The Prague Rules at one year old: here to stay?

*Could the Rules work in BVI arbitration?*

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Prague Rules: one year old on 14 December 2019

• Born in Prague
• Conceived in Minsk
• Colloquium ‘Alternative to IBA Rules on the taking of evidence: benefit or time wasting?’ on 21 September 2017 on the eve of the Eastern European Dispute Resolution Forum EEDRF 2017
• “During the colloquium, presentation of the concept of the new rules on the taking of evidence in international commercial arbitration was organized (working name – «The Prague Rules»). ”
• “The principles of inquisitorial model of justice, aimed at effective arbitration proceedings, minimization of financial and time costs, adapting the procedure of international arbitration for dispute resolution with a low amount of the claim are the basis of the Prague Rules.”
Prague Rules: preamble

• The Prague Rules on the Efficient Conduct of Proceedings in International Arbitration ("Prague Rules") are intended to provide a framework and/or guidance for arbitral tribunals and parties on how to increase efficiency of arbitration by encouraging a more active role for arbitral tribunals in managing proceedings.

• The Prague Rules are not intended to replace the arbitration rules provided by various institutions and are designed to supplement the procedure to be agreed by parties or otherwise applied by arbitral tribunals in a particular dispute.

• Parties and arbitral tribunals may decide to apply the Prague Rules as a binding document or as guidelines to all or any part of the proceedings. They may also exclude the application of any part of the Prague Rules or decide to apply only part of them.
Prague Rules: rationale

- Dissatisfaction with the time and costs in arbitration proceedings
- Discontent with a perceived Americanization of international arbitration
- Cultural differences in international arbitration proceedings
- Bridging the gap between civil and common law procedures for evidence
- Dissatisfaction with the IBA Rules on Taking of Evidence (1999/2010)

- But the Foreword to the IBA Rules says: ‘The IBA Rules of Evidence reflect procedures in use in many different legal systems and they may be particularly useful when the parties come from different legal cultures’.

- Were the Prague Rules really needed?
- Do the Rules provide anything new?
Prague Rules: main features

• Proactive role of the Arbitral Tribunal:
  – taking the lead on case management and evidence
  – preliminary views
• Document production discouraged
• Witness evidence controlled by Arbitral Tribunal
  – written statements only if permitted
  – oral examination under the direction and control of the tribunal
• Tribunal-appointed experts
• Hearings discouraged: default is ‘documents only’
• Assistance in amicable settlement
Prague Rules: rules of simplified arbitration?

- Documents only
- Quick resolution?
- Reducing costs?

- Potential for Arbitral Tribunal to embark on ‘frolics of its own’
- Costs estimates and budgets can’t take account of an Arbitral Tribunal’s initiatives during the course of proceedings
Prague Rules: a Loch Ness Monster?

- Never seen in practice
- Frightening
- Unfamiliar
- Potentially destructive
Prague Rules: a disruptor

• and a differentiator?

• catching an anti-elite mood in the international arbitration community?

• speaking for commercial users of arbitration?

• civil lawyers talking to civil lawyers?

• a conversation that has just started?
Prague Rules in the BVI

• BVI: a centre of choice for international arbitration

• BVI IAC Arbitration Rules
  – Article 17(1): ‘Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality…’
  – Article 17(2): ‘As soon as practicable after its constitution and after inviting the parties to express their views, the arbitral tribunal shall establish the provisional timetable of the arbitration…’
  – Article 29: ‘After consultation with the parties, the arbitral tribunal may appoint one or more independent experts to report to it, in writing, on specific issues to be determined by the arbitral tribunal.’
Prague Rules in the BVI

• What are parties looking for in ad hoc and institutional rules?

• Time and costs

• Enforceable awards
Thank you

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