsen, Finn, *Commercial Arbitration in Sweden: a commentary on the Arbitration Act (1999:116) and the rules of the Arbitration Institute of the Stockholm Chamber of Commerce*, translated from the Swedish by Reuven Ben-Dor, 3rd ed., Oxford University Press, 2007.
- Madsen, Finn, *Skiljeförfarande i Sverige: en kommentar till lagen (1999:116) om skiljeförfarande och till reglerna för Stockholms Handelskammares Skiljedomsinstitut*, 2nd ed., Jure Förlag AB, 2009.
- Magnusson, Annette; Shaughnessy, Patricia, *Nya regler för Stockholms Handelskammares Skiljedomsinstitut*, Juridisk tidskrift 2006/07 pp. 912-933.
- Öhrström, Marie, *Stockholms handelskammares skiljedomsinstitut: En handbok och regelkommentar för skiljeförfaranden*, 1st ed., Norstedts Juridik AB, 2009.
- Ramberg, Jan, *Affärstvister och konfliktlösning*, 1st ed., Sveriges Exportråd av Industrilitteratur/Liber, 2006.
- Sandgren, Claes, *Domares jäv och skiljemans obehörighet*, Svensk Juristtidning 2010 p. 689.
- Sandgren, Claes, *Domarjäv*, Juridisk tidskrift 2009/10 pp. 318-325.
- Sandgren, Claes, *Etiska riktlinjer för domare och åklagare?* Juridisk tidskrift 2009/10 pp. 752-765.
- Sandgren, Claes, *Om domarjäv – särskilt på skatteområdet*, Juridisk tidskrift 2011/12 pp. 854-865.

- Wallin, Martin, *Skiljemannajäv grundat på flera uppdrag från samma part eller advokatbyrå*, Juridisk tidskrift 2004/05 pp. 449-463.

Switzerland

- ARROYO Manuel (ed.), *Arbitration in Switzerland: the Practitioner's Guide* (Kluwer Law International 2013).
- BERGER Bernhard, KELLERHALS Franz, *International and Domestic Arbitration in Switzerland* (2nd ed, Stämpfli 2010).
- GÖKSU Tarkan, *Schiedsgerichtsbarkeit* (Dike Verlag 2014).
- GOTTLIEB Benjamin, "Authority of Para-Regulatory Texts in International Arbitration" 2012 Selected Papers on International Arbitration p. 35, Vol. 2.
- KAUFMANN-KOHLER Gabrielle, RIGOZZI Antonio, *International Arbitration – Law and Practice in Switzerland* (Oxford 2015).
- LEEMANN Matthias, "Challenging international arbitration awards in Switzerland on the ground of lack of independence and impartiality of an arbitrator" 2011 ASA Bulletin p. 10, Vol. 29.
- VOSER Nathalie, PETTI Angelina M., "The Revised IBA Guidelines on Conflicts of Interest in International Arbitration" 2015 ASA Bulletin p. 6, Vol. 33.

Thailand

- N. Nerangchamnong, "Disclosure in Impartiality and Independence of Arbitrator", 2012 Assumption University Law Journal 221, Vol. 3.

UAE

- Gordon Blanke and Celine Abi Habib Kanakr, (2011): *Austrian Yearbook on International Arbitration 2011*, Volume 2011 in, pp. 217-255 chapter "Arbitration in Dubai: A Basic Primer" (http://www.kluwerarbitration.com/CommonUI/document.aspx?id=kli-ka-1135313-n#a0001).
- Reza Mohtashami, (2008): *Journal of International Arbitration*, (Kluwer Law International 2008, Volume 25 Issue 5) pp. 631 - 640 the article "Recent Arbitration-related Developments in the UAE" (http://www.kluwerarbitration.com/CommonUI/document.aspx?id=ipn30634).

USA

- Catherine A. Rogers, *Regulating International Arbitrators: A Functional Approach to Developing Standards of Conduct*, 41 Stan. J. Int'l L. 53 (2005).
- Catherine A. Rogers, *The Vocation of the International Arbitrator*, 20 Am. U. Int'l L. Rev. 957, 957 (2005).
- Claudia T. Salomon, Juan M. Alcalá, Camilo Cardozo, *Arbitrator's Disclosure Standards: The Uncertainty Continues*, August-October 2008, Disp. Resol. J.

- Erin O'Hara O'Connor et. al., *Customizing Employment Arbitration*, 98 Iowa L. Rev. 133 (2012).
- Gabriel Bottini, *Should Arbitrators Live on Mars? Challenge of Arbitrators in Investment Arbitration*, 32 Suffolk Transnat'l L. Rev. 341 (2009).
- Judith Levine, *Dealing with Arbitrator "Issue Conflicts" in International Arbitration*, February-April 2006, Disp. Resol. J.
- Laurence Shore & Emmanuelle Cabrol, *A Comment on the Iba Guidelines on Conflicts of Interest: The Fragile Balance Between Principles and Illustrations, and the Mystery of the "Subjective Test"*, 15 Am. Rev. Int'l Arb. 599, 603 (2004).
- Megan K. Niedermeyer, *Ethics for Arbitrators at the International Level: Who Writes the Rules of the Game?*, 25 Am. Rev. Int'l Arb. 481 (2014).
- Omar E. García-Bolívar, *Comparing Arbitrator Standards of Conduct in International Commercial Trade Investment Disputes*, November 2005-January 2006, Disp. Resol. J.
- Peter Horn, *A Matter of Appearances: Arbitrator Independence and Impartiality in ICSID Arbitration*, 11 N.Y.U. J.L. & Bus. 349 (2014).
- Robert A. Holtzman, *The Role of Arbitrator Ethics*, 7 DePaul Bus. & Com. L.J. 481 (2009).
- William W. Park, *Arbitrator Integrity: The Transient and the Permanent*, 46 San Diego L. Rev. 629, 639 (2009).
-

Uruguay

- Luciana Formento y Victoria Nuñez, *"Conflicto de Interés y Exequatur de Laudos Arbitrales Extranjeros"*, 2014, Revista de Derecho de la Universidad de Montevideo, No. 26, 2014.

II. RULES ON EVIDENCE

○ JUDICIAL CASE LAW

Canada

- *Jardine Lloyd Thompson Canada Inc. v. Western Oil Sands Inc.*, 2005 ABQB 509 [referencing section 9(2) of the 1999 Rules though section 9(2) was not amended in the 2010 Rules].

Ecuador

- *Wilson Orlando Acosta Paredes v. Ecuador Bottling Company Corp.* [2010] Case 17111-2009-0748, Judgement.

England and Wales

- *ABB AG v. Hochtief Airport GMBH, Athens International Airport S.A*. [2006] EHWC 388 (Comm).
- *Chantiers de l'Atlantique S.A. v. Gaztransport & Technigaz S.A.S* [2011] EWHC (Comm).

India

- *MMTC Ltd. vs. Anglo American Metallurgical Coal Pty. Ltd* , 221(2015)DLT421.

New Zealand

- *Dalian Deepwater Developer Ltd v Dybdhal* [2015] NZHC 151; [2015] 3 NZLR 260; [2015] NZAR 478.

Sweden

- NJA 2012 p. 289.

Switzerland

- *X. (International) AG v. A.*, decision by the Swiss Federal Supreme Court No. 4A_596/2012 of 15 April 2013.

USA

- *In re Application by Rhodianyl S.A.S.*, 2011 U.S. Dist. LEXIS 72918 (D. Kan. Mar. 25, 2011).
- *In re Application of Caratube Int'l Oil Co., LLP*, 730 F. Supp. 2d 101, 108 (D.D.C. 2010).
- *In re Application of Grupo Unidos Por El Canal S.A.*, 2015 WL 1815251 (N.D. Cal. Apr. 21, 2015).
- *In re Application of Grupo Unidos Por El Canal, S.A.*, 2015 WL 1810135 (D. Colo. Apr. 17, 2015).
- *In re Application of Republic of Ecuador v. Douglas*, 2015 WL 9272853, *3 (D. Mass. 2015).
- *In re Applications of the Republic of Ecuador*, 2011 WL 4434816 (N.D. Cal. Sept. 23, 2011).
- *Landmark Ventures, Inc. v. Insightec, Ltd.*, 63 F.Supp.3d 343, 348 and 352 (S.D.N.Y. 2014).
- *Yang v. Majestic Blue Fisheries, LLC*, 2015 WL 5003606 (D. Guam Aug. 24, 2015).

- **ARBITRAL AWARDS**

Canada

- *Clayton v. Canada*, PCA Case No. 2009-04, Procedural Order No. 12, 2 May 2012, www.italaw.com/sites/default/files/case-documents/italaw1163.pdf.
- *Clayton v. Canada*, PCA Case No. 2009-04, Procedural Order No. 13, 11 July 2012, www.italaw.com/sites/default/files/case-documents/italaw1164.pdf.
- *Clayton v. Canada*, PCA Case No. 2009-04, Procedural Order No. 14, 19 September 2012, www.italaw.com/sites/default/files/case-documents/italaw1165.pdf.
- *Clayton v. Canada*, PCA Case No. 2009-04, Procedural Order No. 3, 3 June 2009, www.italaw.com/sites/default/files/case-documents/italaw1148.pdf.
- *Detroit International Bridge Company v. Canada*, PCA Case No. 2012-25, Procedural Order No. 3, 27 March 2013, www.italaw.com/sites/default/files/case-documents/italaw1422_0.pdf.
- *Eli Lilly and Company v. Canada*, ICSID Case No. UNCT/14/2, Procedural Order No. 1, 26 May 2014, www.italaw.com/sites/default/files/case-documents/italaw3212.pdf.
- *Lone Pine Resources Inc v. Canada*, ICSID Case No. UNCT/15/2, Procedural Order No. 1, 11 March 2015, www.italaw.com/sites/default/files/case-documents/italaw4252.pdf.
- *Mercer International Inc. v. Canada*, ICSID Case No. ARB(AF)/12/3, Procedural Order No. 1, 29 April 2013, www.italaw.com/sites/default/files/case-documents/italaw1510.pdf.
- *Mesa Power Group, LLC v. Canada*, PCA Case No. 2012-17, Procedural Order No. 6, 5 March 2014, www.italaw.com/sites/default/files/case-documents/italaw3209.pdf.
- *Mesa Power Group, LLC v. Canada*, PCA Case No. 2012-17, Procedural Order No. 4, 12 July 2013, www.italaw.com/sites/default/files/case-documents/italaw1576.pdf.
- *Mesa Power Group, LLC v. Canada*, PCA Case No. 2012-17, Procedural Order No. 1, 21 November 2012, www.italaw.com/sites/default/files/case-documents/italaw1200.pdf.
- *Mobil Investments Canada Inc. and Murphy Oil Corporation v. Canada*, ICSID Case No. ARB(AF)/07/04, Minutes of the First Session of the Arbitral Tribunal with the Parties, 6 May 2009**,** www.italaw.com/sites/default/files/case-documents/italaw3100_0.pdf.
- *Saint Marys VCNA, LLC v. Canada*, Procedural Order No. 1, 10 September 2012, www.italaw.com/sites/default/files/case-documents/italaw1313.pdf.
- *Windstream Energy LLC v. Canada*, Procedural Order No. 1, 16 September 2013, www.italaw.com/sites/default/files/case-documents/italaw1588.pdf.
- *Windstream Energy LLC v. Canada*, Procedural Order No. 2, 12 January 2014, www.italaw.com/sites/default/files/case-documents/italaw3061.pdf.

China

- *Claimant v. Respondent*, HKIAC Case No.A14154, unreported and unpublished.

Ecuador

- *Juan Carlos Chaparro Álvares v. The Republic of Ecuador*, Ad-hoc Tribunal, Final Award, Gaceta Arbitral No. 1, 2013, Quito Ecuador.
- *Autoridad Portuaria de Manta v. Terminales Internacionales de Ecuador SA – En Liquidación, IIHC Limited, Hutchinson Port Holdings Limited*, Case No. 091-13, Center of Arbitration and Mediation of the Chamber of Commerce of Quito, Final Award.

France

- ICC case No. 12269, Final Award, September 2005, published in ICC International Court of Arbitration Bulletin Vol. 22 No. 2.
- ICC Case No. 13225 Procedural Order, 8 October 2004, published in Special Supplement 2010: Decisions on ICC Arbitration Procedure: A Selection of Procedural Orders issues by Arbitral Tribunals acting under the ICC Rules of Arbitration (2003-2004).

Romania

- *Confidential*, ICC CASE 18851/GZ, Procedural Order no.7/19.12.2014.

Singapore

- *ALC v ALF* [2010] SGHC 231.
- *Dongwoo Mann+Hummel Co Ltd v Mann+Hummel GmbH* [2008] 3 SLR(R) 871.
- *Triulzi Cesare SRL v Xinyi Group (Glass) Co Ltd* [2015] 1 SLR 114.

Spain

- *SACYR Concesiones, SL v. Inprisma, SL*, Superior Court of Justice of Madrid, Case No. 83/2012, Judgment, 16th July 2013 (full text in Spanish available here).

Switzerland

- *World Anti-Doping Agency (WADA) and Union Cycliste Internationale (UCI) v. Alejandro Valverde & Real Federación Española de Ciclismo (RFEC)*, CAS 2007/A/1396 & 1402, Award, 31 May 2010, Lausanne.

- **PUBLICATIONS**

Argentina

- Fernando Aguilar, "Teoría holista del Derecho. Un enfoque teórico para el derecho transnacional del Siglo XXI", [2009], La Ley Online, AR/DOC/903/2009, Buenos Aires.
- Julio César Rivera, *Arbitraje Comercial Internacional y Doméstico*, Lexis-Nexis, Buenos Aires, 2007, p. 449 *et seq.*

Belgium

- C. VERBRUGGEN, "Jusqu'où l'arbitre doit-il pousser la recherche de la vérité ?", in *Hommage à Guy Keutgen – Hommage aan Guy Keutgen*, Brussels, Bruylant, 2013, pp. 401 *et seq*.
- D. DEMEULEMEESTER & H. VERBIST, *Arbitrage in de Praktijk,* Brussels, Bruylant, 2013.
- D. MATRAY & G. MATRAY, "L'administration de la preuve en matière de l'arbitrage", in G. KEUTGEN (ed.), *L'administration de la preuve en matière d'arbitrage – De bewijsregeling in arbitrage,* Brussels, Bruylant, 2009, pp. 18 et seq.
- F. DE LY, "Arbitrageovereenkomst en Inleiding van de Procedure", in G. KEUTGEN (ed.), *L'administration de la preuve en matière d'arbitrage – De bewijsregeling in arbitrage,* Brussels, Bruylant, 2009, pp. 41 *et seq.*
- J.-F. TOSSENS, "La preuve dans l'acte de mission et l'instance", in G. KEUTGEN (ed.), *L'administration de la preuve en matière d'arbitrage – De bewijsregeling in arbitrage,* Brussels, Bruylant, 2009, pp. 55 *et seq.*
- M. DRAYE, "Article 1700", in N. BASSIRI & M. DRAYE (eds.), *Arbitration in Belgium. A Practitioner's Guide,* The Hague, Kluwer Law International, 2016.
- P. DE WOLF, "L'aribtre 'a les preuves' de la vérité ?", in *Hommage à Guy Keutgen – Hommage aan Guy Keutgen,* Brussels, Bruylant, 2013, pp. 439 *et seq.*
- P. HOLLANDER, "L'importance des preuves orales dans la procédure arbitrale", *J.T.* 2011/3, pp. 41 *et seq*.
- P. HOLLANDER, "La preuve par témoins en arbitrage", in G. KEUTGEN (ed.), *L'administration de la preuve en matière d'arbitrage – De bewijsregeling in arbitrage,* Brussels, Bruylant, 2009, pp. 137 *et seq.*
- P. HOLLANDER, "La vérité par la parole?", in *Hommage à Guy Keutgen – Hommage aan Guy Keutgen,* Brussels, Bruylant, 2013, pp. 425 *et seq.*
- P. WAUTELET, "Autonomie de la volonté et règles de procédure – de nouvelles pistes pour la conduite de la procédure arbitrale ?", *Hommage à Guy Keutgen – Hommage aan Guy Keutgen,* Brussels, Bruylant, 2013, pp. 19 *et seq.*
- V. FONCKE, "Evidence in Arbitration under the New Belgian Arbitration Act", *b-Arbitra* 2014/1, pp. 29 *et seq*.
- V. VAN HOUTTE, "Deskundigenonderzoek en andere onderzoeksmaatregelen", in G. KEUTGEN (ed.), *L'administration de la preuve en matière d'arbitrage – De bewijsregeling in arbitrage,* Brussels, Bruylant, 2009, pp. 165 *et seq.*

Brazil

- ABBUD, André de Albuquerque Cavalcanti. Soft Law *e Produção de Provas na Arbitragem Internacional*. São Paulo: Atlas, 2014. 208 p.
- BONICIO, Marcelo José Magalhães. Arbitragem e Estado: Ensaio Sobre o Litígio Adequado. *Revista de Arbitragem e Mediação*, vol. 45/2015, pp. 155 – 174, Apr – Jun. 2015.
- CARVALHO, Lucila de Oliveira. LOPES, Luiz Felipe Calábria. Arbitragem Multiparte e Multicontrato: um Estudo Comparativo de Regulamentos de Arbitragem, *Revista Brasileira de Arbitragem*, (Comitê Brasileiro de Arbitragem CBAr & IOB;

Comitê Brasileiro de Arbitragem CBAr & IOB 2014, Volume XI Issue 42), pp. 35 – 56.
- CORRÊA, Fábio Peixinho Gomes. The Presentation of Evidence in International Commercial Arbitration: Bridging Gaps Between Evidentiary Rules and Free Evaluation of Evidence. *Revista de Arbitragem e Mediação*, v. 21/2009, pp. 190-234, Apr-Jun 2009.
- DEFFENTI, Fabiano. O *Uso da Disclosure e da Cross-Examination nas Arbitragens Comerciais Internacionais*. Universidade Federal de Santa Catarina. Florianópolis, 2003. Florianópolis, June 2003.
- FARIA, Marcela Kohlbach de. A Produção de Prova no Procedimento Arbitral. *Revista de Arbitragem e Mediação*, v. 32/2012, pp. 207-226, Jan-Mar. 2012.
- FARIA, Marcela Kohlbach de. A Produção de Prova no Procedimento Arbitral. *Revista de Arbitragem e Mediação*, vol. 32/2012, pp. 207 – 226, Jan – Mar. 2012.
- GOMM, Mauricio. The Extent of The Arbitral Tribunal's Power to Manage Discovery in The United States of America. *Revista de Arbitragem e Mediação*, vol. 22/2009, pp. 156 – 172, Jul – Sep. 2009.
- LEE, João Bosco. Parecer Sobre Homologação de Sentença Arbitral Estrangeira no Brasil. Inadmissibilidade da Prova como Fundamento para Denegação da Homologação da Sentença Estrangeira no Brasil. Aplicação do Princípio da Restituição Integral e Ordem Pública, *Revista Brasileira de Arbitragem*, (Comitê Brasileiro de Arbitragem CBAr & IOB; Comitê Brasileiro de Arbitragem CBAr & IOB 2014, Volume XI Issue 44). pp. 7 – 30.
- MANGE, Flavia Fóz. *Processo Arbitral Transnacional: Reflexões sobre as Normas que Regem os Aspectos Procedimentais da Arbitragem*. Universidade de São Paulo. São Paulo, 2012.
- MANGE, Flavia Foz. *Processo Arbitral: Aspectos Transnacionais*. São Paulo: Quartier Latin, 2014.
- MIRANDA, Daniel Chacur de. A Produção da Prova Testemunhal na Arbitragem à Luz da Flexibilidade e da Previsibilidade na Prática Internacional, *Revista Brasileira de Arbitragem*, (Comitê Brasileiro de Arbitragem (CBAr) & IOB; © Comitê Brasileiro de Arbitragem (CBAr) & IOB 2013, Volume X Issue 38), pp. 30 – 45.
- MONTORO, Marcos André Franco. *Flexibilidade do Procedimento Arbitral*. Universidade de São Paulo. São Paulo, 2010.
- PARENTE, Eduardo de Albuquerque. *Processo Arbitral e Sistema*. São Paulo: Atlas, 2012. 368 p.
- PESSOA, Fernando José Breda. A Produção Probatória na Arbitragem, *Revista Brasileira de Arbitragem*, (Comitê Brasileiro de Arbitragem (CBAr) & IOB; Comitê Brasileiro de Arbitragem (CBAr) & IOB 2007, Volume IV Issue 13). pp. 71 – 97.
- SOUZA, Marcia Cristina Xavier de; ROCHA, Raphael Vieira da Fonseca. Aspectos Probatórios na Arbitragem: A Possibilidade e a Efetividade da Utilização da Discovery Sob o Ponto de Vista da Parte Brasileira. *Revista de Arbitragem e Mediação*, vol. 45/2015, p. 203 – 228, Apr – Jun. 2015.
- VIEIRA, Maíra de Melo. A Prova Escrita na Arbitragem Internacional. *Revista de Arbitragem e Mediação*, vol. 36/2013, pp. 67 – 94, Jan – Mar. 2013.

- VINCENZI, Brunela Vieira de. Arbitration Between Brazilian and German Companies Overview and Expedited Dispute Resolution Tools for Mega Sports Events. *Revista de Arbitragem e Mediação*, vol. 31/2011, pp. 81 – 99, Oct – Dec. 2011.

Canada

- J. Brian Casey, *Arbitration Law of Canada: Practice and Procedure* (2nd ed., 2011).
- J. Kenneth McEwan & Ludmila B. Herbst, *Commercial Arbitration in Canada* (loose-leaf release no. 12, December 2014).
- Olivier F. Kott & Rachel Bendayan, "L'arbitrage international et domestique: toujours la meilleure solution pour résoudre les litiges dans la domaine de la construction? – Considérations pratiques et juridiques", 2011 Développements récents en droit de la construction 31, Vol. 336.

China

(Mainlaind China)

- CIETAC, *CIETAC Guidelines on Evidence* (effective 1 March 2015)
- Commercial Arbitration"), published in the Chinese journal called 《政治与法律》 ("Politics and Law") Issue No.5 in 2009.
- Huanzhong Law Firm Arbitration Team, "实务概要:国际商事仲裁的证据问题" ("Practice Summary: Evidential Issues in International Commercial Arbitration"), published/posted on huanzhonglaw.com on 14 September 2015.
- LIU Xiaohong, "从国际商事仲裁证据制度的一般特质看我国涉外仲裁证据制度的完善" ("Improvement of Rules of Evidence in Foreign-related Arbitration in China: A Perspective from Some General Features of Rules of Evidence in International Arbitration").
- SUN, Wei and Melanie Willems, Arbitration in China: a practitioner's guide (Kluwer Law International, 2015).
- YANG Fan, Foreign-related Arbitration in China: Commentary and Cases (Cambridge University Press, 2016).

(Hong Kong SAR)

- Geoffrey Ma, Arbitration in Hong Kong: A Practical Guide, 3rd ed, Hong Kong: Sweet & Maxwell/Thomson Reuters Hong Kong Ltd., 2014.
- Katherine Lynch, "Have IBA Rules of Evidence in International Commercial Arbitration Been helpful in Harmonizing Document Disclosure Practice?" a conference paper published in 2007, available at http://hdl.handle.net/10722/112761.

England and Wales

- Deborah Ruff and Charles Olsong, Norton Rose Fulbright LLP, Insight, [2016] International Arbitration, 1 February 2016.
- Ekin Omeroglu, Taking Evidence In International Arbitration, [2015] Cov. L.J. 2015, 20(2), 1-15.
- Fraud Intelligence, (2016) 01 FRD 13.
- Nathan D. O'Malley, LLM, "Assessing the Evidence, Burden Of Proof, Adverse Inferences and Procedural Good Faith" in The Rules of Evidence in International Arbitration (2012).
- Peter Rees, We Can Have It All: Some Thoughts on the Future of Document Disclosure, - Paper Presented To The Chartered Institute Of Arbitrators Birmingham Centenary Conference, January 2015, Panel 4, Arbitration [2015] 81(2), 187-191.
- Richard Kreindler And Mariel Dimsey, Conduct And Costs: How Should The Tribunal Sanction The Parties In Costs? Arbitration [2014] 80(4), 387-398.
- Sir Vivian Ramsey, National courts and arbitration: collaboration or competition? The courts as competitors of arbitration. Arbitration [2015] 81(4), 446-451.

Finland

- C. Wallgren-Lindholm, " Predictability of Proceedings in International Commercial Arbitration – And is there a Nordic Way?", 2011 Tidskrift utgiven av Juridiska Föreningen i Finland, Vol. 4–5.
- G. Knuts, "Asiakirjakategorian esittämispyyntö kansainvälisessä välimiesmenettelyssä International Bar Associationin Rules of Evidencen mukaan" in E. Havansi, R. Koulu, H. Lindfors, *Oikeudenkäyntejä ja tuomioistuimia: Juhlakirja Juha Lappalainen 60 vuotta* (2007).
- G. Möller, "Menettelystä välimiesoikeudessa" in E. Havansi, R. Koulu, H. Lindfors, *Oikeudenkäyntejä ja tuomioistuimia – Juhlakirja Juha Lappalainen 60 vuotta* (2007).
- G. Möller, "Todistelusta välimiesmenettelyssä" in H. Halila, M. Hemmo, L. Sisula-Tulokas, *Juhlajulkaisu Esko Hoppu 1935 – 15/1 – 2005*.
- M. Hemmo, "Erforderlig möjlighet att föra talan i skiljeförfarande och gränserna för denna", 2011 Tidskrift utgiven av Juridiska Föreningen i Finland, Vol. 4–5.
- P. Puhakka and M. Åkerberg, "Kirjallinen todistelu suomalaisessa välimiesmenettelyssä", 2013 Defensor Legis Vol. 5.
- R. Liljeström, "Confidentiality in Arbitration; A Finnish Perspective", 2011 Tidskrift utgiven av Juridiska Föreningen i Finland Vol. 4–5.
- R. Mattson, "The Role of the Chairman in Arbitration", 2011 Tidskrift utgiven av Juridiska Föreningen i Finland Vol. 4–5.

France

- B. Moreau, "La Charte Ethique de la Fédération des Centres d'Arbitrage", presentation dated 27 June 2014, available at: http://www.afa-arbitrage.com/afa/uploads/La_Charte_ethique_Federation_des_Centres_d-Arbitrage_Presentation_M_MOREAU.pdf.

- C. Camboulive, “Compatibilité des rôles de partie et de témoin en droit français de l'arbitrage international, note sous Paris, Pôle 1 – Ch. 1, 10 janvier 2012”, Revue de l'Arbitrage, Vol. 2012 Issue 2.
- C. Seraglini, J. Ortscheidt, *Droit de l’Arbitrage Interne et International*, Paris, LGDJ, 2013.
- D. Bensaude, “Présentation des Règles IBA 2010 sur l'administration de la preuve, par Denis BENSAUDE”, Revue de l'Arbitrage, Vol. 2011 Issue 4.
- L. Weiller, “Activités du Comité Français de l'Arbitrage : compte rendu de l'atelier de mai 2011”, Revue de l'Arbitrage, Vol. 2011 Issue 3.
- M. de Boisséson, “La « Soft Law » dans l’arbitrage”, Les Cahiers de l’Arbitrage, 2014, Vol. 3.
- P. Fouchard, E. Gaillard, B. Goldman, *Traité de l’arbitrage commercial international*, Paris, Litec, 1996.
- S. Lazareff, “De l'immoralité présumée de l'arbitre”, Gazette du Palais, 18 juillet 2009
- Y. Derains and L. Kiffer, “National Report for France (2013)” in Jan Paulsson and Lise Bosman (eds), ICCA International Handbook on Commercial Arbitration, Supplement No. 74, May 2013.
- Y. Derains, “Le Professionnalisme des arbitres”, Cahiers de droit de l’entreprise n° 4, July 2012, dossier 19.

Germany

- Bertke/Schroeder, „*Grenzen der Zeugenvorbereitung im staatlichen Zivilprozess und im Schiedsverfahren*“, SchiedsVZ 2014, 80.
- Bietz, „*On the State and Efficiency of International Arbitration - Could the German 'Relevance Method' be useful or not*?“, SchiedsVZ 2014, 121.
- Böckstiegel, „*Party Autonomy and Case Management - Experiences and Suggestions of an Arbitrator*“, SchiedsVZ 2013, 1.
- Böckstiegel/Berger/Bredow, *Schriftenreihe der Deutschen Institution für Schiedsgerichtsbarkeit, Vol.26, The Taking of Evidence in International Commercial Arbitration* (2010).
- Burianski, „*DIS-Conference: 'The Taking of Evidence in International Commercial Arbitration*“, SchiedsVZ 2010, 101.
- Burianski/Reindl, „*Truth or Dare? The Conflict Between E-discovery in International Arbitration and German Data Protection Rules*“, SchiedsVZ 2010, 187.
- Elsing, „*Procedural Efficiency in International Arbitration: Choosing the Best of Both Legal Worlds*“, SchiedsVZ 2011, 114.
- Escher/Reichert, „*Petersberger Schiedstage 2005: Globalization of Dispute Resolution - Arbitration and ADR in the Focus of International Harmonization and Competition*“, SchiedsVZ 2005, 208.
- Grothaus, „*DIS Autumn Conference 2014: 'Global Pond or Single Playing Field: How International Should International Arbitration Really Be?*", SchiedsVZ 2015, 32
- Haller, „*Protection of Business Secrets by Way of Protective Orders*“, SchiedsVZ 2013, 135.

- Haller/Stumpe, commentary on Art. 25 ICC Rules and sec. 27 DIS Rules, in Nedden/Herzberg (eds.), *ICC-SChO/DIS-SchO, Praxiskommentar zu den Schiedsgerichtsordnungen* (2013).
- Hanefeld/Hombeck, „*International Arbitration Between Standardization and Flexibility - Predictability and Flexibility Seen from a Client's Perspective*“, SchiedsVZ 2015, 20.
- Kläsener/Dolgorukow, „*Die Überarbeitung der IBA-Regeln zur Beweisaufnahme in der internationalen Schiedsgerichtsbarkeit*“, SchiedsVZ 2010, 302.
- Kneisel/Lecking, „*Verteidigungsstrategien gegen die Anordnung der Document-Production - insbesondere nach den IBA-Regeln zur Beweisaufnahme in der internationalen Schiedsgerichtsbarkeit*“, SchiedsVZ 2013, 150.
- Kreindler/Schäfer/Wolff, *Schiedsgerichtsbarkeit, Kompendium für die Praxis* (2006)
- Lachmann, *Handbuch für die Schiedsgerichtspraxis* (2nd ed. 2002).
- Münch, commentary on sec. 1049 ZPO, in Rauscher/Wax/Wenzel (eds.), *Münchener Kommentar zur ZPO* (4th ed. 2013).
- Oehm, „*1st Global Conference of the Co-Chairs' Circle: Cultural Differences in International Arbitration*“, SchiedsVZ 2014, 299.
- Raeschke-Kessler, „*Die IBA-Rules über die Beweisaufnahme im internationalen Schiedsverfahren*“, in Böckstiegel (ed.), *Beweiserhebung in internationalen Schiedsverfahren* (2001), 41.
- Reitzug/Wiegandt, „*Cross-Examination in International Arbitration - An Advocacy Workshop“,* SchiedsVZ 2015, 197.
- Risse/Haller, „*Die 'IBA-Regeln' zur Beweisaufnahme in der Internationalen Schiedsgerichtsbarkeit*“, in Eberl (ed.), *Beweis im Schiedsverfahren* (2014), 115.
- Rudkowski, „*Einführung in das Schiedsverfahrensrecht*“, JuS 2013, 398.
- Samaras/Strasser, „*Managing Party-Appointed Experts in International Arbitration - Analysis of the Current Framework and Best Practice Proposals*“, SchiedsVZ 2013, 314.
- Schwab/Walter, *Schiedsgerichtsbarkeit* (7th ed. 2005).
- Sessler, „*Reducing Costs in Arbitration - The Perspective of In-house Counsel*“, SchiedsVZ 2012, 15.
- Trittmann, „*The Interplay Between Procedural and Substantive Law in International Arbitration*”, SchiedsVZ 2016, 7.
- Wilske/Markert, commentary on sec. 1049 ZPO, in Vorwerk/Wolf (eds.), *Beck'scher Online-Kommentar ZPO* (19th ed. 2015).
- Wolf/Eslami, commentary on sec. 1025, 1036 and 1042 ZPO, in Vorwerk/Wolf (eds.), *Beck'scher Online-Kommentar ZPO* (19th ed. 2015).

Italy

- Benedettelli Consolo Radicati di Brozolo, *Commentario breve al Diritto dell'Arbitratonazionale ed internazionale*, CEDAM 2010.
- CFabbi, *La prova nell'arbitrato internazionale*, Giappichelli 2014.

- Draetta, Potential Inefficiencies caused by the document production process in International arbitration, Diritto del Commercio Internazionale, 2014, p. 269.

Kuwait

- Robert Karrar-Lewsley, John Gaffney and Dalal Al Houti, "United Arab Emirates" [2015] International Arbitration 1st Edition, Global Legal Insights, (http://www.globallegalinsights.com/practice-areas/international-arbitration-/global-legal-insights---international-arbitration-1).
- Seema, Bono and Sami, Tannous, "International Arbitration 2015" [2015] International Comparative Legal Studies.(http://www.iclg.co.uk/practice-areas/international-arbitration-/international-arbitration-2015/united-arab-emirates).

Lebanon

- A. EL AHDAB, "IBA Rules on the Taking of Evidence", 2012 World Journal of Arbitration, p. 893, Vol. 15.
- A. EL AHDAB, "Revision of the UNCITRAL Arbitration Rules/ Suggested Modifications till 2009", 2010 World Journal of Arbitration, p. 83, Vol. 6.
- A. EL AHDAB, "The new UNCITRAL Arbitration Rules", 2011 World Journal of Arbitration, p. 20, Vol. 9.
- K. QURESHI, "Cultural sensitivity and International Arbitration", 2009 World Journal of Arbitration, p. 61, Vol. 4.
- M. CHERKAOUI and M. SALAH EL DIN ABDUL WAHAB, "IBA Rules on Taking of Evidence", 2012 World Journal of Arbitration, p. 24, Vol. 15.
- N. COMAIR-OBEID, "Arbitration Procedures", 2008 Lebanese Review of Arab and International Arbitration, p. 4, Vol. 48.
- R. BOU AOUN, "Preparation of a legal standard on transparency in treaty-based investor-State arbitration", 2011 Journal of Arab Arbitration, p. 251, Vol. 9.

Lithuania

- Dr. D. Bubliene, Dr. P. Zapolskis, "The process of electronic disclosure (E-Disclosure) and data protection in international arbitration", 2015, Arbitration: Theory and practice, page 26, Vol. 1.

Mexico

- C. McCadden *et al., Documentos Básicos sobre Arbitraje y Solución de Controversias (El marco normativo en español)* (Themis, 2010).
- C. von Wobeser, "Mexico", 2013, *Arbitration Guide,* IBA Arbitration Committee, May 2013.
- Instituto Mexicano de Arbitraje, *Legislación Mexicana de Arbitraje Comercial Comentada* (Editorial Porrúa, 2015).

New Zealand

- Chapter 25, Williams & Kawharu on Arbitration by David A R Williams QC and Amokura Kawharu, 2011, Lexis Nexis, Wellington, New Zealand.

Poland

- B. Krużewski, „Biegły w postępowaniu arbitrażowym" ["An Expert in Arbitration Proceedings"] in J. Okolski et al. (eds.), *Księga pamiątkowa 60-lecia Sądu Arbitrażowego przy Krajowej Izbie Gospodarczej w Warszawie* [*Essays to Mark 60 Years of the Court of Arbitration at the Polish Chamber of Commerce in Warsaw*] (2010), p. 217-231.
- K. Frątczak, „Nowy Regulamin IBA o postępowaniu dowodowym w arbitrażu międzynarodowym" ["New IBA Rules on the Taking of Evidence in International Arbitration"], 2010 e-Przegląd Arbitrażowy, No. 2, pp. 46-47.
- K. Rokita, „Uzyskanie dokumentów od strony przeciwnej i osoby trzeciej w międzynarodowym arbitrażu handlowym" ["Obtaining Documents from the Other Party and from a Third Party in International Commercial Arbitration"], 2014 ADR. Arbitraż i Mediacja, No. 2 (26), pp. 15-120.
- M. Jamka, „Dowód z zeznań świadka w krajowej i międzynarodowej praktyce arbitrażowej" ["Witness Testimony in Domestic and International Arbitration Practice"] in J. Okolski et al. (eds.), *Księga pamiątkowa 60-lecia Sądu Arbitrażowego przy Krajowej Izbie Gospodarczej w Warszawie* [*Essays to Mark 60 Years of the Court of Arbitration at the Polish Chamber of Commerce in Warsaw* (2010), pp. 179-190.
- M. Jochemczak, „Attorney-client privilege w międzynarodowym postępowaniu arbitrażowym" ["Attorney-Client Privilege in International Arbitration"], 2010 Przegląd Prawa Handlowego, No. 3, pp. 37-44.
- M. Kocur, "Witness Statements in International Commercial Arbitration" in B. Gessel-Kalinowska vel Kalisz (ed.), *The Challenges and the Future of Commercial and Investment Arbitration. Liber Amicorum Professor Jerzy Rajski* (2015), pp. 167-181.
- M. Weingärtner, „Ujawnienie elektronicznych informacji w arbitrażu międzynarodowym" ["Disclosure of Information in an Electronic Format in International Arbitration"], 2010 Biuletyn Arbitrażowy, No. 1 (13), pp. 48-64.
- P. Pietkiewicz, "Legal and Organizational Framework of Arbitration in Poland" in *Arbitration in Poland* (2011), pp. 15-40, in particular pp. 31-32.
- P. Pietkiewicz, „Postępowanie przed sądem polubownym. Poszukiwanie dokumentów u strony postępowania oraz u osoby trzeciej" ["Proceedings Before an Arbitration Court. Searching for Documents Held by a Party to the Proceedings and by a Third Party"] in J. Okolski et al. (eds.), *Księga pamiątkowa 60-lecia Sądu Arbitrażowego przy Krajowej Izbie Gospodarczej w Warszawie* [*Essays to Mark 60 Years of the Court of Arbitration at the Polish Chamber of Commerce in Warsaw*] (2010), pp. 256-279.

Portugal

- M.F. GOUVEIA, *Curso de Resolução Alternativa de Litígios* (3rd ed. 2014), pp. 251-254.
- P.M. NÁPOLES, "As Novas Regras da IBA sobre Produção de Prova em Arbitragem Internacional", 2010 Revista Internacional de Arbitragem e Conciliação 105, Vol. 3, pp. 105-116.

Russia

- A.A. Panov, "The "Surprise Decision" Doctrine in International Commercial Arbitration", International Commercial Arbitration Newsletter, 2012, No. 2.
- A.A. Yagelnitsky, O.D. Petrol, "Temporal Effects of Arbitration Rules" in A.V. Asoskov, N.G. Vilkova, R.M. Hodykin (eds.) New Horizons of International Arbitration: A Collection of Articles (No. 1, Infotropic Media, 2013).
- A.S. Komarov, "Rules of the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation: Academic and Practical Commentary", Infotropic Media, 2012.
- A.V. Grebelsky, "Allocation of the Burden of Proof in International Arbitration" in S.N. Lebedev, E.V. Kabatova, A.I. Muranov, E.V. Vershinina (eds.) Liber Amicorum A.A. Kostin, O.N. Zimenkova, N.G. Eliseeva (2013).
- A.V. Grebelsky, "Disclosure of the Written Evidence in International Commercial Arbitration", Law and Economics, 2015 No. 8.
- C. Mulcahy, "Delay in Arbitration: Revising the Trend" The International Commercial Arbitration Newsletter (2012 No. 2).
- N.G. Vilkova, "Extent of the Procedural Autonomy of the Parties in International Arbitration, or Do the Parties Control Their Arbitration Proceedings?" in A.A. Kostin (ed) Collection of Essays Dedicated to the 80th Anniversary of International Commercial Court of Arbitration at the Chamber of Commerce and Industry of the Russian Federation (2012).
- R.O. Zykov, "International Arbitration in Sweden: Law and Practice", Statut, 2014.
- T.N. Neshataeva, "Decisions of the ECHR: Innovations and Effect on the Legislation and the Law Enforcement Practice", Norma, Infra-M, 2013.

Singapore

- C.T. Tan and J. Choong, "Disclosure of Documents in Singapore International Arbitrations: Time for a Reassessment?" 2005 Asian International Arbitration Journal 49, Vol. 1, Issue 1.
- D. Joseph and D. Foxton (eds), *Singapore International Arbitration: Law and Practice* (2014), pp. 265, 268-272, 276-278.
- L. Chew, *Introduction to the Law and Practice of Arbitration in Singapore* (2010), pp. 158-159.
- L.S. Chan, "Discovery in Arbitration" 2009 Singapore Institute of Arbitrators Newsletter 3, Issue 3.
- L.S. Chan, *Singapore Law on Arbitral Awards* (2011) pp. 204-205.

- M. Hwang and A. Chin, "Discovery in Court and Document Production in International Commercial Arbitration – Singapore" 2006 ICC International Court of Arbitration Bulletin – Special Supplement 33.
- S. Menon and D. Brock (eds), *Arbitration in Singapore: A Practical Guide* (2014), pp. 20, 125, 170, 231, 247, 258-266, 289-291.
- W.L. Fong, "Playing Nice in International Arbitration" Singapore Law Gazette, October 2014.

Slovakia

- Slavomír Halla, "Obstaranie dôkazov v medzinárodnej obchodnej arbitráži pomocou inštitútu 'discovery'" (*English translation*: „Provision of Evidence in International Commercial Arbitration through the Institute of 'Discovery'") in Days of law: the Conference Proceedings, 1. edition, 2009, pp. 1651-1668.

Slovenia

- A. Friedl, "Tackling Corruption in Arbitration", 2015 Slovenian Arbitration Review 36, Vol. 4, Issue 3.
- Y. Schuch, "The Quest for Truth in International Arbitration", 2015 Slovenian Arbitration Review 4, Vol. 4, Issue 1.

South Korea

- D.-H. Kim, "A study on the taking of electronic evidence in International Arbitration", 2011 Bupjo Association Journal page 203, Vol. 655.

Spain

- Álvaro López de Argumedo Piñeiro and Juliana de Ureña, "Nuevas tendencias en la práctica de pruebas en el arbitraje internacional: comentarios a las reglas de la IBA sobre práctica de prueba en el arbitraje internacional (aprobadas el 29 de mayo de 2010)", Instituto Peruano de Arbitraje, *Arbitraje internacional: pasado, presente y futuro. Libro homenaje a Bernardo Cremades e Yves Derains T. I.* (2013) 499.

Sweden

- Hobér, Kaj, International Commercial Arbitration in Sweden, Oxford University Press, 2010.
- Lindskog, Stefan, *Skiljeförfarande: en kommentar*, 2nd [rev.] ed., Norstedts Juridik AB, 2012.
- Madsen, Finn, *Commercial Arbitration in Sweden: a commentary on the Arbitration Act (1999:116) and the rules of the Arbitration Institute of the Stockholm Chamber of Commerce*, translated from the Swedish by Reuven Ben-Dor, 3rd ed., Oxford University Press, 2007.

- Madsen, Finn, *Skiljeförfarande i Sverige: en kommentar till lagen (1999:116) om skiljeförfarande och till reglerna för Stockholms Handelskammares Skiljedomsinstitut*, 2nd ed., Jure Förlag AB, 2009.
- Öhrström, Marie, *Stockholms handelskammares skiljedomsinstitut: En handbok och regelkommentar för skiljeförfaranden*, 1st ed., Norstedts Juridik AB, 2009.
- Ramberg, Jan, *Affärstvister och konfliktlösning*, 1st ed., Sveriges Exportråd av Industrilitteratur/Liber, 2006.
- Zettermarck, Claes; Wikström, Rikard, *The Impact of Document Production on the Efficiency of Arbitration*. In: Between East and West: Essays in Honor of Ulf Franke, p. 587-599, Juris, 2010.

Switzerland

- ARROYO Manuel (ed.), *Arbitration in Switzerland: the Practitioner's Guide* (Kluwer Law International 2013).
- BERGER Bernhard, KELLERHALS Franz, *International and Domestic Arbitration in Switzerland* (2nd ed., Stämpfli 2010).
- GÖKSU Tarkan, *Schiedsgerichtsbarkeit* (Dike Verlag 2014).
- GOTTLIEB Benjamin, "Authority of Para-Regulatory Texts in International Arbitration" 2012 Selected Papers on International Arbitration p. 35, Vol. 2.
- HOSANG Alain, "Adverse Inferences as a Consequence of the Non-Production of Documents According to the 2010 IBA Rules of Evidence in International Commercial Arbitration" in Büchler/Müller-Chen (eds), *Private Law – national – global – comparative – Festschrift für Ingeborg Schwenzer zum 60. Geburtstag* (2011) p. 791.
- KAUFMANN-KOHLER Gabrielle, RIGOZZI Antonio, *International Arbitration – Law and Practice in Switzerland* (Oxford 2015).
- LENDENMANN Joëlle, "The Parties' Confidentiality Obligations and their Enforcement in International Commercial Arbitration" 2013 Selected Papers on International Arbitration p. 127, Vol. 3.
- MARGHITOLA Reto, *Document Production in International Arbitration* (Kluwer Law International 2015).
- MEIER Fabian, "Evidentiary Privileges in International Arbitration – How to Determine What Rules Apply?" 2012 Selected Papers on International Arbitration p. 139, Vol. 2.
- SCHERER Matthias, "The Limits of the IBA Rules on the Taking of Evidence in International Arbitration: Document Production Based on Contractual or Statutory Rights" 2010 International Arbitration Law Review p. 195, Vol. 13.
- WIRTH Markus, "Fact Witnesses" 2010 International Arbitration Law Review p. 207, Vol. 13.
- ZUBERBÜHLER Tobias, HOFMANN Dieter, *IBA Rules of Evidence : Commentary on the IBA Rules on the Taking of Evidence in International Arbitration* (Schulthess Verlag 2012).

Taiwan

- Chung-Sen Yang, "Various Aspects of Evidence Investigation in Arbitration", [November 2006] Arbitration, Page 1, Vol. 79.
- Marianne Chao, "Most ICC Arbitration Adopts Continuous Trial Proceeding", Economic Daily News, July 20, 2009.
- Joyce W.J. Chen, "Rules of Evidence in International Commercial Arbitration and Its Effects on Recognition and Enforcement of Arbitral Awards" (January 2011).
- Wei-Hua Wu, "International Arbitration for Patent Disputes" [June 2012], Technology Law Review, Page 51, Vol. 9, Issue 1.

Turkey

- Cemile Demir Gökyayla, *Milletlerarası Tahkimde Belge İbrazı*, Vedat Kitapçılık 2014.
- Ekin Hacıbekiroğlu, *Milletlerarası Tahkim Hukukunda Deliller ve Delillerin Değerlendirilmesi*, II Levha Yayınları, İstanbul 2012.
- Friedrich Graf von Westphaen "Hakemlere İtirazlar: Tarafsızlık ve Bağımsızlık Koşulları" II. Uluslararası Özel Hukuk Sempozyumu "Tahkim" http://hukuk.marmara.edu.tr/yayinlar/sempozyum-yayinlari/ii-uluslararasi-ozel-hukuk-sempozyumu-tahkim/.
- Musa Aygül "Milletlerarasi Ticarî Tahkimde Delillerin Milletlerarasi Istinabe Yoluyla Elde Edilmesi ve Karşilaşilabilecek Sorunlar" 2013 Gazi Üniversitesi Hukuk Fakültesi Dergisi Cilt XVII, Sa. 1-2 p 261.
- Musa Aygül, *Milletlerarası Ticari Tahkimde Tahkim Usulüne Uygulanacak Hukuk ve Deliller*, Oniki Levha Yayınları 2015.
- Pedro J. Martinez-Fraga "King or Arbitrator: Exploring the Inherent Authority of Arbitrators to Impose Sanction Within the Framework of the 2010 IBA Rules on the Taking of Evidence in International Arbitration" 2012 Year Vol 1 Nr 1 Uluslararasi Ticaret ve Tahkim Hukuku Dergisi p3.

UAE

- Robert Karrar-Lewsley, John Gaffney and Dalal Al Houti, "United Arab Emirates" [2015] International Arbitration 1st Edition, Global Legal Insights. (http://www.globallegalinsights.com/practice-areas/international-arbitration-/global-legal-insights---international-arbitration-1).
- Seema, Bono and Sami, Tannous, "International Arbitration 2015" [2015] International Comparative Legal Studies (http://www.iclg.co.uk/practice-areas/international-arbitration-/international-arbitration-2015/united-arab-emirates).

USA

- Bernardo M. Cremades, *Managing Discovery in International Arbitration*, November 2002-January 2003, Disp. Resol. J.
- Brian Cooper, *Ethics for Party Representatives in International Commercial Arbitration: Developing A Standard for Witness Preparation*, 22 Geo. J. Legal Ethics 779 (2009).

- Bryant Yuan Fu Yang & Diane Chen Dai, *Tipping the Scale to Bring A Balanced Approach: Evidence Disclosure in Chinese International Arbitration*, 17 Pac. Rim L. & Pol'y J. 41 (2008).
- Claudia T. Salomon, Sandra Friedrich, *Obtaining and Submitting Evidence in International Arbitration in the United States*, 24 Am. Rev. Int'l Arb. 549, 549 (2013).
- Dominique D'Allaire, Rolf Trittmann, *Disclosure Requests in International Commercial Arbitration: Finding A Balance Not Only Between Legal Traditions but Also Between the Parties' Rights*, 22 Am. Rev. Int'l Arb. 119, 119 (2011).
- Giacomo Rojas Elgueta, *Understanding Discovery in International Commercial Arbitration Through Behavioral Law and Economics: A Journey Inside the Minds of Parties and Arbitrators*, 16 Harv. Negot. L. Rev. 165 (2011).
- Jan W. Bolt & Joseph K. Wheatley, *Private Rules for International Discovery in U.S. District Court: The U.S.-German Example*, 11 UCLA J. Int'l L. & Foreign Aff. 1 (2006).
- Jonathan L. Frank, Julie Bédard, *Electronic Discovery in International Arbitration: Where Neither the Iba Rules Nor U.S. Litigation Principles Are Enough*, November 2007-January 2008, Disp. Resol. J. 62.
- Laurent Vercauteren, *The Taking of Documentary Evidence in International Arbitration*, 23 Am. Rev. Int'l Arb. 341 (2012).
- Melissa Stear Gorsline & Maria Pradilla Picas, *U.S. Discovery in Aid of Investor-State Arbitrations: A Blessing or A Curse?*, 30 Md. J. Int'l L. 14 (2015).
- Nathan D. O'Malley & Shawn C. Conway, *Document Discovery in International Arbitration-Getting the Documents You Need*, 18 Transnat'l Law. 371 (2005).
- Patricia D. Galloway, *Using Experts Effectively & Efficiently in Arbitration*, 2012 Disp. Resol. J., August-October.
- Pedro J. Martinez-Fraga, *Good Faith, Bad Faith, but Not Losing Faith: A Commentary on the 2010 IBA Rules on the Taking of Evidence in International Arbitration*, 43 Geo. J. Int'l L. 387 (2012).
- Pedro J. Martinez-Fraga, *Juridical Convergence in International Dispute Resolution: Developing A Substantive Principle of Transparency and Transnational Evidence Gathering*, 10 Loy. U. Chi. Int'l L. Rev. 37, 40 (2012).
- Peter Ashford, *Document Production in International Arbitration: A Critique from "Across the Pond'*, 10 Loy. U. Chi. Int'l L. Rev. 1 (2012).
- Peter Ashford, *Documentary Discovery and International Commercial Arbitration*, 17 Am. Rev. Int'l Arb. 89 (2006).

III. PARTY REPRESENTATION GUIDELINES

- **JUDICIAL CASE LAW**
- **ARBITRAL AWARDS**
- **PUBLICATIONS**

Belgium

- M. DRAYE, “Article 1700”, in N. BASSIRI & M. DRAYE (eds.), *Arbitration in Belgium. A Practitioner’s Guide,* The Hague, Kluwer Law International, 2016.
- M. SCHERER, “Ethical Questions regarding Counsel Conduct in Arbitration: Example of the LCIA Guidelines”, in V. FONCKE & B. KOHL (eds.), *What Counsel in Arbitration can do, must do or must not do?,* Brussels, Bruylant, 2015, pp. 19 *et seq*.

Brazil

- CARMONA, Carlos Alberto. Breves considerações críticas acerca das diretrizes da International Bar Association sobre a representação de parte na arbitragem internacional. *Revista UNIFESO – Humanas e Sociais*, Vol. 1, n. 1, 2014, pp. 69-99.

Hong Kong SAR

- Geoffrey Ma, *Arbitration in Hong Kong: A Practical Guide*, 3rd ed, Hong Kong: Sweet & Maxwell/Thomson Reuters Hong Kong Ltd., 2014.

England and Wales

- Mateusz Bek, LLB, LLM, senior research assistant, Institute of Maritime Law, University of Southampton, LCIA 2014 Rules changes, (2015) ALM 1503 1.
- Richard Kreindler And Mariel Dimsey, Conduct And Costs: How Should The Tribunal Sanction The Parties In Costs? (2014) Arbitration, 80(4), 387-398.

France

- C. Benson, “The IBA Guidelines on Party Representation: An Important Step in Overcoming the Taboo of Ethics in International Arbitration”, Les Cahiers de l'Arbitrage, 2014, Vol. 1.

Germany

- Bertke/Schroeder, „Grenzen der Zeugenvorbereitung im staatlichen Zivilprozess und im Schiedsverfahren“, SchiedsVZ 2014, 80.
- Meyer/Gerhardt, „Seven Guidelines on Party Representation - The New LCIA Rules“, SchiedsVZ 2015, 10.
- Oehm, „1st Global Conference of the Co-Chairs' Circle: Cultural Differences in International Arbitration“ SchiedsVZ 2014, 299.
- Pörnbacher/Loos/Baur, „Aktuelle Neuerungen im internationalen Schiedsrecht“, BB 2012, 711.
- Raeschke-Kessler, „Die Präambel der IBA Rules of Evidence - ein Programm für eine moderne Verfahrensgestaltung in internationalen Schiedsverfahren“, in Schütze (ed.), Festschrift für Reinhold Geimer zum 65. Geburtstag (2002).
- Wilske/Markert/Bräuninger, „Entwicklungen in der internationalen Schiedsgerichtsbarkeit im Jahr 2013 und Ausblick auf 2014“, SchiedsVZ 2014, 49.

- Wolf/Eslami, commentary on sec. 1025 ZPO, in Vorwerk/Wolf (eds.), Beck'scher Online-Kommentar ZPO (19th ed. 2015).

Italy

- Fabbi, *La prova nell'arbitrato internazionale,* Giappichelli 2014.

Lebanon

- S. MOGHAIZEL, "Parties Representation in International Arbitration according to the International Bar Association", 2014 The World Journal of Arbitration, p. 75, Vol. 23.

Poland

- B. Jankowski, „Wytyczne IBA dotyczące reprezentacji stron w arbitrażu międzynarodowym" ["IBA Guidelines on Party Representation in International Arbitration"], 2014 Biuletyn Arbitrażowy, No. 21, pp. 54-59.
- B. Krużewski, „Wytyczne IBA dotyczące reprezentacji stron w arbitrażu międzynarodowym - przydatne ujednolicenie standardów czy nadmierna regulacja arbitrażu?" ["IBA Guidelines on Party Representation in International Arbitration - a Useful Unification of Standards or Excessive Arbitration Regulation?"], 2014 Biuletyn Arbitrażowy, No. 21, pp. 60-65.
- M. Asłanowicz, „Wytyczne IBA dotyczące reprezentacji stron w arbitrażu międzynarodowym - zastosowanie i znaczenie" ["IBA Guidelines on Party Representation in International Arbitration – Application and Meaning"], 2014 Biuletyn Arbitrażowy, No. 21, pp. 31-42.
- M. Hartung, „Wytyczne IBA: ciekawa próba ujednolicenia zasad postępowań arbitrażowych" ["IBA Guidelines: An Interesting Attempt to Harmonize the Rules of International Arbitration"], 2014 Biuletyn Arbitrażowy, No. 21, pp. 43-46.
- M. Jamka, „Wyłączenie pełnomocnika. Kilka uwag na temat rozwoju arbitrażu międzynarodowego na podstawie Wytycznych IBA dotyczących reprezentacji stron w arbitrażu międzynarodowym" ["Disqualification of a Party Representative. A Few Remarks on the Development of International Arbitration on the Basis of IBA Guidelines on Party Representation in International Arbitration"], 2014 Biuletyn Arbitrażowy, No. 21, pp. 47-53.
- M. Olechowski, „Nowy wspaniały świat? Kilka dylematów wokół Wytycznych IBA dotyczących reprezentacji stron w arbitrażu międzynarodowym" ["Brave New World? – A Few Dilemmas Concerning the IBA Guidelines on Party Representation in International Arbitration"], 2014 Biuletyn Arbitrażowy, No. 21, pp. 66-78.
- M. Surdek, „Czy istnieje potrzeba kodyfikowania zasad etyki dotyczących pełnomocników stron w arbitrażu międzynarodowym? Uwagi na kanwie Wytycznych IBA dotyczących reprezentacji stron w arbitrażu międzynarodowym" ["Is There a Need to Codify the Rules of Ethics of Parties' Representatives in International

Arbitration? Remarks Based on the IBA Guidelines on Party Representation in International Arbitration"], 2014 Biuletyn Arbitrażowy, No. 21, pp. 79-84.
- P. Bytnerowicz, E. Wanat, „Dopuszczalność przygotowania świadków w postępowaniu arbitrażowym" ["On Whether It Is Acceptable to Prepare Witnesses in Arbitral Proceedings"], 2015 Biuletyn Arbitrażowy, No. 22, pp. 74-75.
- S. Wilske, S.K. Hughes, "Arbitration Guerilla Tactics and Minimum Ethical Standards in International Arbitration – Light on the Horizon or a Sisyphean Exercise?" in B. Gessel-Kalinowska vel Kalisz (ed.), *The Challenges and the Future of Commercial and Investment Arbitration. Liber Amicorum Professor Jerzy Rajski* (2015), pp. 225-247.

Russia

- D.S. Vlasov, "The Rules of Ethics in International Arbitration, or the "New IBA Guidelines on Party Representation in International Arbitration"", Zakon, 2013 No. 11.
- R.O. Zykov, "International Arbitration in Sweden: Law and Practice", Statut, 2014.

Singapore

- S. Lim, "Reflections on Costs and Ethics in International Arbitration" 2013 Singapore Institute of Arbitrators Newsletter 5, Issue 7.

Slovenia

- M. Malus Kovačič, "Impact of Provisions on Representation in Case of Multi-Step Dispute Resolution Clauses", 2015 Slovenian Arbitration Review 9, Vol. 4, Issue 1.

Sweden

- Dahlberg, Silvia; Rosengren, Jonas, *Etiska regler för ombud i internationella skiljeförfaranden*. Published on InfoTorg Juridik's website, 19 May 2015. [http://www.infotorgjuridik.se/premium/mittijuridiken/praktikerartiklar/article215256.ece].

Switzerland

- BERGER Bernhard, KELLERHALS Franz, *International and Domestic Arbitration in Switzerland* (2nd ed., Stämpfli 2010).
- DASSER Felix, "A Critical Analysis of the IBA Guidelines on Party Representation" in Müller/Besson/Rigozzi (eds), *New Developments in International Commercial Arbitration 2014* (2014), p. 64.
- GEISINGER Elliott, SCHNEIDER Michael, DASSER Felix, *IBA Guidelines on Party Representation in International Arbitration: Comments and Recommendations by the Board of the Swiss Arbitration Association*, 4 April 2014, available at: http://www.arbitration-ch.org/pages/en/publications/conference-and-position-papers/index.html.

- KAUFMANN-KOHLER Gabrielle, RIGOZZI Antonio, *International Arbitration – Law and Practice in Switzerland* (Oxford 2015).

UAE

- Seema, Bono and Sami, Tannous, " International Arbitration 2015" [2015] International Comparative Legal Studies. (http://www.iclg.co.uk/practice-areas/international-arbitration-/international-arbitration-2015/united-arab-emirates).

IV. GENERAL REFERENCES

○ JUDICIAL CASE LAW

USA

- *In re Application of Republic of Ecuador*, 2011 WL 10618727, at *1 (N.D. Fla. Aug. 24, 2011).
- *Landmark Ventures, Inc. v. Insightec, Ltd.*, 63 F.Supp.3d 343, 348 and 352 (S.D.N.Y. 2014).
- *Les Telecommunications d'Haiti S.A.M. v. Cine*, 2014 WL 2655451, *2 (E.D.N.Y. 2014).
- *New Regency Prods., Inc. v. Nippon Herald Films, Inc*., 501 F.3d 1101 (9th Cir. 2007).

○ PUBLICATIONS

USA

- Armin Steinbach, *The Treatment of Confidential Information in WTO Dispute Settlement Proceedings*, 24 Am. Rev. Int'l Arb. 591, 591 (2013).
- Brian Cooper, *Ethics for Party Representatives in International Commercial Arbitration: Developing A Standard for Witness Preparation*, 22 Geo. J. Legal Ethics 779 (2009).
- Carol Chave, *Starting an International Commercial Arbitration: Using A Preliminary Hearing Letter*, February-April 2005, Disp. Resol. J. 88.
- Carolyn Lamm, Eckhard Hellbeck, Nikolaos Tsolakidis, Winter 2014, *International Arbitration in a Globalized World*, Disp. Resol. Mag.
- Catherine A. Rogers, *Fit and Function in Legal Ethics: Developing A Code of Conduct for International Arbitration*, 23 Mich. J. Int'l L. 341 (2002).
- Catherine A. Rogers, *Transparency in International Commercial Arbitration*, 54 U. Kan. L. Rev. 1301 (2006).
- Edna Sussman, Solomon Ebere, *All's Fair in Love and War-or Is It? Reflections on Ethical Standards for Counsel in International Arbitration*, 22 Am. Rev. Int'l Arb. 611 (2011).
- Elena V. Helmer, *International Commercial Arbitration: Americanized, "Civilized," or Harmonized?*, 19 Ohio St. J. on Disp. Resol. 35 (2003).
- Gabrielle Kaufmann-Kohler, *Globalization of Arbitral Procedure*, 36 Vand. J. Transnat'l L. 1313 (2003).
- Jack J. Coe, Jr., Margaret L. Moses, *The Principles and Practice of International Commercial Arbitration* (Cambridge Univ. Press 2008), 113 Penn St. L. Rev. 1369 (2009).

- James W. Constable, *International Commercial Arbitration*, July/August 2010, Md. B.J.
- John Beechey, *The ICDR Guidelines for Information Exchanges in International Arbitration: An Important Addition to the Arbitral Toolkit*, August-October 2008, Disp. Resol. J. 84.
- John M. Barkett et. al., *The Myth of Culture Clash in International Commercial Arbitration*, 5 FIU L. Rev. 1 (2009).
- Joshua B. Simmons, *Valuation in Investor-State Arbitration: Toward A More Exact Science*, 30 Berkeley J. Int'l L. 196 (2012).
- Kenneth Beale, Justin Lugar, Franz Schwarz, *Solving the S 1782 Puzzle: Bringing Certainty to the Debate over 28 U.S.C. S 1782's Application to International Arbitration*, 47 Stan. J. Int'l L. 51 (2011).
- Kristen M. Blankley, *Lying, Stealing, and Cheating: The Role of Arbitrators As Ethics Enforcers*, 52 U. Louisville L. Rev. 443 (2014).
- L. Tyrone Holt, Esquire, *Whither Arbitration? What Can Be Done to Improve Arbitration and Keep Out Litigation's Ill Effects*, 7 DePaul Bus. & Com. L.J. 455 (2009).
- M. McCary, *Bridging Ethical Borders: International Legal Ethics with an Islamic Perspective the Failure of A Lawyer Properly to Understand the Sense of Different Legal Concepts or to Adapt to Different Modes of Practice in Various* Places, 35 Tex. Int'l L.J. 289 (2000).
- Margaret L. Moses, *Ethics in International Arbitration: Traps for the Unwary*, 10 Loy. U. Chi. Int'l L. Rev. 73 (2012).
- Michael Black QC, Wendy Kennedy Venoit, George J. Pierson, Spring 2007, *Arbitration of Cross-Border Disputes*, Constr. Law.
- Nana Japaridze, *Fair Enough? Reconciling the Pursuit of Fairness and Justice with Preserving the Nature of International Commercial Arbitration*, 36 Hofstra L. Rev. 1415 (2008).
- Nathan M. Crystal & Francesca Giannoni-Crystal, *"One, No One and One Hundred Thousand" . . . Which Ethical Rule to Apply? Conflict of Ethical Rules in International Arbitration*, 32 Miss. C. L. Rev. 283 (2013).
- Pedro J. Martinez-Fraga, *Juridical Convergence in International Dispute Resolution: Developing A Substantive Principle of Transparency and Transnational Evidence Gathering*, 10 Loy. U. Chi. Int'l L. Rev. 37 (2012).
- Peter Ashford, *Rule Changes Affecting the International Arbitration Community*, 22 Am. Rev. Int'l Arb. 87 (2011).
- Pierre A. Karrer, *The Civil Law and Common Law Divide: An International Arbitrator Tells It Like He Sees It*, February-April 2008 Disp. Resol. J.
- Robert Donald Fischer & Roger S. Haydock, *International Commercial Disputes Drafting an Enforceable Arbitration Agreement*, 21 Wm. Mitchell L. Rev. 941 (1996).
- Shahla F. Ali, *The Morality of Conciliation: An Empirical Examination of Arbitrator "Role Moralities" in East Asia and the West*, 16 Harv. Negot. L. Rev. 1 (2011).
- Stavros L. Brekoulakis, International Arbitration Scholarship and the Concept of Arbitration Law, 36 Fordham Int'l L.J. 745 (2013).
- Stefanie Pfisterer, *The Arbitrator As Settlement Facilitator*, 24 Am. Rev. Int'l Arb. 649 (2013).
- Thomas J. Stipanowich & Zachary P. Ulrich, *Arbitration in Evolution: Current Practices and Perspectives of Experienced Commercial Arbitrators*, 25 Am. Rev. Int'l Arb. 395 (2014).

- Thomas J. Stipanowich, *Arbitration and Choice: Taking Charge of the "New Litigation" (Symposium Keynote Presentation)*, 7 DePaul Bus. & Com. L.J. 383 (2009).
- Thomas J. Stipanowich, *Reflections on the State and Future of Commercial Arbitration: Challenges, Opportunities, Proposals*, 25 Am. Rev. Int'l Arb. 297 (2014).

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