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The Prague Rules: what are they?

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- Officially called the Rules on the Efficient Conduct of Proceedings in International Arbitration.
- Launched 14 December 2018.
- Alternative regime to the IBA Rules on the Taking of Evidence in International Arbitration.
- Brought about by concerns of civil law practitioners that IBA Rules involved too much discovery and lengthy cross examination.
- Enshrines an inquisitorial approach. The Tribunal is given a more proactive role. Limited or no disclosure.

- **The Prague Rules apply if the parties agree or by the Tribunal's own initiative on consultation with the parties: Article 1**
- **The Tribunal has a proactive role: Article 2**
- **Emphasis on Tribunal's role in directing the form and content of evidence.**

- **Limited document production: Article 4**
- **Parties will seek to “avoid any form of document production, including e-discovery”:** Article 4.2
- **All key documents to be provided with the pleadings.**
- **No complete bar to document production: parties can “request certain documents” at the CMC: Article 4.3**
- **But only if the document is:**
 - **Relevant to the material outcome of the case;**
 - **Not in the public domain; and**
 - **In the possession of another party or within its power or control.**

(Article 4.5)

- **Cross Examination: Article 5**
- **Tribunal has the power to decide which witnesses are to be cross-examined at the hearing, either before or after the witness in question has submitted a witness statement: Article 5.2**
- **But the parties have the final say on whether to present witness evidence, even if that witness is not allowed to testify: Article 5.4**
- **If a party insists on calling a witness whose witness statement has been submitted by the other party, the Tribunal should direct that witness to be cross examined: Article 5.7**

- **Expert evidence: Article 6**
- **Emphasis on Tribunal-appointed experts, but parties can submit their own expert reports: Article 6.5**

- **Iura Novit Curia: Article 7**
- **Loosely translated means “the Tribunal knows best”.**
- **Tribunal can rely on legal arguments not pleaded by the parties, provided the parties have been given the opportunity to express their views.**

- **Hearing: Article 8**
- **Presumption that a dispute should be resolved on paper, with no oral hearing.**
- **Parties can request a hearing but the Tribunal has final say.**

- **Amicable settlement: Article 9**
- **Tribunal actively to assist the parties in settling: Article 9.1**
- **Any member of the Tribunal can act as mediator: Article 9.2**
- **If an arbitrator has acted as mediator, he can only continue as arbitrator if both parties provide written consent: Article 9.3**



THANK YOU