

Arbitration - Switzerland

New Rules on Evidence in International Arbitration

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Scope Use

On June 1 1999 Committee D (Arbitration and ADR) of the International Bar Association (IBA), under Chairman David W Rivkin, adopted a new version of its *Rules on the Taking of Evidence in International Commercial Arbitration*. The previous version dates back to 1983. The rules have now been printed in convenient booklet form. The rules can also be acquired from the IBA's web site at www.ibanet.org.

Scope

The rules apply when the parties have agreed - or the arbitral tribunal has decided - to apply them. The rules deal in particular with:

- the production of documents;
- witnesses (but not depositions);
- site inspection;
- evidentiary hearings; and
- the admissibility and assessment of evidence.

The rules reflect customary and sound practice and can be referred to safely.

Use

The rules can also be used as non-binding guidelines, although a lot of flexibility is already built into them. They can also be varied by experienced arbitrators who have their own preferences or wish to adjust them to fit a particular case. The rules are compatible with both the Anglo-American and the continental/civil law methods of conducting proceedings. The rules will usually be combined with the filing of written briefs by the parties, but do not require such briefs.

The rules are useful because they cover a large number of issues of which the parties' counsel might have differing expectations, especially when they come from other jurisdictions. It is also more convenient to refer to a set of rules with which everyone will be familiar, as opposed to learning, studying and evaluating in each arbitration case the different procedural rules devised by each individual arbitral tribunal.

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