

A Guide to the IBA Rules on the Taking of Evidence in International Arbitration

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****Arbitration 104*** *A Guide to the IBA Rules on the Taking of Evidence in International Arbitration (the Guide)* is a comprehensive, clear and well-structured reference book for any international arbitration practitioner dealing with evidential matters. The authors and consultant editor have drawn upon their deep and diverse experience of civil and common law matters, and their extensive networks of global contacts, to bring together international perspectives on the IBA Rules and their practical application. This is invaluable because, although the IBA Rules have become the predominant guidance on evidentiary matters for parties conducting international arbitration, they are often used as an advisory source rather than as mandatory rules to be applied. The flexibility that this advisory role affords has no doubt contributed significantly to the widespread use of the IBA Rules but it has also led to variations in their application. Many readers will therefore benefit from the broad and multi-faceted approach of the Guide in commenting upon the IBA Rules.

The Guide starts by briefly explaining the provenance and historical development of the IBA Rules, from their first iteration in 1983, through the 1999 update and to the current, 2010, version. It explains the aims of those behind the IBA Rules in seeking to reconcile, in a practical and accessible form, the differing approaches of common and civil law systems, so as to provide "an efficient, economical and fair process for the taking of evidence" which could supplement any other applicable rules and laws. Although the reconciliation in the IBA Rules of the different international approaches to evidentiary matters has been performed by committees of distinguished practitioners from many jurisdictions and has been highly successful, it is not without controversy. Whilst it is doubted that the relatively recent Prague Rules on the Efficient Conduct of Proceedings in International Arbitration pose any real threat to the continued dominance of the IBA Rules, their genesis is in part due to concerns amongst some practitioners that the IBA Rules lean too far towards a common, rather than a civil, law approach, and perhaps front-load the collection and presentation of evidence more than some would like. A full understanding of the origins and objectives of the IBA Rules, as well as the solutions they provide, is therefore valuable, even though the latest version has now been in existence for almost a decade.

Having set the scene, the Guide then tracks the provisions of the IBA Rules, starting with their Preamble and Definitions, before dealing with the nine substantive Articles in turn. Some of the articles, such as art 3 concerning documentary evidence, will be very familiar to many arbitration practitioners. However, that familiarity is borne out of the widespread use of art 3-type procedures, such as Requests to Produce, and this also means that there is a correspondingly large body of experience for the Guide to analyse and convey. Even the most experienced practitioners are likely to find something of interest in the commentary on this article, which runs to over a hundred pages. Other articles may be less familiar territory, and the Guide provides a valuable resource for those who come across them or wish to explore the way that they address the relevant evidentiary issues.

The practical approach of the Guide is also reflected in its structure. In each case, the relevant text of the IBA Rules (for example, the whole of the article under consideration) is set out in full first. This is then followed by introductory comments before the IBA Rules are broken down into their respective sub-parts or sub-articles, which are then repeated and subjected to a detailed commentary. This methodical approach, although a little repetitive, ****Arbitration 105*** is perfect for the practitioner who wishes to dip into the book in relation to the specific article or sub-article of interest at any given time. Whilst it is possible that some students or arbitration enthusiasts may choose to read the book from cover to cover, this is primarily a book to be used as

reference material for understanding and guiding practice or making submissions in relation to particular evidentiary issues as they arise. Indeed, this is set to be a well-cited reference book and will no doubt provide ammunition for many procedural hearings in the coming years.

The practical utility of the Guide is further enhanced by its Appendices. The first Appendix is a commentary on the IBA Rules given by the 1999 IBA Working Party and 2010 IBA Rules of Evidence Review Subcommittee. This provides contemporaneous insights from those tasked with drafting the IBA Rules, their considerations and objectives when drafting the Rules. The remaining 11 Appendices are well-thought out roadmaps, checklists, samples, templates and tables. These are the product of the authors' many years of experience, both as counsel and as arbitrator, in the practical application of the Rules, and should prove very useful for practitioners who have not already developed a comprehensive set of their own precedents and wish to avoid having to "reinvent the wheel".

The IBA Rules are referred to in so many international arbitrations that this thorough reference book is likely to be a useful companion for many arbitration practitioners on a regular basis. I therefore have no hesitation in recommending the Guide as a valuable resource for any arbitration library.

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