

# **“I’VE GOT THE POWER” — IMPLICATIONS OF THE ARBITRAL TRIBUNAL’S PROACTIVE ROLE UNDER THE PRAGUE RULES FOR DUE PROCESS AND ENFORCEABILITY**

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## **ABSTRACT**

*This paper focuses on the due process and enforceability implications of the proactive role conferred upon the arbitral tribunal under the Prague Rules on the Efficient Conduct of Proceedings in International Arbitration (hereinafter “Prague Rule”). After establishing that the Prague Rules may only be applied with the parties’ consent, this paper summarizes the academic discourse on expressly conferred and implied powers of arbitral tribunals and concludes that the Prague Rules do not introduce any new powers of the arbitral tribunal. Because the Prague Rules do not change what the arbitral tribunal can do because of the already existing powers, the Prague Rules may be interpreted to go one step further and to prescribe the arbitral tribunal what it should do. This paper highlights some of these potential duties under the Prague Rules and assesses the implications of their exercise on the effectiveness of an arbitral award. The author reaches the conclusion that the proactive role under the Prague Rules, including the possibility of the tribunal to express its preliminary views on the case, has no implications on due process or the enforceability of an arbitral award under the New York Convention. Therefore, the release of the Prague Rules should be welcomed. They provide a viable alternative to the IBA Rules on the Taking of Evidence in*

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*International Arbitration because parties may now choose to explicitly enable their arbitral tribunal to take a more proactive role in managing the proceedings.*

**KEYWORDS:** *Prague Rules, IBA Rules, international commercial arbitration, due process, enforceability, proactive role, tribunal powers*