



ADVOKATBYRÅ

”Material Management” in Arbitration

Annica Börjesson – Norwegian Arbitration Day 2020

Material Management in Arbitration



What is it?

Why not?

The Swedish Arbitration Act (SFS 1999:116)



Section 21

The arbitrators shall handle the dispute in an impartial, practical, and speedy manner. They shall act in accordance with the decisions of the parties, unless they are impeded from doing so.

The Prague Rules of the Efficient Conduct of Proceedings in International Arbitration



Article 2.4

The arbitral tribunal may at the case management conference or at any later stage of the arbitration, if it deems it appropriate, indicate to the parties:

- a. the facts which it considers to be undisputed between the parties and the facts which it considers to be disputed;
- b. with regard to the disputed facts – the type(s) of evidence the arbitral tribunal would consider to be appropriate to prove the parties' respective positions;
- c. its understanding of the legal grounds on which the parties base their positions;
- d. the actions which could be taken by the parties and the arbitral tribunal to ascertain the factual and legal basis of the claim and the defence;
- e. its preliminary views on:
 - i. the allocation of the burden of proof between the parties;
 - ii. the relief sought;
 - iii. the disputed issues; and
 - iv. the weight and relevance of evidence submitted by the parties.

Expressing such preliminary views shall not by itself be considered as evidence of the arbitral tribunal's lack of independence or impartiality, and cannot constitute grounds for disqualification.