

Prague Rules on taking of evidence to launch in December 2018

by *Practical Law Arbitration*

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Inquisitorial Rules on the Taking of Evidence in International Arbitration are due to launch in Prague in December 2018.

The latest draft of the *Inquisitorial Rules on the Taking of Evidence in International Arbitration*, dated 11 March 2018, and known as the Prague Rules due to their planned official launch in Prague in December 2018, has been released. The initiative for the Prague Rules was apparently first discussed in April 2017 at a Russian Arbitration Association event in Moscow, in response to what was perceived to be the "Creeping Americanisation of international arbitration".

The rules aim to address parties' apparent frustrations with the increased time and costs of arbitration, and to provide parties from civil law jurisdictions with a procedure that seeks to mirror more closely the inquisitorial approach in civil proceedings. Issues such as discovery, fact witnesses and impartiality of party appointed arbitrators are uncommon to civil jurisdictions such as continental Europe, Latin America, the Middle East and parts of Asia. The working group behind the rules hopes that the rules will encourage tribunals to be more active in case management, thus increasing efficiency of proceedings, as well as reducing the time and costs involved.

Parties and tribunals may decide to apply the rules as a binding document or as guidelines, and may cherry pick and modify the elements they wish to apply. Interesting features of the rules include the following:

- The tribunal is to avoid extensive discovery "including any form of e-discovery".
- Parties must explain to the tribunal how any witness testimony will contribute to proving facts relevant to the issues in dispute.
- The tribunal is to take a more active role in the questioning of witnesses.
- The tribunal is encouraged to assist the parties in settling the dispute including by expressing its preliminary view on the parties' positions and acting as mediator.

The drafting committee consists mainly of Russian, CIS and Eastern European members of the bar although does also include bar members from Portugal, Denmark, Switzerland, Germany and France.

White & Case partner Dipen Sabharwal said: "Flexibility and the ability to tailor arbitral proceedings to meet the needs of each case are the hallmarks of international arbitration. Tomas Vail of our international arbitration team is a member of the Working Group which drafted the Prague Rules, which are without doubt a welcome innovation which reflects the practices of parties from diverse legal traditions."

Source: [Official Launch of Prague Rules on Taking of Evidence](#)

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