

**BOOKS****IBA Rules of Evidence – Commentary on the IBA Rules on the Taking of Evidence in International Arbitration**

*Tobias Zuberbühler, Dieter Hofmann, Christian Oetiker, Thomas Rohner,*  
Schulthess/SELP, 2012, 299 pages, €128  
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**The IBA Rules on the Taking of Evidence in International Arbitration – A Guide**

*Peter Ashford,*  
Cambridge University Press, 2013, 189 pages, US \$130.00  
ISBN 978-1-10703-217-0

On 29 May 2010 the IBA Council adopted the newly re-drafted ‘IBA Rules on the Taking of Evidence in International Arbitration’ (IBA Rules). The IBA first set out its Rules of Evidence in 1983. They were last updated in 1999. The most recent modification was carried out by a committee under the joint chairmanship of Judith Gill QC and Guido Tawil. For the IBA Rules to apply, the parties have to adopt them. This is now very commonly done: parties often incorporate the Rules into their terms of reference and tribunals commonly incorporate them in their case management orders. Even when the Rules are not expressly adopted by the parties, they serve as a guide to tribunals as they set out the international norm.

Given that the IBA Rules are such a common feature of international arbitration, it is perhaps surprising that so far little work has been done explaining and analysing the Rules. This lacuna has been successfully filled by two commentaries on the Rules; one by Swiss practitioners and one by an English solicitor. It should be noted that both commentaries were commissioned by the publishers and they are not endorsed by the IBA or its Arbitration Committee.

*The IBA Rules of Evidence – Commentary on the IBA Rules on the Taking of Evidence in International Arbitration* (Schulthess/SELP, 2012) was written by four experienced Swiss lawyers practising in international arbitration law: Tobias Zuberbühler, Dieter Hofmann, Christian Oetiker and Thomas Rohner.

The structure of the book is logical and easy to follow. The chapters mirror the arrangement of the Rules starting with the preamble and definitions, followed by the nine substantive articles. Each chapter sets out the full text of the relevant article; this is followed by the analysis including any changes from the 1999 version of the Rules. The authors have further appended in the back of the book a comparison between the 1999 and the 2010 Rules set out in the familiar ‘Track Changes’ format.

The detailed commentary provided on the Rules is easy to follow and is well referenced. The authors provide a useful mixture of common sense practical guidance as well as consistently highlighting the differing views within the arbitration community. Key words in the text are emphasised by being printed in bold and this can quickly guide the reader to the paragraph germane to the issue at hand. Where relevant, the difference between civil law and common law approaches is set out. This serves as a useful reminder that the expectations of representatives from the two legal traditions may be fundamentally different. The book is particularly instructive on document production with a section dedicated to electronic documents. The authors also boldly explore the permissible limits of witness preparation in the context of international arbitration; a topic which no doubt will continue to provoke strong emotions in practitioners from different legal traditions.

The book highlights parallel requirements between the IBA Rules and other procedural rules and guidance, such as the ICC's report on *Techniques for Controlling Time and Costs in Arbitration* and the UNICITRAL *Notes on Organizing Arbitral Proceedings* – both of which are set out in full in the Appendices – as well as the ICC Rules and UNICITRA Model Law.

The book brings together Rules, commentary from the IBA Drafting Committee and academic writing on the Rules. It is not overly technical and is very easy to use. It will certainly serve as a useful reference book for both representatives and arbitrators.

*The IBA Rules on the Taking of Evidence in International Arbitration – A Guide* (Cambridge University Press, 2012) was written by Peter Ashford, an English solicitor and international arbitration partner at Fox Williams LLP. The book aims to provide practitioners with practical guidance on the Rules and this is successfully achieved in this well-researched and useful commentary.

The structure of the book is easy to follow and logical; the Rules are set out article by article (in bold), followed by the relevant IBA commentary (in italics) and then followed by a discussion of the relevant article. The discussion refers to potentially relevant provisions in the commonly used institutional rules, such as the Swiss Rules, ICSID Arbitration Rules, LCIA, AAA and so on. Further, a tabular view of the interaction between the IBA Rules and the major institutional rules is appended to the book.

The book exposes the Rules to detailed and, where there are practical implications, critical analysis. For example, the author highlights the Rules' silence on making interim orders as well as on how to deal with an irreconcilable conflict between the IBA Rules and the applicable institutional rules. The interplay between the substantive rules and the preamble is considered; there is an informative discussion on the meaning

and potential relevance of 'good faith' in the application of the Rules. The book refers to a number of decided cases; these are predominantly, but not solely, decisions of English Courts. The use of case law is always succinct, small extracts from judgments are quoted at times where they usefully expose a point, and in-depth academic discussions of decisions are avoided.

The book provides useful advice to both legal representatives and arbitrators; the author is throughout conscious that the arbitration process must satisfy both the interests of fairness and the 'promotion of efficiency, economy and conservation of resources'. For example, the advantages and disadvantages of some case management decisions are considered, such as when the parties' memorials and witness statements should be served. The book also succinctly deals with the difficult issues relating to document production in the international arbitration context: these include e-disclosure, specificity, modes of production, the standard of relevance and materiality.

This book will no doubt become a useful *vade mecum* for arbitration practitioners. It brings together the essential materials dealing with the taking of evidence as well as a clear, informed and focused discussion on the relevant principles.

**Richard Samuel and Daniel Tividar,**  
*3 Hare Court, London*