



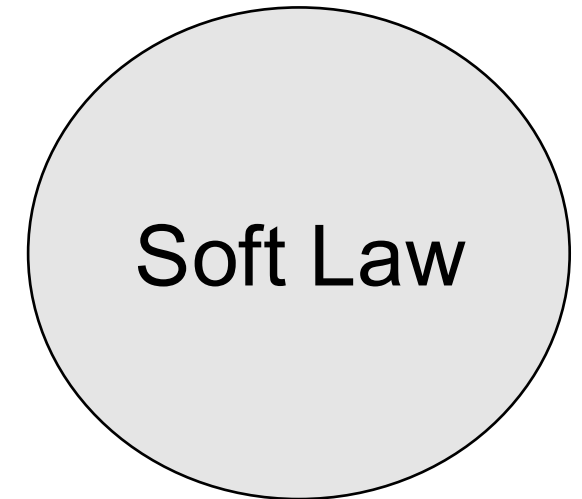
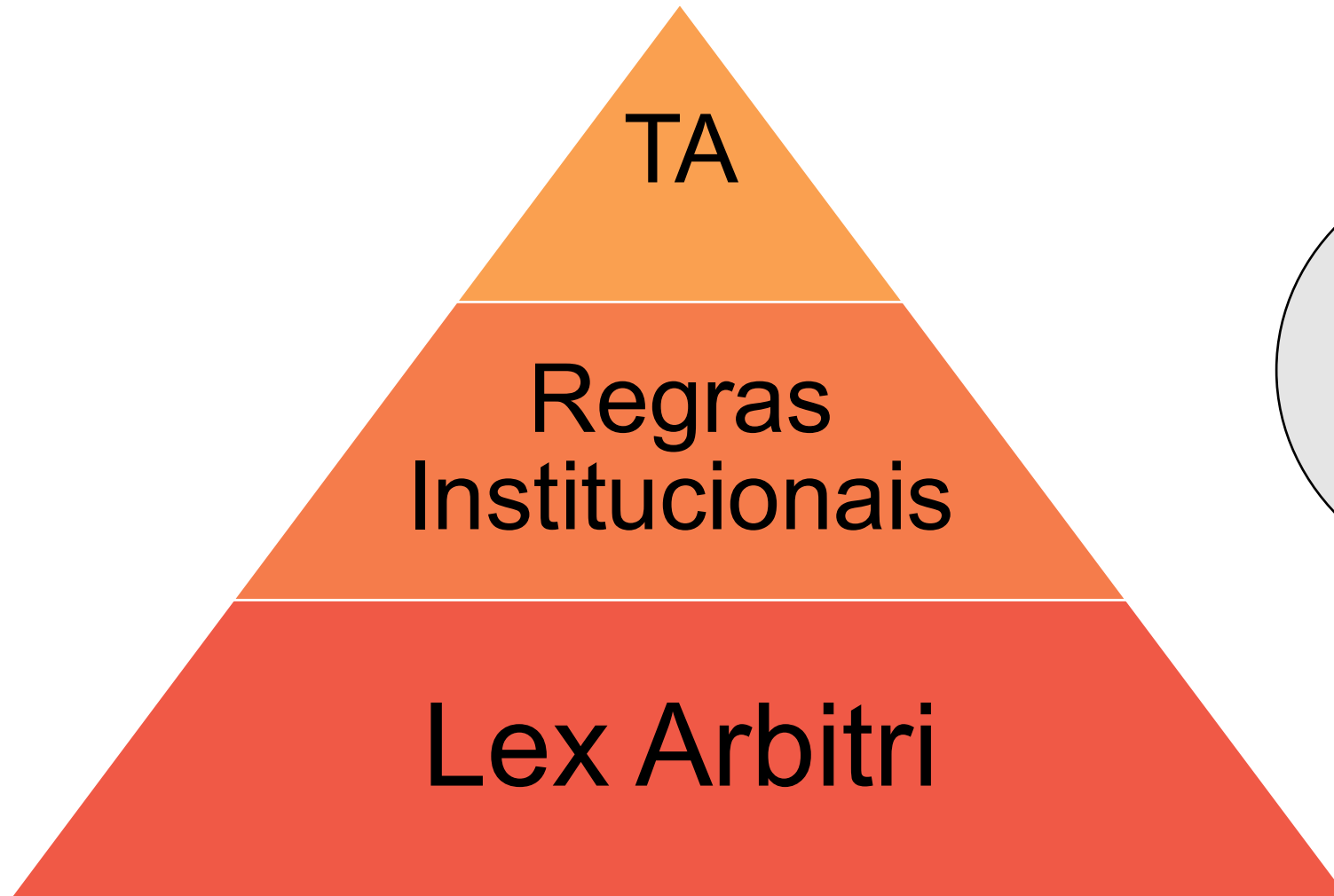
PRODUÇÃO DE PROVAS NA ARBITRAGEM INTERNACIONAL

Leonardo Ohlrogge
2026

- ① Regras Aplicáveis
- ② Prova Testemunhal
- ③ Document Production
- ④ Prova Pericial
- ⑤ Audiência

Regras Aplicáveis

REGRAS APLICÁVEIS



LEX ARBITRI

- Sede no Brasil: Lei nº 9.307/96

- Art. 22:

Poderá o árbitro ou o tribunal arbitral tomar o depoimento das partes, ouvir testemunhas e determinar a realização de perícias ou outras provas que julgar necessárias, mediante requerimento das partes ou de ofício.

- Flexibilidade e discricionariedade

REGRAS INSTITUCIONAIS – ICC (2021)

- Art. 25(2): O tribunal arbitral poderá ouvir testemunhas, peritos nomeados pelas partes ou qualquer outra pessoa, na presença das partes, ou na sua ausência, desde que tenham sido devidamente convocadas.
- Art. 25(4): A qualquer momento no decorrer do procedimento, o tribunal arbitral poderá determinar a qualquer das partes que forneça provas adicionais.

REGRAS INSTITUCIONAIS – CAM-CCBC (2025)

- Art. 27.1: Caberá ao tribunal arbitral deferir e determinar as provas que considerar úteis, necessárias e adequadas, segundo a forma e a ordem que entender convenientes ao caso concreto.

TRIBUNAL ARBITRAL

- Conferência Inicial
 - Termo de Arbitragem
 - Ordem Processual No. 1
 - Cronograma Processual
- Participação das Partes
- Discricionariedade

Regras sobre a Produção de Provas



IBA Rules on the Taking of Evidence in International Arbitration

REGRAS DA IBA – I

- Ponte entre common law e civil law
- 2020 (2010, 1999, 1983*)
- Soft Law
- Prática Corrente
- Utilizadas normalmente como diretrizes

REGRAS DA IBA – II

Preâmbulo

The Rules are designed to be used in conjunction with, and adopted together with, institutional, ad hoc or other rules or procedures governing international arbitrations. The IBA Rules of Evidence reflect procedures in use in many different legal systems, and they may be particularly useful when the parties come from different legal cultures.

REGRAS DA IBA – III

- Prova Documental (Art. 3)
- Prova Testemunhal (Art. 4)
- Prova Pericial (Arts. 5 and 6)
- Inspeção (Art. 7)
- Audiência (Art. 8)
- Admissibilidade da Prova (Art. 9)

Prova Testemunhal

DEPOIMENTO ESCRITO – I

- Prova Documental (Art. 3, IBA Rules)

Witness Statement' means a written statement of testimony by a witness of fact.

- Quem pode ser testemunha? (Art. 4(2), IBA Rules)
Qualquer pessoa

Any person may present evidence as a witness, including a Party or a Party's officer, employee or other representative.

DEPOIMENTO ESCRITO – II

- Elaborado pelas partes (advogados) em conjunto com a testemunha
- Conteúdo (Art. 4.5, IBA Rules):
 - Informações das testemunhas (incluindo experiência)
 - Descrição dos fatos
 - Idioma do depoimento oral
 - Confirmação de veracidade
 - Assinatura e data

DEPOIMENTO ESCRITO – III

- Depoimentos são apresentados com as petições de mérito
- Testemunhas podem apresentar mais de um depoimento
- Por exemplo:
 - Statement of Claim (CWS-1)
 - Statement of Reply (CIWS-2)

CROSS-EXAMINATION

- Notice of Cross-Examination (Parte Contrária)
- Audiência
 - Direct Examination
 - Cross-Examination
 - Re-direct Examination
 - Recross-Examination
- Escopo

AUDIÊNCIA – NÃO COMPARECIMENTO DA TESTEMUNHA

Art. 4.7

If a witness whose appearance has been requested pursuant to Article 8.1 fails without a valid reason to appear for testimony at an Evidentiary Hearing, the Arbitral Tribunal shall disregard any Witness Statement related to that Evidentiary Hearing by that witness unless, in exceptional circumstances, the Arbitral Tribunal decides otherwise

Document Production



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EXEMPLO DE CRONOGRAMA PROCESSUAL

Cronograma Processual	
Requerimento de Arbitragem	
Resposta ao Requerimento de Arbitragem	
Constituição do Tribunal Arbitral	
Conferência Inicial	
Alegações Iniciais	
Resposta às Alegações Iniciais	
"Document Production"	Pedido de Apresentação de Documentos
	Resposta ao Pedido Apresentação de Documentos
	Réplica à Resposta do Pedido de Apresentação de Documentos
	Apresentação Voluntária
	Decisão do Tribunal Arbitral
	Apresentação dos Documentos conforme decisão do TA
Réplica	
Tréplica	
Audiência	
Alegações Finais	
Sentença Arbitral	

ICC MODEL PROCEDURAL TIMETABLE

First round of submissions

Document Production Phase

Second round of submissions

N°	Event	Parties / Tribunal	Time Interval	Date
	Statement of Claim , together with all documentary evidence and Witness Statements (expert and fact witnesses, if any)	Claimant/s		dd/mm/yyyy
	Statement of Defence [and Counterclaim] , together with all documentary evidence and Witness Statements (expert and fact witnesses, if any)	Respondent/s		dd/mm/yyyy
	Simultaneous exchange of document production requests	Claimant/s and Respondent/s		dd/mm/yyyy
	Simultaneous production of requested documents and objections to document production requests, where contested	Claimant/s and Respondent/s		dd/mm/yyyy
	Replies to objections to document production requests and applications to the Tribunal regarding document production (if necessary)	Claimant/s and Respondent/s		dd/mm/yyyy
	Decision on applications for document production	Tribunal		dd/mm/yyyy
	Production of documents ordered by the Tribunal	Claimant/s and Respondent/s		dd/mm/yyyy
	Reply [and Defence to Counterclaim] , together with all documentary evidence and witness statements (expert and fact witnesses)	Claimant/s		dd/mm/yyyy
	Rejoinder [and Reply on Counterclaim] , together with all documentary evidence and witness statements (expert and fact witnesses)	Respondent/s		dd/mm/yyyy

CONCEITO DE DOCUMENTO

IBA Rules (Definitions)

‘Document’ means a writing, communication, picture, drawing, program or data of any kind, whether recorded or maintained on paper or by electronic, audio, visual or any other means;

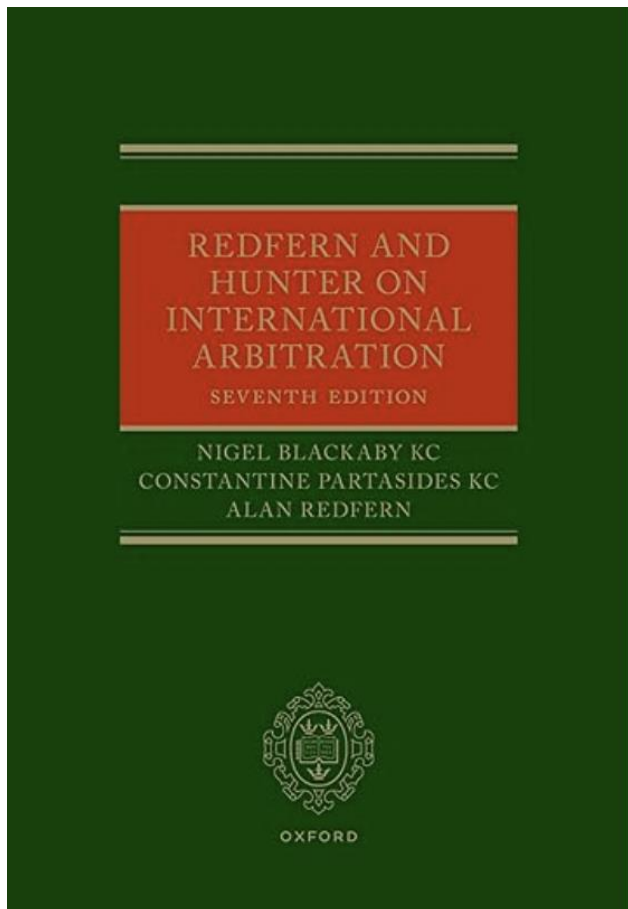
ART. 3.3 IBA RULES

3. A Request to Produce shall contain:
 - (a) (i) a description of each requested Document sufficient to identify it, or
(ii) a description in sufficient detail (including subject matter) of a narrow and specific requested category of Documents that are reasonably believed to exist; in the case of Documents maintained in electronic form, the requesting Party may, or the Arbitral Tribunal may order that it shall be required to, identify specific files, search terms, individuals or other means of searching for such Documents in an efficient and economical manner;
 - (b) a statement as to how the Documents requested are relevant to the case and material to its outcome; and

REDFERN SCHEDULE

Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party	Objections to Document Request	Reply to Objections to Document Request	Tribunal's Decisions

ALAIN REDFERN



FISHING EXPEDITION



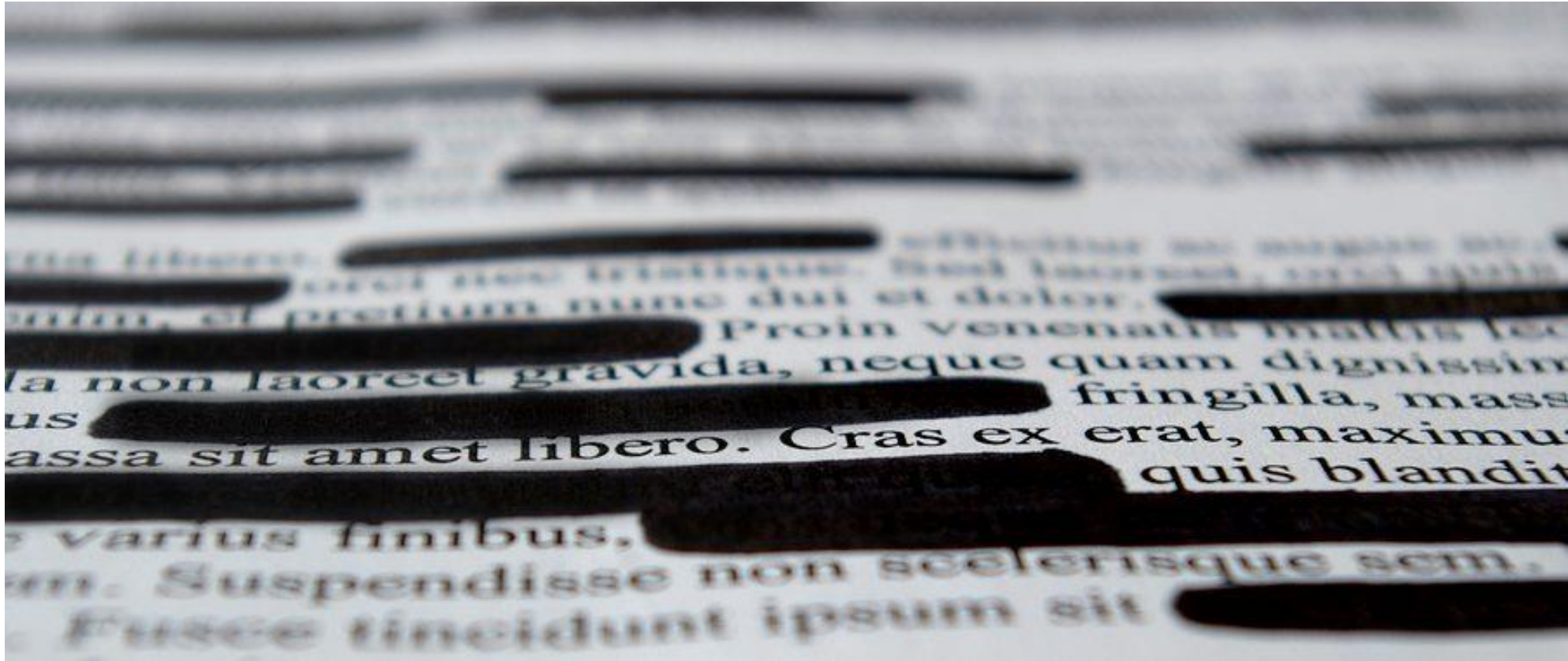
OBJEÇÕES (ART. 9.2, IBA RULES)

- (a) lack of sufficient relevance to the case or materiality to its outcome;
- (b) legal impediment or privilege under the legal or ethical rules determined by the Arbitral Tribunal to be applicable (see Article 9.4 below);
- (c) unreasonable burden to produce the requested evidence;
- (d) loss or destruction of the Document that has been shown with reasonable likelihood to have occurred;
- (e) grounds of commercial or technical confidentiality that the Arbitral Tribunal determines to be compelling;
- (f) grounds of special political or institutional sensitivity (including evidence that has been classified as secret by a government or a public international institution) that the Arbitral Tribunal determines to be compelling; or
- (g) considerations of procedural economy, proportionality, fairness or equality of the Parties that the Arbitral Tribunal determines to be compelling.

CONFIDENCIALIDADE

- Sigilo cliente-advogado
- Informações sobre terceiros
- Informações médicas
- Informações bancárias
- Segredos comerciais
- Importante: Advogados internos - Documentos normalmente não protegidos

REMOÇÃO DE INFORMAÇÕES (REDACTED DOCUMENT)



ACORDO DE CONFIDENCIALIDADE



ACESSO RESTRITO



RETORNO OU DESTRUIÇÃO



CONFIDENTIALITY ADVISOR

54. (d) WIPO Rules (2021)

In exceptional circumstances, in lieu of itself determining whether the information is to be classified as confidential and of such nature that the absence of special measures of protection in the proceedings would be likely to cause serious harm to the party invoking its confidentiality, the Tribunal may, at the request of a party or on its own motion and after consultation with the parties, designate a confidentiality advisor who will determine whether the information is to be so classified, and, if so, decide under which conditions and to whom it may in part or in whole be disclosed. Any such confidentiality advisor shall be required to sign an appropriate confidentiality undertaking.

NÃO APRESENTAÇÃO – INFERÊNCIA NEGATIVA

Art. 9.5 IBA Rules

If a Party fails without satisfactory explanation to Produce any Document requested in a Request to Produce to which it has not objected in due time or fails to produce any Document ordered to be produced by the Arbitral Tribunal, the Arbitral Tribunal may infer that such document would be adverse to the interests of that Party.

INFERÊNCIA NEGATIVA – REQUISITOS

“1) the party seeking the adverse inference must produce all available evidence corroborating the inference sought;

2) the requested evidence must be accessible to the inference opponent;

3) the inference sought must be reasonable, consistent with facts in the record and logically related to the likely nature of the evidence withheld;

4) the party seeking the adverse inference must produce prima facie evidence;

5) the inference opponent must know, or have reason to know, of its obligation to produce evidence rebutting the adverse inference sought.”

Marghitola , Document Production in International Arbitration, 2015, p. 176

Prova Pericial

PROVA PERICIAL

- Art. 5, IBA Rules: Perito das Partes → Prática corrente
- Art. 6, IBA Rules: Peritos do Tribunal Arbitral

PERITO DAS PARTES

- Conteúdo:
 - Qualificação
 - Instruções
 - Declaração de independência e Imparcialidade
 - Fatos
 - Opinião (incluindo método)
- Co-autoria

CROSS-EXAMINATION

- Notice of Cross-Examination (Parte Contrária)
- Audiência
 - Apresentação (Direct Examination)
 - Cross-Examination
 - Re-direct Examination
 - Recross-Examination

Audiência



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CONCEITO DE AUDIÊNCIA

IBA Rules (Definitions)

‘Evidentiary Hearing’ means any hearing, whether or not held on consecutive days, at which the Arbitral Tribunal, whether in person, by teleconference, videoconference or other method, receives oral or other evidence

MODALIDADE

- Presencial
 - Instituição
 - Escritórios
 - Hotéis
- Virtual

ORGANIZAÇÃO

- Reunião Pré-Audiência
 - Agenda (Hearing Timetable)
 - Decisão sobre eventuais discordâncias
 - Ordem das testemunhas
 - Escopo do depoimento
 - Estenotipia
 - Tradução

ESTRUTURA

- Apresentações (Opening Statements)
- Testemunhas
- Peritos
- Closing Statements (mais raro)
 - Post-Hearing Briefs

EXEMPLO DE SALA DE AUDIÊNCIAS



Obrigado

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