



## RECENT ENGLISH DECISION QUESTIONS THE 2014 IBA GUIDELINES ON CONFLICTS OF INTEREST IN INTERNATIONAL ARBITRATION

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In 2014, the International Bar Association revised their Guidelines on Conflicts of Interest in International Arbitration (the "Guidelines"). Although the Guidelines are not binding, they are considered persuasive and are widely used in international arbitration. Despite their widespread use, the Guidelines have rarely been the subject of judicial scrutiny.

The Guidelines, however, were recently found at the forefront of an English decision, *W Limited v. M SDN BHD*, which considered a challenge to two arbitration awards issued by a sole arbitrator. The claimant challenged the award on the basis of the English Arbitration Act, which permits a challenge "on the grounds of serious irregularity affecting the tribunal, the proceedings or the award." In support of the challenge, Claimant cited to the Guidelines that provide, in pertinent part, that a non-waivable red list conflict exists where an arbitrator (or their firm) "regularly advises the party, or an affiliate of the party" and "derives significant financial income therefrom." An "affiliate" is broadly defined in the Guidelines as all companies in a group of companies.

The arbitrator was a partner at a law firm that provided services to a client company that had the same corporate parent as Respondent.

His firm, however, did not advise the parent company or the respondent's party, and there was no suggestion that he personally did work for the client company. Despite this, and relying upon the Guidelines' definition of "affiliate," Claimant argued that since the arbitrator's firm did work for a client company with the same parent company as Respondent, there was a conflict of interest.

After concluding that there would be no conflict under applicable English law, the court addressed Claimant's position under the Guidelines. Noting the "distinguished contribution" made by the Guidelines to issues of impartiality and independence, the Court took issue with the application of the term "affiliate." Specifically, the Court criticized the notion that an arbitrator could be disqualified where they were neither aware of, nor involved with, the advising of an affiliate of a party.

The Court also questioned the application of Guidelines insofar as there appear to be tensions between some of the General Standards. In Part 2(1), the Guidelines state that "[i]n all cases" it is "the General Standards should control the outcome" and General Standard (2)(d) maintains a "categorical position, not allowing for judgment by reference to the facts of the case." On the other hand, General Standard (6)(a) states that the relationship between an arbitration and a law firm "should be considered in each individual case," dispelling the idea that these are "catch-all rules."

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