INTERNATIONAL ASSOCIATION OF YOUNG LAWYERS

Ethics and Role of Counsel in International Arbitration

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1. Applicable Ethics Rules and Legal Status of Counsel

1.1 The legal profession in Latvia

In order to discuss the ethics rules that apply to the legal profession in Latvia, one must first realize that the local laws are extremely liberal in defining the range of persons who may be considered as part of it. Legal professionals in Latvia either belong to a regulated legal profession or work unregulated, and, as the naming may suggest, the former are subject to a number of statutory obligations and professional oversight and the latter are not.

1.1.1 Regulated legal professions

Judges, sworn advocates, prosecutors, notaries, and bailiffs (as well as their professional assistants) make up the five regulated legal professions in Latvia. Members of these professions symbolically affirm their association to the judiciary[1] by swearing an oath, and they are commonly referred to as the "sworn professions".

Considering the aim of this research, this section will focus on the ethics rules that govern the members of the one regulated profession that is routinely expected to act as counsel in arbitration – the *sworn advocates* (hereinafter also "attorneys").

The conduct of attorneys in Latvia is primarily regulated by:

1. Advocacy Law of the Republic of Latvia[2]
2. Code of Ethics of Latvia's Sworn Advocates[3]
3. Statutes of the Latvian Collegium of Sworn Advocates[4]
4. Cabinet of Ministers regulations "Sworn Advocates' Examination Procedure"[5]

Advocacy in Latvia is characterized by professionalism, a certain qualification, professional independence, as well as an increased level of responsibility towards the client and the legal system itself. The Advocacy Law defines attorneys' practice as an intellectual endeavor without the goal of profit. An attorney is subject to the profession's ethics rules at all times, especially while conducting professional activities, whether it be in national courts or international arbitration.

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[1] Law on Judicial Power, a law of the Republic of Latvia, January 1, 1993

[2] Advocacy Law, a law of the Republic of Latvia, August 19, 1993

[3] Code of Ethics of Latvia's Sworn Advocates, adopted in the general meeting of sworn advocates of May 21, 1993, available at http://www.advokatura.lv/?open=eng&it=etika&lang=eng

[4] Statutes of the Latvian Collegium of Sworn Advocates, adopted in the general meeting of sworn advocates of May 21, 1993, available at http://www.advokatura.lv/?open=eng&it=statutes&lang=eng

[5] Cabinet of Ministers regulations No. 227 "Sworn Advocates' Examination Procedure", executive regulations of the Republic of Latvia, March 10, 2009

The Code of Ethics contains explicit wording on this matter, equaling an attorneys' obligations towards arbitrators to those towards courts.

Entry into the profession requires a person to pass an examination and meet certain criteria, e.g. attorneys must have an impeccable reputation.

The Code of Ethics, adopted by the Collegium of Sworn Advocates (the bar association of Latvia) in 1993, is the primary source of ethics rules for Latvian attorneys and is based on the IBA International Code of Ethics. In Latvia, attorneys are not subject to any privately issued professional regulations or ethics codes because the law requires them to act independently, subject only to law and the regulations of the Collegium.

Under Latvian law, attorneys practice either independently or together with other attorneys. This requirement means that attorneys generally cannot work as in-house counsel, requiring suspension of their Collegium membership to do so. However, it may be argued that the rules of the profession would effectively continue to apply during such suspension, as violations may make it impossible to meet the reputation requirements when seeking reinstatement.

1.1.2 Unregulated legal professions

Apart from the five regulated professions, all other legal professions, which also cover all in-house counsel, are considered unregulated – the conduct and ethics of these legal professionals is not subject to any specific statutory regulation and is bound only to law in general, the client's interests, and the specific rules that may apply in certain environments.

Currently, with certain exceptions that will be discussed below, any person may practice law in Latvia regardless of their qualifications or background. It would be fair to say that client representation and legal services are fields that are "market-regulated" since anybody may serve as a representative in civil litigation (first and appellate instances),[6] administrative proceedings[7] and the Constitutional Court,[8] unless the person meets certain statutory exclusion criteria.[9] Similarly, unless prevented by contractual reasons or by the rules of the particular arbitral tribunal, non-attorneys may freely act as counsel in arbitration proceedings under Latvian law.

Exceptions from this, or attorney monopoly areas, are criminal defense[10] and representation in the cassation instance in civil cases. Even the latter exception

[6] Civil Procedure Law, a law of the Republic of Latvia, March 1, 1999

[7] Administrative Procedure Law, a law of the Republic of Latvia, February 1, 2004

[8] Constitutional Court Law, a law of the Republic of Latvia, June 28, 1996

[9] These criteria are listed in the Civil Procedure Law and the Administrative Procedure Law

[10] Criminal Procedure Law, a law of the Republic of Latvia, October 1, 2005

has a very brief history – the Latvian parliament enacted it in October 31, 2002,[11] but an individual complaint was brought to the Constitutional Court, which ruled the exception unconstitutional and in violation of the constitutional right to fair trial.[12] After implementing changes in the state legal aid system and passing measures aimed at reducing the duration of court proceedings, the parliament adopted the civil cassation exception again in 2014.[13]

A few advantages that the law grants to attorneys are not available to non-attorney legal professionals, such as the broader rights to obtain information from various institutions or the fact that attorneys' invoices have the power of writs of execution, but non-attorneys are, in turn, not bound to the professional standards and ethics rules of the bar.

Latvian legal professionals sometimes form voluntary professional associations, which may, in theory, introduce their own ethics codes for their members.[14] However, such associations are rarely concerned with regulating the profession or introducing and enforcing ethics standards, instead serving as means of exchanging information, networking, and practical cooperation. Participation in these organizations is voluntary, therefore their overall role and significance is negligible in the context of this report.

1.2 Competent authorities and remedies

1.2.1 Attorneys

All attorneys who practice in Latvia are professionally associated through the Latvian Collegium of Sworn Advocates (hereinafter also "Collegium") – the Latvian bar association – an autonomous public law body operating under the Advocacy Law. The Collegium comprises multiple institutions, three of which are of interest in the context of this report: the Latvian Council of Sworn Advocates (hereinafter also "Council"), the Disciplinary Commission and the Ethics Commission. Members of these bodies are drawn from the ranks of the Collegium itself by general vote.

1. The Ethics Commission reviews complaints about possible ethics violations by attorneys and provides opinions on various ethics issues of the profession. Decisions of the Ethics Commission can be seen as a moral assessment, and they have no legal force.
2. The Council's competence includes supervision of attorneys' professional activity, suspension or disbarment of attorneys, review of complaints, as well as initiation of disciplinary action if the attorney's

[11] Amendments to the Civil Procedure Law, a law of the Republic of Latvia, January 1, 2003

[12] Ruling of the Constitutional Court of the Republic of Latvia, case No. 2003-04-01, June 27, 2003

[13] Amendments to the Civil Procedure Law, a law of the Republic of Latvia, January 1, 2013

[14] See e.g. http://www.ljb.lv/; http://juristiem.wordpress.com/

conduct warrants it. The council may also choose not to initiate disciplinary proceedings and refer the issue to the Ethics Commission instead. Decisions of the Council may be appealed to the administrative court.

3. The Disciplinary Commission is the body that imposes disciplinary penalties on attorneys for violations in professional conduct or ethics.

Complaints about the conduct of attorneys may be submitted to the Council or the Ethics Commission by:

- Court, if the attorney repeatedly disrupts proceedings;
- Any individual or entity, including the opposing party;
- Any attorney.[15]

The consequences of violations are not limited to disciplinary penalties – an attorney may additionally face civil, administrative, and criminal liability, as determined by the respective court.

The following disciplinary penalties may be imposed on attorneys:

- Reproof and reprimand;
- Prohibition on practice in a certain area for up to three years;
- Suspension for up to one year;
- Disbarment.

The penalty of disbarment is possible for:

- Deliberate violation of law;
- Gross violation of the Code of Ethics;
- Repeat disciplinary punishment;
- Failure to fulfill obligations imposed as disciplinary punishment.

To contrast with the IBA Guidelines articles 26 and 27, neither in general court proceedings nor in arbitral settings does Latvian law provide any special remedies for attorney misconduct, even the bill that is to become the new Arbitration Law[16] contains no provisions granting similar rights to arbitrators as envisaged by the IBA Guidelines.

An important difference is the prevailing view that an arbitrator is not competent to touch on matters associated with the representation of parties. In cases where a

[15] Disciplinary action is frequently initiated following complaints of other attorneys, see *Tiesnešu un advokātu profesionālā ētika, uzvedība un atbildība*, speech by A. Guļāns, former chairman of the Supreme Court, available at http://at.gov.lv/files/uploads/files/docs/conferences/Gulana%20runa%20ASV%20konference.doc

[16] Arbitration Law, a draft law of the republic of Latvia, edition of November 12, 2013

party suffers due to its attorney's misconduct, it is seen as the party's own fault for choosing inadequate counsel. Remedies are available only outside of the respective proceedings, i.e. by filing a complaint with the Council or by general litigation.

Rulings of the Disciplinary Commission are not publicly available; therefore an analysis of how they correspond to or rely on the IBA Guidelines is not possible.

1.2.2 Non-attorneys

Since no specific regulations are in place for the conduct of non-attorney legal professionals, there are no specific oversight institutions either. These individuals are still subject to the general procedural regulations, such as the penalties for disrupting civil proceedings that are provided by the Civil Procedure Law, but no procedural sanctions are available for general ethics violations.

However, despite the lack of oversight, the legal services market in Latvia is somewhat self-regulating. The small scope of the market means that competition is stiff, and a poor reputation may spell the end of a lawyer's career. Furthermore, non-attorneys may desire to be admitted to the bar in the future for multiple reasons, such as the prestige and visibility of the profession or the procedural advantages that it offers. As stated above, the Collegium evaluates the reputation and character of new applicants. This criterion has received increasing attention recently, and a history of professional misconduct is sufficient grounds for rejecting a candidate.

2. Background of Latvia's Arbitration Regulations

A deep distrust has formed in the Latvian public towards local arbitral tribunals. There is unwillingness to use the advantages of the often much quicker dispute resolution method of arbitration due to concerns about the impartiality of arbitrators.

To offer some background for such concerns – the establishment of permanent arbitral tribunals under Latvian law is a simple process, less involved than even registering an LLC, and over 200 are currently in place.[17] Where the disputing parties have entrusted the selection of arbitrators to a permanent arbitral tribunal, it does so in accordance with its rules, which is created and may be amended by the tribunal's founders.

Until 2013, the law was equally liberal on the selection of potential arbitrators – the only requirements were their legal capacity and consent. Essentially, until very recently, individuals with no relevant background or knowledge, or, for a more colorful example – repeat felons, could possibly be appointed to decide on a

[17] 214 permanent arbitral tribunals were registered with the Registry of Enterprises of the Republic of Latvia at the time of writing. List of registered tribunals is available at http://www.ur.gov.lv/skirejtiesas.html

dispute by what essentially amounted to the managers of a private business. While such a situation is difficult to imagine in environments where careful scrutiny of contracts and exercise of due diligence is the norm, one must understand that historically the two post-Soviet decades have been a formative and very troubled time in Latvia's legal system. Lack of legal knowledge, unsafe business practices, abuse of trust or simple bribery were some of the causes that could lead the early private businesses into being at the mercy of a biased judge, provided that the bias remained undetected.

With a history of mishandled cases, arbitral tribunals are still often viewed as less of an impartial mediator and more of a vehicle for fraud. International businesses do recognize the value of a carefully selected and reputable arbitrator in dispute resolution, because it allows them to bypass the otherwise lengthy process in Latvian courts (routinely requiring up to five years with a full course of appeals), but arbitration abroad is still preferred for more important matters.

The problem has received recognition, as evidenced by the aforementioned changes in regulations concerning arbitrators, and the Ministry of Justice is – at the time of writing – working on a draft law, that will specifically regulate arbitration proceedings in Latvia,[18] introducing reforms in the current model. The law is being designed based on observations of the current process in action and seeks inspiration in the 1985 UNCITRAL Model Law on International Commercial Arbitration.[19] One of the goals set for the bill is the reduction in number of permanent arbitral tribunals by setting much stricter requirements for their formation[20] – a move that may eliminate many "pocket" tribunals and improve the otherwise tarnished reputation of arbitration as means of dispute resolution.

3. Ethics and Procedure of Arbitration under Latvian Law

3.1 Remuneration of counsel and third party funding

Latvian law does not set any hard limits on the fee amounts of attorneys or other legal service providers. The law does attempt to establish a soft limit for attorneys in civil litigation in national courts by setting the maximum recoverable legal fees as a percentage of the total award – this causes the client to act as the regulating factor. No fee recovery is possible for the services of non-attorney representatives in national courts, therefore this does not apply to unregulated legal professions.

While result-oriented bonuses are acceptable, the use of ordinary success fees is prohibited for attorneys, both in national courts and arbitration, but is possible

[18] Arbitration Law, a draft law of the Republic of Latvia, edition of November 12, 2013

[19] UNCITRAL Model Law on International Commercial Arbitration, United Nations Commission on International Trade Law, 1985

[20] Annotation to the Arbitration Law, a draft law of the Republic of Latvia, edition of November 12, 2013 available at http://www.mk.gov.lv/doc/2005/TMAnot_121113_skirejties.1311.doc

with non-attorney counsel. The prohibition for attorneys does not stem from any specific wording in law, but is instead understood to arise from the requirement for the attorney's fee to be clearly stated to the client when entering into an agreement for legal assistance. This is further reinforced by the principle established by the Advocacy Law that the objective of attorneys' work is not the gain of profit but intellectual pursuits, and therefore the fee may only serve as a compensation for the attorney's time and skills invested.

3.1.1 Third party funding

The source of litigation financing has never been viewed as in issue of legal ethics in Latvia. Accordingly, there are no relevant regulations in place and litigants may freely use funding from any source.

The lack of attention to this matter may be explained by the fact that the prohibition on success fees in attorney remuneration would make the business of specialized litigation lending unpredictably high-risk. For this reason, and also due to the fact that litigation costs in Latvia are comparatively low in the global context, specialized lending businesses are unknown. The same reasons also cause general lending institutions to be unwilling to allow borrowing for litigation purposes under normal collateral terms. Frivolous lawsuits, which could be enabled by funding from interested parties acting in bad faith, are explicitly prohibited.

3.2 Conflicts of interest

In Latvia, there are no generally accepted and used tests for determining whether an attorney is in conflict of interest. However, Section 65 of the Advocacy Law prohibits an attorney to advise or acknowledge authorization from two opposing parties in a single case, and an attorney may not, again within a single case, switch from the side of one party to the other. Parties are considered opposing if they have conflicting interests in the particular case. Accordingly, the criteria are:

1. Whether the attorney advises or acknowledges the authorization of two opposing parties; or
2. Whether the attorney has switched from the side of one party to the other within a single case; and
3. Whether the clients have conflicting interests (with an exception in out-of-court settings, including arbitration, with the client's consent).

The notable detail in these criteria is that they limit the "range of conflict" to a single case (under broader interpretation in the context of the regulations for civil proceedings, this also includes related cases). An attorney is expected and required to maintain independence from any particular client and be able to fairly work on further cases without misusing privileged knowledge. Conflicts of interest may be permissible in out-of-court settings, including arbitration, if the attorney obtains the client's consent.

The remedies available to clients against conflict of interest situations in arbitration under Latvian law if non-attorney counsel is used are either requesting the arbitrator to recuse from the case or engaging the services of a different representative. As a last resort, unlawfully granted arbitral awards may still be rejected when presented to a national court for obtaining a writ of execution.

A lower conflict threshold is set for arbitrators – before appointment, they must disclose to the parties their knowledge of any circumstances that may cast a reasonable doubt on the impartiality and independence of the process, and both parties may then decide whether to accept the candidate. The new Arbitration Law will also define a range of association types that will automatically be considered as causing the potential arbitrator to be in conflict of interest, such as association by participation in an earlier case as a representative, expert or witness for one of the parties, as well as broad links for association by birth, business or employment.

While these criteria may make it appear that Latvian law allows for extensive operation in "grey" conflict of interest conditions, it must be kept in mind that Latvian legal services market is very concentrated. An attorney may, over the course of the career, have accumulated enough clients, who themselves work in a similarly concentrated market, that it is inevitable that some clients will eventually develop conflicting interests, or perhaps a certain narrow field of national law may have an insufficient number of attorneys specializing in it. Conflict of interest standards such as those in CCBE documents could prove unworkable in Latvia simply due to the country's low population. Similarly, Chinese walls, while spoken of favorably in academic circles, would find little use in the comparatively small firms that operate in the country.

3.3 Communication with opposing party / (prospective) arbitral tribunal

As outlined above, attorneys are prohibited from advising opposing parties and switching from one party to the other within a single or related case. Accordingly, to determine whether communication to the opposing party may serve as grounds for disciplinary action against the attorney, it must be understood whether the communication actually relates to the issue at hand. Communication that does not violate privilege in the particular case is acceptable, while legal advice/assistance to the opposing party in a case with conflicting interests would be punishable.

Non-attorney legal professionals, again, do not have specific regulations restricting their communications, but may still be subject to damages claims from their clients if a link can be established between the communication and the consequences.

Specific regulations are not provided for ex-parte communications, but this lack is compensated somewhat by strict impartiality requirements for both judges in national courts and arbitrators in arbitral tribunals operating under Latvian law. Parties may either initially reject an arbitrator with a known bias or, if a bias or

association is discovered later, they may demand that the arbitrator recuse from the case.

The threshold for such bias or association is low – both the current regulations and the draft Arbitration Law require only the existence of any circumstances that can cast a reasonable doubt on the impartiality or independence of the arbitrator. Ex-parte communications are therefore sufficient grounds for demanding recusal unless it can be proven that the communication is unrelated. Difficulties may arise in cases with a single arbitrator in ad-hoc arbitration, because in such situation the law leaves recusal at the arbitrator's own discretion (unless the parties are in agreement on this point). To safeguard against misconduct and procedural violations, there is a requirement for all arbitral awards to be approved by national courts before they can be enforced in Latvia.

3.4 Integrity and Contact with Witnesses / Experts

Under Latvian law, the basic procedural principle of dispute resolution, both in national courts and in arbitration, is that a competition takes place between the parties, each attempting to disprove the other's claims and substantiate their own. Clients expect counsel to represent their case in the most advantageous way possible, and the competition may subject counsel to pressure to overlook elements of the case that advance the client's position but are in some way faulty, incomplete or untrue.

A core principle of the Code of Ethics is that attorneys must at all times conduct themselves in a just and honest way. Attorneys are further required to refrain from actions that could damage the reputation of the profession or cast doubt on their honesty or sense of justice.

Both attorneys and non-attorney counsel may communicate with both witnesses and experts and offer assistance with preparation of statements, and it is up to the approached persons themselves to decide whether to accept it.

In general jurisdiction courts, the influencing of statements is prevented by attaching criminal liability to the provision of knowingly false statements, expert opinions or other evidence, as well as for inducing such actions (but not for mere failure to report if it has not been promised in advance). Furthermore, if such influence were to come from an attorney, it would also be considered a gross violation of the principle of personal honesty, established by the Code of Ethics, and could lead to disciplinary action.

The truthfulness of statements provided to arbitral tribunals, however, do not enjoy a similar protection. Latvia's Criminal Law enumerates the types of institutions and authorities, the knowing provision of false evidence to which is a criminal offence, listing pre-trial criminal proceedings, general jurisdiction and administrative courts, notaries and bailiffs – and excluding arbitral tribunals. Again, remedy against misconduct here is available at the approval stage for arbitral awards.

While witnesses are often used in national courts, both the current arbitration regulations and the draft Arbitration Law disallow the use of witness testimonies as evidence in arbitral proceedings. Statements may, however, be submitted in writing and are then treated the same way as other written evidence.

Expert opinions that have been produced outside of the particular arbitral proceedings, i.e. commissioned by one of the parties or of an unrelated origin, are treated as other written evidence as well. For an expert opinion to be considered as such, it must be produced as part of the proceedings by an arbitrator-appointed expert. Again, submission of a knowingly false expert opinion to an arbitral tribunal does not lead to criminal liability, but an attorney assisting or inducing it would be violating the rules of the Code of Ethics.

In general, a lawyer's assistance to witnesses and experts is not viewed as necessary and may lead to suspicion of influence. The questions posed to experts and witnesses are intended to clarify certain factual or technical points that the parties and their advisors are otherwise incompetent to speak on. No legal input required for responses to such questions, and it is considered advantageous to withhold it for the sake of preserving the appearance of impartiality, which may be as important as the impartiality itself.

3.5 Liability of counsel

The primary condition that is examined when assessing the liability of counsel is whether the counsel is directly at fault for the losses suffered by the client. This allows dissatisfied clients to launch claims for losses caused both intentionally and through gross negligence – by poorly prepared cases, failing to submit material evidence, deliberate acts against the client's interests, etc.

However, only attorneys are liable towards their clients for ethics violations, as such liability is provided by law. Non-attorney counsel only bear the basic level of liability that is set for civil authorization contracts, and clients are able to claim compensation for the losses caused but must fulfill all the evidentiary preconditions that are set for such claims. Exceptions are made in cases where the agreement with the client stipulates different liability terms for the counsel.

Third party liability insurance is commonly used by attorneys in Latvia. While the law does not set a minimum or even strictly require it, instead just referring to the possibility of its use, attorneys must inform their clients if they work uninsured. Again, this requirement does not apply to non-attorney counsel, but similar policies are available. The practice varies on a case-to-case basis, but all larger firms can be assumed to maintain a reasonable insurance cover.

4. Comparison between the local ethics rules and the IBA Guidelines on party representation in international arbitration

There are significant differences in the approach to arbitration regulations between Latvian law and the IBA Guidelines, explained by the notion that each of

these sources strives to secure different goals. Namely, the national regulations treat the client-counsel relationship as a fully private matter and attempts to avoid influencing them, leaving decisions associated with representation of interests and rights at the discretion of the client. This attitude is based on three core principles of the Latvian civil process:

1. Principle of competition
2. Principle of party equality
3. Principle of party disposition

Of these, the principle of party disposition reveals the essence of the Latvian approach to the civil process best – it carries the idea that each party may freely choose whether or not to bring its claim, the amount to be claimed, the procedural tools to be used etc.[21] The judiciary may interfere with these freedoms only in specific cases that are explicitly defined by law, and only to ensure fairness.

It is the principle of party disposition that also leaves the selection of professional counsel at the discretion of the parties themselves, and, if it is discovered that the counsel acts against the party's interests, it is the interest and the ability of the particular party alone to decide whether and how to replace the counsel.

Interference by courts/arbitral tribunals with the selection of counsel disrupts the principle of party disposition, which may in turn lead to the disruption of the next most important principles – competition and party equality. The issue is – why should the court or tribunal concern itself with the representation matters of a particular party? It is understood in Latvia that the aim of the court is to deliver an impartial and just judgment, while it is solely the interest of the parties to present their case to the best of their ability in order to receive a favorable judgment.

Meanwhile, the IBA regulations are based on considerations of fairness, supporting the view that the arbitral tribunal should be a supervisory body that ensures that party representatives do not act in bad faith. The approach of the IBA Guidelines is quite unlike the national regulations and could prove to be difficult to implement with the currently accepted understanding of process in nearest future.

The differences are particularly visible in the issue of exclusion of representatives/recusal of arbitrators in conflicts of interest. Under local regulations, it would be unthinkable for the tribunal to demand that a party representative step down due to a conflict of interest with an arbitrator – Latvian law recognizes only recusal of arbitrators. The principle of party disposition requires that a party be always free to choose a suitable representative solely on its

[21] See the ruling of the Supreme Court of the Republic of Latvia in case No. SKC-1627/2012 of October 17, 2012 and the ruling of the Constitutional Court of the Republic of Latvia in the case No. 2009-133-0106 of October 6, 2010

own terms. If the chosen representative is in a conflict of interest situation with the arbitrator, it would be the arbitrator who would have to recuse from the case because it is the arbitrator who is expected to be absolutely impartial and independent.

Section 501 of Latvian Civil Procedure Law explicitly states that arbitrators are obligated to disclose to the parties any circumstances that may cast a reasonable doubt on the impartiality and independence of the arbitrator. The "any circumstances" wording included in the national regulations is even broader than provided by IBA Guideline 5.

Unlike the IBA Guidelines, the national law is silent on the issue of ex-parte communication. It may be inferred that such communication is a potential indication of the arbitrator being less than impartial, thus triggering the "any circumstances" condition, which leads to the conclusion that ex-parte communication is not permitted by national law if a party does not believe and can prove the arbitrator's impartiality in given circumstances. The same approach is also used in regard to contact with prospective arbitrator, i.e. it is solely the duty of the arbitrators to ensure that noting in their conduct indicates a bias.

Another significant difference between the national law and the IBA Guidelines is in the treatment of witness/expert liability. While the IBA Guidelines place a level of responsibility for the truthfulness of witness/expert statements with the relevant party representative, under Latvian law, witnesses and experts bear the full responsibility themselves.

The IBA Guidelines also rely on procedural remedies to enable the arbitrator to assist a party whose representative acts in bad faith, resolving issues during the course of the arbitration to ensure that both parties have an equal chance to present their case in the best possible way. This contrasts with the national approach of attempting to penalize misconduct outside of the framework of the particular case without influencing the proceedings.

This distinction may actually be the best illustration of the differences between the two sources of arbitration regulations – in Latvia, the law emphasizes the individual responsibility of each participant of the proceedings, with parties being allowed full discretion in deciding whether or not their representatives conduct themselves in an acceptable manner.