

Note on Organisation of hearings virtual



1. Introduction

1. The purpose of this note is to provide users with recommendations for the preparation and conduct of virtual hearings in proceedings administered by the Madrid International Arbitration Center and the Ibero-American Arbitration Center ["**CIAM-CIAR**" or the "**Center**"]¹ .

2. CIAM-CIAR is guided by three guiding principles: process excellence, customer service and sustainability. In line with these principles, the Center encourages users of arbitration to employ technology as a more cost-effective and environmentally friendly alternative for the efficient and expeditious conduct of arbitral proceedings, in accordance with its Arbitration Rules [the "**Rules**"]. Specifically, the Center encourages parties, counsel and arbitrators [the "**Participants**"] to hold meetings, conferences and hearings through remote means of communication such as videoconferencing, where possible and appropriate [the "**Virtual Hearing**" or "**Hearing**"]² .

3. The CIAM-CIAR General Secretariat has a team available to assist Participants during the organization and holding of Virtual Hearings.

¹ In preparing this Note, the Center has drawn on the [Note on Holding Virtual Hearings of the Madrid Court of Arbitration](#) (one of CIAM's founding entities), and has taken into consideration the following documents, whose authors are thanked for their contribution as sources of inspiration: [ICC Guidance Note on Possible Measures to Mitigate the Effects of the COVID-19 Pandemic](#), [Seoul Protocol on Video Conferencing in International Arbitration](#) and [Guidance Note on Remote Dispute Resolution Proceedings of CIArb](#). For a complete list of guides on virtual hearings, see DELOS' [Resources on Holding Remote or Virtual Arbitration and Mediation Hearings](#).

² CIAM-CIAR also makes its [Virtual Platform](#) available to Participants; a secure and confidential interface that allows Participants in arbitration proceedings to access their case file from anywhere in the world.



General recommendations

4. The holding of virtual hearings may be consulted and agreed by the arbitrators with the parties, either;

(i) in the procedure provided for prior to the issuance of the first procedural order on the conduct of the proceedings³ ;

(ii) when setting the conditions for the hearing⁴ ;

(iii) at any other time they deem appropriate, within the framework of the arbitrators' general powers to conduct the proceedings⁵ .

5. When assessing the possibility of holding Virtual Hearings, it is suggested that arbitrators and parties consider at least the following issues:

(i) the estimated impact on the procedural timetable of waiting until a face-to-face hearing is possible;

(ii) whether such an estimated impact would lead to excessive delay, given the circumstances of the case (and in particular whether there are particular reasons of urgency which would make more rapid processing desirable);

³ Art. 31.1 of the Rules: 1. As soon as possible and in any case within thirty days of receipt of the arbitration file, the tribunal shall hear the parties, either by telephone conference, videoconference, face-to-face meeting, exchange of communications or any other means deemed appropriate by the arbitrators. The agreement reached by the parties or, failing that, the decision of the arbitrators, shall be contained in a first procedural order which shall cover, at least, the following issues:

a) The full name, description, address and other contact information of each of the parties and of any person representing them in the arbitration.
b) The address where notifications or communications may be validly made during the arbitration and the means of communication to be used.
c) A summary statement of the positions of the parties and their claims, together with the estimated amount of any quantified claims and, to the extent possible, an estimate of the monetary value of all claims.
d) A list of the points in dispute to be resolved, unless the arbitrators deem it inappropriate.
e) The full names, addresses and other contact information of each of the arbitrators.
f) The language and seat of arbitration.
g) The legal rules applicable to the merits of the dispute or, where appropriate, whether it should be resolved in equity.
h) The procedural calendar.

⁴ Art. 34.4 of the Rules.- 4. The conduct of the hearings shall be the exclusive responsibility of the arbitrators, who may take all appropriate measures to ensure the efficient conduct of the hearings. With due notice and after consultation with the parties, the arbitrators, by issuing a procedural order, shall establish the rules under which the hearing is to be conducted, the manner in which witnesses or experts are to be examined and the order in which they are to be called.

⁵ Art. 27.1 of the Rules: 1. Subject to the provisions of these Rules, the arbitrators shall conduct the arbitration proceedings in such manner as they deem appropriate in each case, avoiding unnecessary delay or expense, in order to ensure a prompt and efficient resolution of the dispute, always observing the principle of equality of the parties and giving each party sufficient opportunity to present its case.



(iii) the subject matter of the hearing (arbitrators' decisions on evidence, examination of witnesses or experts, formulation of conclusions, etc.) and, in particular, the impact of holding a Virtual Hearing in the means of evidence to be taken (e.g. in a visual inspection);⁶

(iv) the safeguards available to properly participate in Virtual Hearings, to safeguard the privacy of the information exchanged therein and to prevent unauthorised third parties from having access to that information and to the Hearings themselves;

(v) the number of persons who will participate in the hearing, their availability to travel and their geographical locations, especially if they are in different time zones;

(vi) the possibility of dividing the hearing into different sessions, virtual and face-to-face; and

(vii) the impact of the holding of Virtual Hearings on the validity and enforcement of any award rendered.

3. Procedural issues

3.1 Before the hearing

6. One of the first questions that the Participants must decide on is the platform or service used as support for the conduct of the Hearing. CIAM-CIAR has accounts on the Zoom and Loopup platforms, which it makes available to its users should they deem them appropriate. The Center makes no representations or warranties with respect to these external providers. Participants should exercise due diligence as to the suitability of such platforms.

7. In addition, the Center suggests, inter alia, the following recommendations to the Participants:

(i) determine the minimum technical conditions to be met by the devices and the type of connection of the Participants;

⁶ With regard to the use of technology, the Center wishes to highlight the possibilities offered by the use of drones. These remotely piloted aerial systems have led to considerable cost and time savings in carrying out visual inspections.



- (ii) Connect to the Audience through a desktop or laptop computer, refraining from using *tablets* or mobiles, which may have an unstable connection and reduced functionalities;
- (iii) Use a wired internet connection, which is preferable to a wireless connection, to facilitate faster speeds;
- (iv) Use a webcam and microphone that are functional and provide a clear and flawless picture and audio to ensure the best possible quality during the Hearing;
- (v) Consider the acoustics and luminosity of the location from which the connection to the Hearing is made;
- (vi) Verify that computing devices are adequately charged and that power cables or backup batteries are available as needed;
- (vii) Ensure that the platform application is up to date on your device;
- (viii) Disable automatic computer updates on their devices, which risk being automatically activated and may disrupt the Hearing;
- (ix) Draw up a list of all Hearing Participants, as well as the manner in which their presence and identity will be confirmed;
- (x) Take into account different time zones when setting Hearing dates, start and end times, breaks and duration of each Hearing day;
- (xi) Determine the manner in which the parties' submissions, the testimony of witnesses and experts, and the presentation of documents and any inspections or expert evidence that may be necessary will be conducted.

Test session and protocol in case of technical failure

8. The Center recommends that Participants conduct a test session well in advance. The purpose of this session will be to familiarise themselves with the platform and to allow Participants to assess the compatibility of equipment, the quality of their audio and video streams and to make any necessary adjustments, as well as to test the platform's features, including microphone muting, viewing options, screen sharing and other features.

9. It is also recommended to foresee a protocol of action in case problems are experienced with the chosen digital platform during the Virtual Hearing. This protocol could include measures such as recourse to CIAM-CIAR staff, technical



staff specifically contracted for this purpose, a phone call in case of disconnection or the use of an alternative platform.

3.2 During the hearing

10. Pursuant to Article 34.4 of the Rules, "the arbitrators shall be exclusively responsible for the conduct of the hearings". The arbitrators may delegate the operation of the Virtual Hearing to the secretary of the tribunal, to an assistant to the tribunal, to CIAM-CIAR staff or to a technician specifically contracted for this purpose.

11. The arbitrators may terminate the Hearing if they consider that the virtual mode is prejudicial to either party, there are indications that the confidentiality or security of the Hearing is not being ensured, or for any other reason they consider that it is not appropriate for the Hearing to proceed.

12. The Center suggests, inter alia, the following recommendations to the Participants:

- (i) Use the "waiting room" functionality until all Participants have successfully logged in, and can be authorised to enter the courtroom by the chairperson, the sole arbitrator or the platform manager;
- (ii) Identify themselves and their spokesperson(s); and as far as possible try to reduce the number of spokespersons, to avoid audio overlap and interference;
- (iii) Agree in advance on the order and duration of presentations, as well as the examination of witnesses and experts;
- (iv) In the event that the chosen platform has a "chat" option and it is agreed to allow its use, this channel should not be used by the parties to send communications to the arbitrators that are not visible to the other parties.

Witnesses and experts

13. The examination of witnesses and experts via videoconference poses a unique problem. There are different methods to ensure that the examination takes place properly, without the assistance of unauthorised persons. A solution that offers sufficient guarantees to the parties, given the nature of the case, is invited.

14. The most protective system is usually the presence, at the place where the witness testifies, of a member of the team of lawyers of the opposing party to the



party presenting the witness. In the event that it is not possible or efficient to adopt this precaution, it is recommended that it should be possible to check at any time that persons not authorised by the arbitrators do not enter the room from which the witness or expert witness is appearing. This can be achieved, for example,

- (i) by having two cameras: one focusing directly on the witness in a close-up shot and the other giving an overview of the room from which the witness appears;
- (ii) requesting the witness to stand at such a distance from the camera as to allow the arbitrators to have a wider view of the room; or
- (iii) using a 360° webcam.

15. In addition, it is recommended that the witness or expert witness:

- (i) appear from a room specifically arranged for the occasion, only with the technological devices and documentation and materials authorised for participation in the Hearing;
- (ii) reasonably demonstrates that, apart from the exchanges required by his or her testimony with the Participants who ask questions, he or she does not communicate with other persons during the appearance, without the permission of the court; and
- (iii) sign a declaration stating that you have fulfilled the conditions set out above.

16. Where Virtual Hearings involve geographical dispersion, the Center may assist arbitrators and users in identifying suitable rooms from which to establish a connection for the taking of evidence, through its network of alliances. Similarly, the Center is available to provide other necessary support in the organisation of Virtual Hearings, in particular to ensure the integrity of the testimony of witnesses and experts.

17. In any case, the arbitrators may, at any time during the Hearing, ask such questions or make such checks as they deem appropriate in order to preserve the integrity of the statement being made.

Document exhibition

18. The display of documents during the Virtual Hearing will follow the method previously agreed by the tribunal and the parties. CIAM-CIAR makes available to the



Participants its [Virtual Platform](#) which ensures direct access to the electronic case file for all Participants. Participants will also be able to use the screen-sharing function.

4. SECURITY

19. In the case of confidential arbitration proceedings, the Participants shall act so as to ensure that there is no interference in the proceedings by unauthorised third parties.

20. The Participants shall employ measures to ensure confidentiality and data protection; in particular, the Participants are recommended to:

- (i) Refrain from participating in the Hearing through a public connection;
- (ii) Determine the list of Participants (arbitrators, parties, counsel, witnesses, experts, administrative secretary, interpreters, stenographers, technicians, etc.) who will attend the Virtual Hearing (or part of it) and not allow the participation of persons who are not on the list;
- (iii) Protect access to the Virtual Hearing with a password;
- (iv) Not to share the password to access the Hearing with third parties, nor to share the viewing of the Hearing with third parties, whether by means of unauthorised retransmissions or recordings;
- (v) Determine whether the Virtual Hearing will be audio-recorded only or whether it will also include video, and who will be responsible for the recording (e.g., an arbitrator, the administrative secretary, the staff of the Center or a technician specifically contracted for this purpose).

21. As additional measures, Participants may also make use of Virtual Private Networks (VPNs) to connect to the Audience. Such a connection mode offers an additional level of security by encrypting a private connection to its user, making it more difficult for unauthorised third parties to access.

22. CIAM-CIAR provides a model Virtual Hearing Protocol that the arbitral tribunal and the parties may adopt and/or adapt according to their needs (Annex 1).



Annex 1

Virtual Hearing Protocol

1. The Hearing shall be held virtually using the platform (***) [the "**Platform**"]. The following rooms shall be made available for the conduct of the Hearing:

- A Main Chamber where the Hearing will be held,
- A Waiting Room for all participants;
- A Deliberation Chamber for the Tribunal.

2. The (Arbitral Secretary/Tribunal Assistant/Center/Computer Technician), under the instructions of the presiding arbitrator, shall be the administrator of these virtual rooms.

3. The Arbitral Secretary shall send an invitation to all participants [the "**Participants**"] to connect to the Hearing and only these shall be authorised to participate in the Hearing.

4. Participants must log in with their full name and surname.

1. Test session and logistics

5. The Arbitral Tribunal and the Parties shall hold a test session on (***) .

6. The purpose of this session will be to allow Participants to assess the compatibility of equipment, the quality of their audio and video streams and make any necessary adjustments, as well as to test the Platform's features, including microphone muting, viewing options, transitions between Rooms and screen sharing.

7. The Parties shall be responsible for testing the Platform with each of their witnesses and expert witnesses, and with Hearing support staff (transcribers, interpreters, etc.) to ensure that all logistical requirements of this Procedural Order are met.



8. The Participants shall use their best efforts to ensure that there is a clear video and audio transmission during the Hearing. The Parties shall access the Platform through a desktop or laptop computer. Among other things, the Participants should consider the following recommendations:

- To facilitate a high-speed internet connection, it is recommended to use a wired connection, which is preferable to a wireless connection;
- Eliminate foreseeable background noise and take appropriate measures to prevent any person in the vicinity of the courtroom from disturbing the hearing;
- Correct positioning and lighting of the camera (e.g. attendees should avoid sitting close to a window, and it is also useful to place a light source in front of - and not behind - the Participant);
- Verify that computing devices are adequately charged and that power cords or backup batteries are available as needed;
- Participants are responsible for ensuring that the Platform application on their computer is up to date;
- Disable automatic computer updates on their computers, which risk being activated automatically and may disrupt the Hearing.

2. Access to the Main Hall

9. Participants shall access the Platform using the passwords provided by the Arbitration Secretary at least 10 minutes before the scheduled start time of the Hearing. Participants will be directed to the Waiting Room where they will remain until the Tribunal verifies that all Participants are properly connected to the Platform.

10. On the instructions of the Chairman of the Tribunal, the Arbitral Secretary shall admit all Participants to the Main Chamber at the same time.

11. Once the Authorised Participants have joined the Hearing, the Arbitral Secretary shall lock the Chamber to prevent others from joining the Hearing. The Tribunal may unlock the Chamber as necessary (e.g. to allow the next witness to join or to allow an Authorised Participant who has technical difficulties to rejoin after disconnecting).



3. Pleadings and evidence

Pleadings

12. Immediately before commencing their opening submissions, the Parties shall upload the summaries, excerpts, slides, graphics or other materials they wish to use for their respective submissions on the CIAM-CIAR Virtual Platform. In addition, Parties may also display the presentation through "screen sharing".

Documentary evidence

13. Immediately prior to the commencement of the interrogatories, the Parties shall upload a list of documents they wish to use for their respective interrogatories on the CIAM-CIAR Virtual Platform. In addition, the Parties may also display the documents through the "screen sharing" modality.

Witnesses and experts

14. The faces of witnesses and experts should be clearly visible when testifying. As far as possible, the webcam should be placed at face level, relatively close. Witnesses and experts should speak directly into the camera while testifying.

15. The Tribunal may request a witness or expert witness to aim his or her camera to provide a closer view of any material or person in his or her environment in order to verify that he or she is not referring to or relying on unauthorised information while testifying or is accompanied by unauthorised persons.

16. During their testimony, witnesses and experts may not exchange communications of any kind, except with the permission of the Tribunal.

4. Good practice (Online Etiquette)

17. In order to achieve the necessary level of cooperation and coordination for a successful Hearing, each Participant undertakes to verify the following issues:



- Identify your main spokesperson(s), who will have use of the screen and microphone;
- Refrain from interrupting any speaker;
- Use video conferencing functionalities reasonably and responsibly;
- Refrain from any unauthorised recording or screen capturing;
- Mute the microphone when you are not speaking;
- You take the necessary measures or practices to support the procedural efficiency of the Hearing.

18. In order to avoid delays and difficulties in reconnecting, Participants should not disconnect from the Hearing during breaks, unless otherwise instructed by the Tribunal. During such breaks the lines may be muted and the Tribunal may move the Participants to the Waiting Room.

5. Security

19. To safeguard the privacy of the Audience, Participants shall not connect from a public environment or use an unsecured public wifi connection.

20. Access to the Main Chamber shall be password-protected and shall be provided by the Arbitration Secretary to all Participants. The Parties' representatives shall be responsible for securely sharing the password with their team members, witnesses, experts and transcribers and other service persons.

21. The Arbitral Secretary shall be responsible for admitting and excluding Participants in the Main Chamber. Unless authorised by the Arbitral Tribunal, only Participants may be admitted to the Main Chamber.

22. The Parties agree that no person shall attend, participate in or be allowed to hear the Hearing without the prior consent of the Arbitral Tribunal.

6. Protocol in case of technical failure

23. An IT technician may be present during the Hearing in case of technical failures.



24. In the event that a Participant is disconnected from the Hearing or experiences some other technical failure and the connection cannot be re-established:

- The Tribunal may take measures to stop the Hearing and move the Participants to the Waiting Room;
- The Tribunal may, with the agreement of the Parties, change the order in which witnesses and experts appear;
- A Participant experiencing a technical failure should check e-mail pending instructions from the Selection Board.

25. In the event that the Main Chamber experiences technical failures that make it impossible to conduct the Hearing, the Tribunal shall take such measures as it deems appropriate, including holding the Hearing on an alternative Platform or suspending the Hearing.

Emergency conference call

26. In case of disconnection and inability to reconnect for a prolonged period of time, the Chairman of the Tribunal or the Arbitral Secretary shall send an email to the Participants to connect to an emergency conference call to receive instructions from the Arbitral Tribunal on how to proceed.

7. Declaration by the Parties

27. The Parties confirm that it has conducted its own investigation of the suitability and appropriateness of the proposed Platform for the Hearing and of any risks of using such Platform, including risks related to its security, privacy or confidentiality, and agree to use it to conduct the Hearing.