
International Bar Association Council Resolution on the IBA Practical Guide on Business And Human Rights for Business Lawyers

The Council of the International Bar Association (IBA),

Recalling that the IBA is the ‘global voice of the legal profession’, and that providing guidance for Bar Associations (Associations), Law Societies (Societies) and individual members of the legal profession (Members) on United Nations instruments that may impact on the legal profession, among others, is critical to the IBA’s objectives, as stipulated in Articles 1.2, 1.3, 1.5 and 1.7 of the IBA Constitution.

Respecting the IBA’s collaborative relationship with Associations, Societies and Members, and that those Associations have primary responsibility as rule-making and regulatory bodies for the profession in their respective jurisdictions.

Noting that the UN’s Human Rights Council in 2011 unanimously endorsed the United Nations Guiding Principles (UNGPs) after almost six years of research and review of internationally accepted standards on human rights, and global consultation.

Noting further that states, civil society organisations and the private sector increasingly support the UNGPs as the authoritative global standard for preventing and addressing the risk of adverse impacts on human rights by businesses.

Recognising that it is important for lawyers to understand how the UNGPs may affect their clients' activities and those of lawyers.

Recognising that the protection of human rights and fundamental freedoms to which all persons are entitled requires that all persons have effective access to legal services provided by an independent legal profession.

Recognising that according to Principle 18 of UN's 1990 Basic Principles on the Role of Lawyers, 'lawyers shall not be identified with their clients' or their clients' causes as a result of discharging their functions', thereby stressing the need for lawyers to adhere to their principal duty of providing independent legal advice and supporting a robust legal defence even for clients allegedly engaged in conduct that violates human rights.

Recognising that professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from improper restrictions, and providing legal services to all in need of them.

Recognising that neither the UNGPs nor the Practical Guide are intended to override the professional standards of any jurisdiction or to prescribe any of the factors that lawyers may or may not consider as independent professionals.

Recognising that all persons are entitled to call upon the assistance of a lawyer of their choice to protect their rights and to defend them.

In this context the IBA, after consultation with various representatives of Associations, Societies and Members at the 2013 Annual Conference in Boston, formed the IBA Business and Human Rights Working Group (Working Group), and that the Working Group, with the assistance of the then IBA Legal Projects Team (LPT), presented draft versions of the IBA Business and Human Rights Guidance for Bar Associations (Guidance for Bar Associations) and the IBA Business and Human Rights Practical Guide for Business Lawyers (Practical Guide) (at that stage as one document), at the IBA Annual Conference in Tokyo in October 2014.

Appreciating further that during 2015 the Working Group and the IBA Legal Policy and Research Unit (IBA LPRU) (the former LPT) sought and received comments from various IBA committees, as well as from Associations, Societies and Members among others, including three in-country consultations with the collaboration of the Associations of Spain, Costa Rica and Namibia, and that based the consultations and comments received have revised the document, and finalised the Guidance for Bar Associations.

Noting the IBA Council approved the Guidance for Bar Associations at the IBA's Annual Conference in Vienna on 8 October 2015 and *reflecting* on the existing IBA guidance documents, such as the IBA International Principles on Conduct for the Legal Profession approved on 28 May 2011.

Noting further that in approving the Guidance for Bar Associations, the IBA Council agreed to undertake further work on the Practical Guide with a view to it being presented to the Council for approval at its mid-year meeting in Barcelona in May 2016.

Noting that since the IBA Council approved the Guidance for Bar Associations, final rounds of consultations were undertaken, and the IBA LPRU held meetings and discussions with the BIC's Closed Policy Committee and the Working Group, the parties then agreed the final language for the Practical Guide for Business Lawyers.

Noting that the Working Group, in collaboration with the IBA LPRU, is preparing a Reference Annex, which, consistent with the principles of the Practical Guide, will provide further detail and information on the various provisions of the Practical Guide and which will remain as a living document for future reference and assistance for legal professionals. The Reference Annex is not intended to become an IBA Policy; as such, it was neither reviewed nor commented by the Policy Committee and is therefore not submitted to the Council for approval,

Now therefore resolves that:

1. The Council approves the Practical Guide for Business Lawyers; and
2. The Council thanks the Working Group and the IBA LPRU for their excellent collaboration with the Closed Policy Committee on the production of the Practical Guide for Business Lawyers.
3. The Council confirms that, in line with the provisions of the UN Basic Principles on the Role of Lawyers as resolved by the UN General Assembly in its 'Human rights in the administration of justice' resolution of 18 December 1990 (Basic Principles), nothing in the IBA Business and Human Rights Guidance for Bar Associations or in the IBA Practical Guide for Business Lawyers shall be interpreted as reducing respect for the fundamental human right of effective access to legal services provided by an independent legal profession to all in need of such services, including that all lawyers should always be able to fulfil their duties and responsibilities and enjoy the guarantees provided for by the Basic Principles, consistent with their legal and professional responsibilities.
4. The Council understands that the Reference Annex and any amendment thereof will be published as a commentary to the Practical Guide issued by the Working Group in collaboration with the IBA LPRU (as its own position) and shall be consistent with the general principles contained in the Practical Guide, as approved on 28 May 2016 by the Council.