IBA Arbitration Committee - Investment Arbitration Subcommittee: "The Report and Recommendations on Third-Party Participation in Investment Arbitration"

The IBA Investment Arbitration Subcommittee's March 2026 report, "Report and Recommendations on Third-Party Participation in Investment Arbitration," addresses an increasingly common feature of investor–state dispute settlement, third-party participation ("TPP"); for the report's purposes, TPP includes both participation by non-parties seeking to intervene as amicus curiae and participation by non-disputing treaty parties ("NDTPs"). TPP is viewed differently across the arbitration community: supporters associate it with legitimacy, transparency, public-interest input and assistance to tribunals, while critics point to possible conflicts, confidentiality concerns, cost and delay, political interference and pressure on party consent. The report deliberately does not take a position on that debate; instead, it proceeds from the more practical premise that TPP exists, is being used more frequently, and has been treated inconsistently by investment tribunals.

The report's empirical review—based on available data collected through 11 December 2024 and subject to the stated possibility of a margin of error—identifies 212 TPP applications in 135 investment arbitrations, with 179 applications (approximately 84.4%) made in ICSID proceedings. In that empirical section, the report uses "TPP applications" to mean amicus curiae applications, while also considering annulment proceedings where relevant. The data suggests a marked increase over time, including an approximate annual increase of 17% since 2000 and growth of more than 300% in applications in ICSID annulment proceedings since the first reported such application in 2014. The report also records a diverse group of known applicants, including non-governmental organizations ("NGOs"), supranational bodies, sovereigns, Indigenous communities, corporate entities, professional associations, private organizations and individuals, while noting that NGOs comprise about 54% of applicants by identity and that the European Commission accounts for almost half of the total number of applications. Of the known outcomes, the report identifies 121 grants—including 111 full grants and 10 partial grants—and 57 denials, supporting its conclusion that TPP has become a regular feature of investment arbitration without implying uniform acceptance in every case.

The report's analysis of current practice identifies areas where procedural architecture has developed but remains uneven. The rules examined generally contemplate a process for amicus submissions involving an application for leave, party observations, a tribunal decision and, if leave is granted, a written submission subject to conditions imposed by the tribunal. NDTP participation is treated separately because many investment agreements and rules allow treaty parties to participate as of right on questions of treaty interpretation, although some frameworks permit broader submissions within the scope of the dispute and subject to tribunal control. The report identifies divergences in disclosure requirements, party consent and consultation, ex officio invitations, the meaning of a "distinct perspective" and "significant interest," and procedural safeguards such as timing, costs and access to documents. It also observes that tribunals and ad hoc committees vary in how they address admitted amicus submissions in their decisions, and raises that issue for consideration without making a recommendation on it.

Against that background, the report's recommendations are measured and practical rather than prescriptive of any single policy view on TPP. It recommends that tribunals and ad hoc committees require disclosure of an applicant's identity, ownership, control, funding or assistance for the submission, and affiliations or links with disputing parties, while also inviting party comments on applications and any ex officio invitation for TPP. It further suggests that, when considering whether a third-party applicant may assist on a matter within the scope of the dispute, tribunals may consider the applicant's expertise or unique perspective, and should assess significant interest by reference to a direct stake, mandate-based connection or unique and compelling interest in the legal principles at issue. Finally, it recommends clearer timetables and, absent express treaty or rule provisions, access to pleadings subject to protection of confidential or sensitive information, with broader access only where justified and essential. For practitioners, academics, arbitrators and institutions, the report's value lies in offering carefully framed reference points for managing third-party participation in a way that remains attentive to transparency, procedural fairness, efficiency and the rights of the disputing parties.