By placing considerations of fairness and equality on an equal footing with legal and ethical rules, Section 9.2(g) provides arbitrators with the tool they need to deal with divergent legal and ethical rules. The in-house counsel problem, for example, may arise in an arbitration with a Swiss corporate party on one side and an American party on the other. The American party may seek disclosure of communications between the Swiss party and its in-house counsel, arguing that such communications are not privileged under the law of Switzerland, where the communications took place. The American party would, at the same time, vehemently resist disclosure of its communications with its own in-house lawyer, arguing that Section 9.2(b) of the IBA Rules requires the tribunal to respect the American rules of privilege that protect such communications. Most international arbitrators would now resolve such a dispute by reference to Section 9.2(g), and would decide either that the communications between both parties and their in-house lawyers should be protected, as a matter of fairness and equality, or that neither set of communications should be protected, on the same basis. The mandate to conduct the proceedings with fairness and equality would be interpreted to trump any invocation of privilege under Section 9.2(b) that would result in unfair or unequal treatment.

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20 Id. at 9.2(g).
21 Id. at 9.2(b).
22 Id. at 9.2(g).
23 Id. at 9.2(b). (g).

Referring Principles:

| XII.7 - Most favorable privilege rule |