

2020 Updated to the IBA Rules: Modest Changes for Challenges New and Old

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On February 15, 2021, the International Bar Association (IBA) released the long-awaited 2020 update to its highly influential Rules on the Taking of Evidence in International Arbitration (“IBA Rules”). Known for their flexibility and practical blend of common law and civil law traditions, the IBA Rules have come to reflect the most common practices in international arbitration proceedings over the past two decades. The 2020 update is important because, prior to the 2020 update, the IBA Rules had only been revised once, in 2010, after first being formalized in 1999. As a result, given the prevalence of the IBA Rules, the 2020 update is likely to remain the benchmark standard for international arbitration practice for the next decade.

Notwithstanding the significance of the 2020 update, the most recent revisions are by no means a complete overhaul of the prior 2010 version of the IBA Rules. Although the drafters incorporated some substantive changes intended to address recent trends in international arbitration practice, the 2020 update largely reflects a subtle attempt to clarify certain provisions of the IBA Rules. The degree to which the drafters resisted the temptation to include far more prescriptive guidelines is a recognition that international arbitration proceedings remain varied and that the need to protect party autonomy is of paramount significance to international arbitration practice.

This article introduces the most salient portions of the 2020 update to the IBA Rules and accompanying “Commentary on the revised text of the 2020 IBA Rules on the Taking of Evidence in International Arbitration”

(the “Commentary”)—a detailed guide prepared by the drafters of the IBA Rules that provides important context to the intent of the provisions. In doing so, the authors intend to provide some perspective and practical guidance about what these updates say about the current state of international arbitration and what they may mean for the practice in the coming years.

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