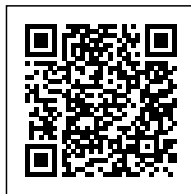


# REVOLUTION IN THE AIR

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**Is it time to change the rules for international arbitration? Nearly 30 countries believe it is – but the new rules they have proposed have caused controversy with some lawyers in Spain saying they will lead to worry and uncertainty for clients.**



The world of international arbitration could be set for a revolution. For the last twenty years, many international arbitration practitioners have been applying the International Bar Association (IBA) rules on the taking of evidence in international arbitration in their cases. The IBA rules – which are often thought of as a compromise between civil law and common law traditions – are commonly adopted as a benchmark for dealing with evidence and oral hearings. But now a challenge to this approach has emerged. Last year, on the 14th of

December, a working group formed by representatives from 29 countries – predominantly civil law jurisdictions, such as Russia, Slovenia, Ukraine and the Czech Republic – launched 'Rules on the Efficient Conduct of Proceedings in International Arbitration', known as the "Prague Rules". This new set of rules is designed to offer an alternative to the IBA Rules and promote procedural efficiency in international arbitration, in order to reduce its time and cost. However, many professionals are not convinced that the new rules will be effective.

## **SOURCE OF THE PROBLEM**

Efficiency has been a buzzword in international arbitration for a number of years. "For a long time, arbitration practitioners have been discussing the possible tools to reduce the duration and the cost related to international arbitration", says Laurence Shore, partner and leader of the International Arbitration department at the Italian law firm BonelliErede. "The Prague Rules proponents believe that proceedings have become extremely lengthy and expensive – they identify the source of the problem as the extensive document production, the numerous witnesses called by the parties, as well as the oral hearings featuring cross-examination of witnesses," he explains. One of the key features of arbitration is that, unlike litigation, it may, to a large extent, be shaped in accordance with the will and needs of the parties. However, nowadays, many clients are worried about how much they are spending on cases and how long it takes to get a result. Although it is not easy to estimate the duration of arbitral proceedings, in general a commercial arbitration could last between 12 and 18 months, according to Shore. "Even though arbitration is quicker than most court proceedings, 12 to 18 months to reach a decision could be considered not good enough to meet the parties' need for a quick and efficient solution of the dispute." Costs are also difficult to determine because they depend on the complexity and value of the dispute. Clients' expenses are usually related to the costs of the legal counsel preparing the case – which constitute the main portion of parties' expenses – the costs of the arbitrators, as well as the fees of the arbitral institution administering the case. "The Prague Rules proponents believe that entrusting the arbitrators with a more active role will help reduce the costs of the arbitral proceedings," Shore says. However, despite the concerns expressed about the arbitral process, international arbitration is still a very vibrant and growing area. "These complaints do not seem to have discouraged the parties from choosing arbitration," Shore says. "Given the complexity of some cases, especially in cross border disputes, arbitration is the only real option – additionally, there are more high value cases going to arbitration than 15 years ago and a wider range of industries that resort to arbitral tribunals, everything is more complicated now."

## **LIMITING WITNESSES**

In this context, the drafters of the Prague Rules believe that, by adopting procedures more akin to a civil law inquisitorial style, procedural efficiency in international arbitration will be enhanced. Indeed, the working group has identified three features of evidence taking in arbitration which are largely responsible for the time and costs of arbitration proceedings: excessive document production requests, too many witnesses, and lengthy hearings featuring cross examination.

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