



The International Network of Women in Dispute Resolution



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— INDEPENDENT ARBITRATORS & MEDIATORS —

CONDUCTING VIRTUAL ARBITRATION HEARINGS: SKILLS THAT MAKE A DIFFERENCE

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NGUYEN MANH DZUNG, MCI Arb

- Member | International Court of Arbitration (ICC)
- Arbitrator | Vietnam International Arbitration Centre (VIAC)
- Arbitrator of Korean Commercial Arbitration Board (KCAB International)

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1. How has the ICC addressed virtual hearings during the pandemic?
2. How do you present evidence (expert, fact etc.) effectively in a virtual setting?
3. Any solutions/issues specific to Vietnam?

HOW HAS ICC ADDRESSED VIRTUAL HEARINGS?



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iccwbo.org/publication/icc-guidance-note-on-possible-measures-aimed-at-mitigating-the-effects-of-the-covid-19-pandemic/



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ICC Guidance Note on Possible Measures Aimed at Mitigating the Effects of the COVID-19 Pandemic

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This note provides guidance to parties, counsel and tribunals on possible measures that may be considered to mitigate the adverse effects of the COVID-19 pandemic on ICC arbitrations

This note provides guidance to parties, counsel and tribunals on possible measures that may be considered to mitigate the adverse effects of the COVID-19 pandemic on ICC Arbitrations (the "Guidance Note"). COVID-19 is a health catastrophe that is massively disrupting the global economy. It will both disrupt many pending ICC Arbitrations and generate new disputes that may themselves be more difficult to progress due to safety concerns and public health restrictions imposed to limit or slow the virus's spread. However, parties, counsel and tribunals can minimise and perhaps even avoid such disruption and difficulty by thoughtful use of case management tools that are either already available through the ICC Arbitration Rules ("Rules") or by the additional steps the ICC International Court of Arbitration ("Court") is taking to streamline its internal processes.

ALSO VIEWED

↓ 2019 ICC Dispute Resolution Statistics

↓ Paying tribute to Stephen Bond (1943-2020)

↓ ICC Guidance Note on Possible Measures Aimed at Mitigating the Effects of the COVID-19

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Contents of ICC's Guidance Note:

I. Mitigating COVID-19 related delays

A. Increasing the Efficiency of the Arbitral Procedure

B. Service of Documents and Notifications

II. Guidance on the organisation of virtual hearings

A. Means of Conducting Conferences or Hearings

B. Cyber-Protocol

C. Procedural Issues

Annex I. Checklist for a protocol on virtual hearings

Annex II. Suggested clauses for cyber-protocols and procedural orders dealing with the organisation of virtual hearings

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Annex I of the Guidance Note provides Checklist for a protocol on virtual hearings.

1. Pre-hearing plan, scope, and logistics
2. Technical issues
3. Confidentiality, privacy, and security
4. Online etiquette and due process considerations
5. Presentation of evidence, examination of witnesses and experts

HOW TO PRESENT EVIDENCE EFFECTIVELY?



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- (i) Consultation between the tribunal and the parties on the organisation and presentation of oral pleadings;
- (ii) Identifying whether counsel will be using multi-screens for online pleadings, presentation of evidence and agreeing the modalities for submitting and showing demonstrative exhibits in a virtual environment;
- (iii) Consultation between the tribunal and the parties on the examination of witnesses and experts; and
- (iv) Consultation between the tribunal and the parties on virtual transcription and the use of stenographers and interpreters that are capable and able to deliver the necessary level of service in a virtual environment.

GUIDANCES OF SEVERAL INSTITUTIONS



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1. SIAC Guides Taking Your Arbitration Remote (August 2020): A very specific checklist for preparation prior to and for virtual hearings. It includes every note-worthy and detailed aspect of holding a virtual hearing.
2. HKIAC Guidelines for Virtual Hearings (May 2020): General guidance only (*Note: Evidence bundles and documents to be shared virtually must be supplied to the relevant service provider in advance of the hearing date.*)
3. KCAB Seoul Protocol on Videoconferencing (March 2020): More detail-oriented than ICC's checklist but not as specific as SIAC Guides. (*Note: Agreed bundle of documents submitted to the Tribunal for the purposes of the hearing to be provided at the start of the witness examination.*)



1. Consent of the parties is required to hold virtual hearings (VIAC Rule 25.1).
 2. Virtual meeting, however, does not require the parties' consents (VIAC Rule 22.2). → Tribunal to hold virtual meeting as an example to convince the parties' to hold virtual hearings.
 3. In practice: not always wholly virtual hearing → Partially virtual hearing: at least one participant attends virtually while the rest participate in person.
- ❖ Advantages: convenience for foreign arbitrator/cost saving for the parties.
 - ❖ Disadvantages: technical interruption, limited internal discussion between tribunal members/impartiality of witness/experts cross examination/documents presentation.
 - ❖ Unclear issues: testing procedures/ mechanism for cooperation between counsels and clients/ courts' attitude toward virtual hearing.

THANK YOU FOR YOUR LISTENING!



ADR VIETNAM CHAMBERS LLC
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ADR Vietnam Chambers LLC

Address: Level 46, Bitexco Financial Tower, No. 2 Hai Trieu Street,
Ben Nghe Ward, District 1, Ho Chi Minh City, Vietnam

Tel: 0903 807 376

Email: dzung.nguyen@adr.com.vn

Web: www.adr.com.vn