

ICC PUBLISHES GUIDE ON DISABILITY INCLUSION IN INTERNATIONAL ARBITRATION AND ADR

As a leading Disputes firm with a global reputation in International Arbitration (IA) and Alternative Dispute Resolution (ADR), we are delighted that the International Chamber of Commerce (ICC) has published its Guide on Disability Inclusion in International Arbitration and ADR¹ (the Guide).

This briefing outlines the Guide's scope and the impact we hope it will make in advancing the arbitration industry by adopting a more inclusive approach, which recognises the needs of parties, lawyers, and arbitrators.

The Guide

The Guide, published in October 2023, seeks to promote greater accommodation of those with disabilities in IA and ADR by encouraging a more inclusive approach. The Guide also identifies the benefits that diversity and inclusion bring to the decision-making process and provides guidance on how to achieve it.

By addressing various points, including these often-sensitive issues, it is hoped that the IA and ADR industries will be able to open their doors to a greater pool of talent resulting in even higher quality decisions and outcomes.

The publication is timely. A recent report by Cortext Capital² identified that whilst the arbitration industry is generally aware of the need for diversity and inclusion for race and age when looking to appoint arbitrators, many other characteristics including disability are generally not considered.

What does the Guide include?

The Guide is split into three sections, namely:-

1. Recommendations and disability inclusion toolkit;
2. Understanding disability; and
3. Disability inclusion in International Arbitration and ADR.

Section 1 Recommendations and disability inclusion toolkit

Section 1 includes a suggested CMC wording for use by the parties and also guidance for Tribunals when considering requests for making accommodations.

The section also contains a helpful list of recommendations focussed on the roles of the Tribunals, Practitioners, and Institutions, and how they might best address issues around the inclusion of those with disabilities.

Section 2 Understanding disability

An issue around understanding disability is the language associated with it. Section 2 seeks to overcome this by discussing the language used and focusses on the World Health Organisation's (WHO) 2001 International Classification of Functioning, Disability and Health (ICF), which has been adopted by all 191 WHO members, and which provides a standard linguistic and conceptual basis for the definition and measurement of disability.

The section also helpfully sets out the various and varying definitions of disability, including that used by the United Nation's Convention on Rights of Persons with Disabilities, which defines persons with disabilities as including "*those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.*"

¹ [2023 ICC-Guide-on-Disability-Inclusion-in-International-Arbitration-and-ADR-902.pdf \(iccwbo.org\)](#)

² [The Usual Suspects 2023 \(cortextcapital.org\)](#)

This is a welcome addition and will assist in the adoption of the correct terminology and provide confidence in an area where a fear of offending may lead to a tendency to avoid a discussion.

Section 3 Disability inclusion in International Arbitration and ADR

Section 3 differentiates between disabilities, which can be self-managed, and those in IA and ADR proceedings where the participants whether the party, legal team, or Tribunal need to take responsibility for making reasonable accommodations to enable participation by those with disabilities.

The section lists examples and references case studies where manageable accommodations can and have been made. For example, awareness of the access issues of a visually impaired participant in one matter led the Tribunal to relocate the hearing to enable their involvement.

The examples and practical steps taken are a helpful resource.

Conclusion

The Guide is to be welcomed in increasing awareness and understanding of the need for more inclusive practices and the benefits that will flow from us all making greater accommodations to enable a more diverse industry.

It encourages arbitral Tribunals, practitioners, and Institutions to take more responsibility for promoting training, and implementing policies that encourage an inclusive environment.

The Guide's recommendations, toolkit, and guidance are a helpful and valuable resource for practitioners, Institutions, and arbitrators.

We certainly hope that inclusive policies will become commonplace, and encourage a cultural shift embracing diversity and inclusion leading to full participation for all those interested in careers in IA and ADR.

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