

THE PRAGUE RULES: A BRAND NEW APPROACH TO ARBITRATION?

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Legal Briefings - By **Craig Tevendale**

The new [Rules on the Efficient Conduct of Proceedings in International Arbitration \(Prague Rules\)](#) launched last month in the Czech Republic and aim to provide a more efficient framework for arbitral procedure which can be used to streamline a dispute, reducing delay and costs. Their approach is closer to civil law than common law traditions, with the tribunal pro-actively managing the dispute from the start.

The Prague Rules provide for early narrowing of the legal and factual issues in dispute at an initial case management conference and preliminary tribunal decisions on key matters. Tribunals can order site inspections and request key documents. The new rules seek to heavily restrict disclosure, with parties told they should “*avoid any form of document production, including e-discovery*”. No requests for documents will ordinarily be permissible after the first case management conference. There is an inquisitorial approach to witness evidence and tribunal-appointed experts are suggested. Provided that the parties give their consent, the rules allow members of the tribunal to facilitate a commercial settlement, or to mediate the dispute - an approach which remains controversial to some parties and practitioners. Where disputes do not settle, parties and tribunals are encouraged to proceed on documents only, avoiding oral hearings where possible.

Much of what the Rules cover is not entirely novel, and could already be put in place where the IBA Rules are used. For example, tribunals can already appoint their own experts, adopt a civil-style inquisitorial approach to witnesses and order limited disclosure. However, whilst these powers are in principle largely available to tribunals and can be requested by parties, in practice this happens infrequently. It follows that if the procedural framework proposed in the Prague Rules were adopted in its entirety, it would produce a very different arbitration process to the experience with which most parties will be familiar.

It remains to be seen whether the Rules are in fact the solution to procedural inefficacy. The issues which commonly frustrate parties generally arise from the reluctance of the tribunal to actually use more active case-management approaches, rather than from an absence of available powers under the applicable procedure. It has been suggested that using the Prague Rules may front-load costs in some cases and that some due-process challenges may follow. The mediation/arbitration-arbitration/mediation provision in the Rules has also generated some skepticism, as this is a source of concern in relation to arbitrator impartiality in many jurisdictions. However, the Rules do aim to provide some protection in allowing one or both parties to ask an arbitrator to step down after an unsuccessful settlement attempt.

The Prague Rules may well be a useful tool where both parties want to exercise their party autonomy to resolve their dispute using an approach closer to civil law traditions. The Rules are likely to be used in cases where restricting evidence makes sense, such as disputes which mainly relate to issues of law, but are less likely to be used in cases which are high-value, fact-heavy and/or complex, where more extensive witness evidence and documentary disclosure will be needed. For the right type of dispute, and where the parties share similar expectations on how their process should run, the Rules offer an opportunity to realise efficiencies and tangible cost savings. More generally, the Prague Rules have prompted a renewed discussion of procedural problems in international arbitration and how best to achieve efficiency, which is a welcome development for the arbitration community as a whole.

We understand that an arbitration is already underway using the Rules, and it will be interesting to see whether the Rules gain traction more widely.

Craig Tevendale has written a more detailed [article](#) for Global Arbitration Review (accessible by subscription service) on the scope and potential impact of the Prague Rules.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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