

What Is Different in the Prague Rules?

**Presentation at the Kyiv Arbitration Days 2019
13 September 2019**



Dr. Daniel GREINER
Partner, Barrister
Peter & Partners Int'l Ltd
DGreineder@peterandpartners.com
Avenue de Champel 8C, P.O. Box 71
1211 Geneva 12
Switzerland
T. +41 58 317 70 70



Prague gets a
makeover!

Prague Rules, Article 2.4

“The arbitral tribunal may at the case management conference or at any later stage of the arbitration, if it deems it appropriate, indicate to the parties:

- a. the facts which it considers to be undisputed between the parties and the facts which it considers to be disputed;*
- b. with regard to the disputed facts – the type(s) of evidence the arbitral tribunal would consider to be appropriate to prove the parties’ respective positions;*
- c. its understanding of the legal grounds on which the parties base their positions;*
- d. the actions which could be taken by the parties and the arbitral tribunal to ascertain the factual and legal basis of the claim and the defence;*
- e. its preliminary views on:*
 - i. the allocation of the burden of proof between the parties;*
 - ii. the relief sought;*
 - iii. the disputed issues; and*
 - iv. the weight and relevance of evidence submitted by the parties.”*

Prague Rules, Article 4

- *“Generally, the arbitral tribunal and the parties are encouraged to avoid any form of document production, including e-discovery” (Art. 4.2 Prague Rules)*
- *“Subject to Articles 4.2 – 4.4, a party may request the arbitral tribunal to order another party to produce a specific document which:*
 - a. is relevant and material to the outcome of the case;*
 - b. is not in the public domain; and*
 - c. is in the possession of another party or within its power or control.” (Art. 4.5 Prague Rules)*

Prague Rules, Article 6

- *“At the request of a party or on its own initiative and after having heard the parties, the arbitral tribunal may appoint one or more independent experts to present a report on disputed matters which require specialised knowledge.”* (Art. 6.1 Prague Rules)
- *“The appointment of any expert by the arbitral tribunal does not preclude a party from submitting an expert report by any expert appointed by that party. At the request of any other party or on the arbitral tribunal’s own initiative, such party appointed expert shall be called for examination during the hearing.”* (Art. 6.5 Prague Rules)

Prague Rules, Article 10

- *“If a party does not comply with the arbitral tribunal’s order(s) or instruction(s), without justifiable grounds, the arbitral tribunal may draw, where it considers appropriate, an adverse inference with regard to such party’s respective case or issue.”*

Further Reading

- Daniel Greineder, *Expert Evidence*, in *The Middle Eastern and African Arbitration Review 2019* (2019) pp. 18-23
- Daniel Greineder, *The Limitations of Soft Law Instruments and Good Practice Protocols in International Commercial Arbitration*, in Matthias Scherer (ed.), *ASA Bulletin*, vol. 36 (4) (2018) pp. 907-912
- Wolfgang Peter, *Party-Appointed Witnesses v. Tribunal-Appointed Experts: Is there a Best Practice in International Arbitration?*, in Christian Cascante et al. (eds.) *Festschrift für Gerhard Wegen zum 65. Geburtstag* (2015)

Sources

- Christopher Staughton, *Common Law and Civil Law Procedures: Which is the More Inquisitorial? A Common Lawyer's Response*, in *Arbitration International*, vol. 5 (4) (1989) pp. 351-357
- Gabrielle Kaufmann-Kohler, *Soft Law in International Arbitration: Codification and Normativity*, in *Journal of International Dispute Settlement*, vol. 1 (2) (2010) pp. 283-299
- John Uff QC, *The Predictability Factor in International Arbitration*, in Andrew Berkeley and Jacqueline Mimms (eds.), *International Commercial Arbitration: Practical Perspectives* (2001) pp. 151-168
- IBA Guidelines on Conflicts of Interest in International Arbitration (2014)
- IBA Rules on the Taking of Evidence in International Arbitration (2010)
- Rules on the Efficient Conduct of Proceedings in International Arbitration (Prague Rules) (2018), Articles 2.4, 4.2, 4.5, 6 and 10
- The Admiralty and Commercial Courts Guide (10th ed., 2017)

Thank you

Dr. Daniel GREINER

Partner, Barrister, England and Wales

E-mail: DGreiner@peterandpartners.com

Tel: +41 58 317 70 70

Address: Avenue de Champel 8C
P.O. Box 71
1211 Geneva 12
Switzerland