

COMPARISON OF PROTOCOLS ON VIDEO CONFERENCING

CIArb Guidance Note on Remote DR Proceedings	Seoul Protocol on Video Conferencing	HKIAC Guidelines for Virtual Hearings	ICC Guidance Note on Possible Measures Aimed at Mitigating the Effects of the COVID-19 Pandemic	CHOSEN PROVISIONS
PREAMBLE / INTRODUCTION / PURPOSE				
<p>Preamble</p> <p>The global pandemic of COVID-19 has severely affected the personal and professional lives of people worldwide. Numerous governments have been obliged to impose strict constraining measures on their natural and legal persons, which has resulted in often injurious repercussions to business relationships. It is everyone's responsibility to contribute to the global effort to</p>	<p><u>Introduction</u></p> <p>This Protocol on Video Conferencing in International Arbitration (Protocol) is intended to serve as a guide to best practice for planning, testing and conducting video conferences in international arbitration.</p>	<p>INTRODUCTION</p> <p>HKIAC has administered multiple hearings that are either partially or fully virtual. HKIAC's virtual hearing services may be used for arbitrations administered by HKIAC and those that are not. Full information on HKIAC's virtual hearing services is available here.</p> <p>Whether or not a virtual hearing, in part or in full, is suitable for a particular matter remains a matter for the parties and the arbitral tribunal.</p>	<p>I - Purpose</p> <p>1. 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</p>	<p>Introduction</p> <p>The global pandemic of COVID-19 has severely affected the personal and professional lives of people worldwide. (Preamble)</p> <p>However, CIArb believes that resolving disputes by alternative dispute resolution procedures should not be dependent on the surrounding circumstances in the majority of cases. (Preamble)</p> <p>CIArb seeks to reassure disputing parties that, in most cases, applying some sensible checks as set out in this Guidance Note, parties can still use remote procedures for full resolution of their disputes. (Preamble)</p> <p>CIArb offers this Guidance Note on Remote Dispute Resolution Proceedings to provide parties to existing and future disputes, as well as neutrals, a guide for conducting proceedings in any</p>

<p>prevent the spread of the virus. However, CIArb believes that resolving disputes by alternative dispute resolution procedures should not be dependent on the surrounding circumstances in the majority of cases. Thus, business should not be burdened by unresolved disputes due to the inability of parties to meet physically to resolve disputes. CIArb seeks to reassure disputing parties that, in most cases, applying some sensible checks as set out in this Guidance Note, parties can still use remote procedures for full resolution of their disputes. CIArb offers this Guidance Note on Remote Dispute Resolution Proceedings to provide parties to</p>		<p>These Guidelines are based on HKIAC's experience and aim to ensure that participants experience a seamless and effective virtual hearing. They apply to hearings that are fully or partially virtual.</p>	<p>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.</p> <p>2. The Court recognises the important role that parties, counsel and tribunals play in ensuring that disputes will continue to be resolved on a fair, expeditious, and cost-effective basis. This Guidance Note: (I) recalls the procedural</p>	<p>circumstance where parties to the dispute are unable to meet physically. (Preamble)</p> <p>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"). (Purpose)</p> <p>The Court recognises the important role that parties, counsel and tribunals play in ensuring that disputes will continue to be resolved on a fair, expeditious, and cost-effective basis. This Guidance Note: (I) recalls the procedural tools available to parties, counsel and tribunals to mitigate the delays generated by the pandemic through greater efficiency, and (II) provides guidance concerning the organisation of conferences and hearings in light of COVID-19 considerations, including conducting such conferences and hearings by audioconference, videoconference, or other similar means of communication ("virtual hearing"). To the extent relevant, it may serve in the context of other ICC ADR proceedings as well. (Purpose)</p> <p>II - Mitigating COVID-19 related delays</p> <p>6. The Court remains open for business, continuing to progress pending arbitrations and with its doors open to new cases. Moreover, the Court is fully committed to the fair and efficient resolution of disputes, despite the challenges</p>
---	--	--	---	---

<p>existing and future disputes, as well as neutrals, a guide for conducting proceedings in any circumstance where parties to the dispute are unable to meet physically. This Guidance Note is intended to be broadly applicable to the current 2020 global health crisis and well beyond. This Guidance Note is intended to be taken into consideration to help participants in arranging remote procedures.</p> <p>The Guidance Note relies on related existing practices and scholarly writings produced before and after the 2020 pandemic and is no way a definitive work. We welcome any feedback, comments and suggestions from our members and colleagues around the world. We are eager to</p>			<p>tools available to parties, counsel and tribunals to mitigate the delays generated by the pandemic through greater efficiency, and (II) provides guidance concerning the organisation of conferences and hearings in light of COVID-19 considerations, including conducting such conferences and hearings by audioconference, videoconference, or other similar means of communication ("virtual hearing"). To the extent relevant, it may serve in the context of other ICC ADR proceedings as well.</p> <p>II - Mitigating COVID-19 related delays</p> <p>3. The Court remains open for business, continuing to progress pending</p>	<p>that the COVID-19 pandemic poses. The pandemic does not change the fundamental principles by which the Court operates, including that, pursuant to Article 22(1) of the Rules, tribunals and parties have the duty "to conduct the arbitration in an expeditious and cost-effective manner." Pursuant to Article 25(1) of the Rules, tribunals have the additional duty to proceed within as short a time as possible to establish the facts of the case by all appropriate means.</p> <p>7. Consistent with the Rules and these principles, parties, counsel and tribunals have shared obligations to consider procedural measures that can mitigate the effect of delays to the arbitral process, including delays caused by the COVID-19 pandemic. In doing so, they should take into account that certain aspects of the arbitral process should not be materially delayed by the pandemic. For example, in newly introduced cases, tribunals should avoid any delay by consulting the parties on the organisation and timing of the initial case management conference as soon as practicable, and where possible in their first correspondence to the parties.</p> <p>Similarly, the COVID-19 pandemic should not necessarily delay tribunals' deliberations or their preparation of draft awards, as these activities can be conducted remotely. Tribunals should therefore</p>
---	--	--	---	---

<p>contribute to the global effort of establishing best practices on remote dispute resolution and facilitation of its use.</p> <p>Introduction</p> <p>The Guidance Note is intended for use in conjunction with and adjusted to any governmental and arbitral institutions' advice with reference to any dealings during the COVID-19 pandemic or other circumstance that prevents physical meetings and any laws applicable, including public policy provisions of the possible place(s) of enforcement.</p> <p>Where travel bans and severe government restrictions become more widespread, parties and neutrals should immediately express any concerns regarding their participation in pending</p>			<p>arbitrations and with its doors open to new cases. Moreover, the Court is fully committed to the fair and efficient resolution of disputes, despite the challenges that the COVID-19 pandemic poses. The pandemic does not change the fundamental principles by which the Court operates, including that, pursuant to Article 22(1) of the Rules, tribunals and parties have the duty "to conduct the arbitration in an expeditious and cost-effective manner." Pursuant to Article 25(1) of the Rules, tribunals have the additional duty to proceed within as short a time as possible to establish the facts of the case by all appropriate means.</p> <p>4. Consistent with the Rules and these principles, parties, counsel and tribunals have shared</p>	<p>organise their deliberations, as necessary, and take steps to progress the preparation of draft awards by all appropriate means of communication. The time-limit for the submission of draft awards to the Court, as well as its policy to reduce arbitrator fees in cases of unjustified delays, remain in effect, although the Court will apply that policy with sensitivity in cases involving delays genuinely attributable to specific COVID-19 caused situations, such as the illness of an arbitrator, just as the Court will be mindful of COVID-19 related hardship in assessing requests for advances on fees. (Purpose)</p>
---	--	--	---	---

<p>proceedings to their neutrals, co-neutrals, and case managers and discuss possible schedule or procedural amendments, in particular the possibility of remote participation.</p> <p>Although the definition of remote dispute resolution includes, but is not limited to, video and audio conferences, email and offline means such as documents-only proceedings, this Guidance Note will focus on the use of video and audio conferencing. CI Arb encourages parties to primarily use combined video or audio conferencing whenever possible. This is because combined video and audio allows participants to create a “working environment” that allows participants to be more engaged in the process. Further, combined video and</p>			<p>obligations to consider procedural measures that can mitigate the effect of delays to the arbitral process, including delays caused by the COVID-19 pandemic. In doing so, they should take into account that certain aspects of the arbitral process should not be materially delayed by the pandemic. For example, in newly introduced cases, tribunals should avoid any delay by consulting the parties on the organisation and timing of the initial case management conference as soon as practicable, and where possible in their first correspondence to the parties.</p> <p>5. Similarly, the COVID-19 pandemic should not necessarily delay tribunals’ deliberations or their preparation of</p>	
---	--	--	--	--

<p>audio conferencing is a more efficient means of resolving complex disputes where physical hearings or meetings have been cancelled or postponed.</p> <p>This Guidance Note can be applied to arbitration, mediation, adjudication, negotiation, expert determination, dispute boards, or any other type of alternative dispute resolution. However, CI Arb recognises that arbitration proceedings may be affected by a circumstance preventing physical meetings to a greater degree than other procedures and thus parties to arbitration may need to take more adjustments into consideration.</p>			<p>draft awards, as these activities can be conducted remotely. Tribunals should therefore organise their deliberations, as necessary, and take steps to progress the preparation of draft awards by all appropriate means of communication. The time-limit for the submission of draft awards to the Court, as well as its policy to reduce arbitrator fees in cases of unjustified delays, remain in effect, although the Court will apply that policy with sensitivity in cases involving delays genuinely attributable to specific COVID-19 caused situations, such as the illness of an arbitrator, just as the Court will be mindful of COVID-19 related hardship in assessing requests for advances on fees.</p>	
--	--	--	---	--

CIArb Guidance Note on Remote DR Proceedings	Seoul Protocol on Video Conferencing	HKIAC Guidelines for Virtual Hearings	ICC Guidance Note on Possible Measures Aimed at Mitigating the Effects of the COVID-19 Pandemic	CHOSEN PROVISIONS
DEFINITIONS				
	<p><u>Definitions</u></p> <p><i>Agreed Bundle of Documents</i>- shall mean the agreed and indexed documents submitted to the Tribunal for the purposes of the hearing.</p> <p><i>Hearing Venue</i> - shall mean the site of the hearing, being the site of the requesting authority, typically where the majority of the participants are located.</p> <p><i>Observer</i>- shall mean any individual who is present in the Venue other than the Parties, Tribunal, Witness, interpreter, as described in Article 3.</p> <p><i>Party / Parties</i> -shall mean the party or parties to the arbitration.</p> <p><i>Remote Venue</i>- shall mean the site where the remote Witness is located to provide his/her evidence (i.e. not the Hearing</p>			<p><u>Definitions</u></p> <p><i>Agreed Bundle of Documents</i>- shall mean the agreed and indexed documents submitted to the Tribunal for the purposes of the hearing.</p> <p><i>Hearing Venue</i> - shall mean the site of the hearing, being the site of the requesting authority, typically where the majority of the participants are located.</p> <p><i>Observer</i>- shall mean any individual who is present in the Venue other than the Parties, Tribunal, Witness and interpreter.</p> <p><i>Party / Parties</i> -shall mean the party or parties to the WESM Dispute.</p> <p><i>Remote Venue</i>- shall mean the site where the remote Witness is located to provide his/her evidence (i.e. not the Hearing Venue), typically where a minority of the participants are located.</p>

	<p>Venue), typically where a minority of the participants are located.</p> <p>Venue- shall mean a video conferencing location, including the Hearing Venue and the Remote Venue(s).</p> <p>Tribunal - shall mean the arbitral tribunal.</p> <p>Witness- shall mean the individual who is the subject of the examination by video, including fact witnesses and experts.</p>			<p>Venue- shall mean a video conferencing location, including the Hearing Venue and the Remote Venue(s).</p> <p>Tribunal - shall mean the arbitral tribunal.</p> <p>Witness- shall mean the individual who is the subject of the examination by video, including fact witnesses and experts.</p> <p><i>*Define "place" of arbitration based on RA 9285</i></p>
CIArb Guidance Note on Remote DR Proceedings	Seoul Protocol on Video Conferencing	HKIAC Guidelines for Virtual Hearings	ICC Guidance Note on Possible Measures Aimed at Mitigating the Effects of the COVID-19 Pandemic	CHOSEN PROVISIONS
PRELIMINARIES / PREPARATORY ARRANGEMENTS AND CONSIDERATIONS				
<p>PART 1. Technology and Logistical Matters</p> <p>1. Preliminary considerations</p> <p>1.1. Procedures to be followed, schedules and deadlines, as well as</p>	<p><u>Article 9 - Preparatory Arrangements</u></p> <p>9.1 To the extent possible, the Parties should make the request to the Tribunal to use video conferencing at the hearing at least 72 hours before the commencement of hearing. The Party who requests the use of</p>	<p>GUIDELINES</p> <p>1. Contact the HKIAC as early as possible to discuss hearing dates and virtual hearing services required, even if not all details are certain.</p>	<p>A - Increasing the Efficiency of the Arbitral Procedure</p> <hr/> <p>6. The adverse consequences of the COVID-19 pandemic make it more critical than ever that parties,</p>	<p>A - Increasing the Efficiency of the Arbitral Procedure</p> <hr/> <p>6. The adverse consequences of the COVID-19 pandemic make it more critical than ever that parties, counsel and tribunals give due consideration to implementing case management techniques designed to make arbitration fair and</p>

<p>participants to be involved in the remote proceeding should be planned and agreed in advance. All important information to this end should be circulated between such participants via email. Physical post should only be used where a non-physical alternative does not exist or where domestic legislation requires it.</p> <p>1.2. Technology, software, equipment and type of connection to be used in a remote proceeding should be agreed upon by the parties and tested with all participants in advance of any meetings or hearings.</p> <p>1.3. Sufficient Time Frames should be allocated to eliminate possible connection or other technical failures once a meeting or hearing has begun.</p>	<p>video conferencing (the "Requesting Party") should liaise with the appropriate individuals to ensure the video conferencing can be conducted smoothly. This includes the booking of video conferencing facilities and notifying all participants of the video conferencing arrangements. The Requesting Party shall bear the extra costs of the video conferencing facilities, if any.</p> <p>9.2 The Parties shall endeavor to agree on the seating plan so as to allow each participant to be able to see the participants with whom they will be speaking to during the video conference.</p> <p>9.3 Where an interpreter is required during the video conference, the interpreter shall be briefed by the appointing Party before the commencement of the hearing, including in relation to this Protocol and the arrangements for video conferencing that may impact or require adjustment of their interpretation service.</p> <p>9.4 Before the commencement of the hearing, the Parties shall inform the participants of any backup plans in case of</p>	<p>2. Liaise as early as possible with all other parties and the arbitral tribunal. This will avoid late changes to arrangements and wasted time. This is also relevant in respect of hearing procedural orders or protocols issued by the tribunal.</p> <p>3. Complete HKIAC's online enquiry form. This form focuses participants on five services that are key to organising a fully or partially virtual hearing:</p> <ol style="list-style-type: none"> a. video conferencing; b. audio conferencing; c. electronic bundling and presentation of evidence; d. transcription services; and e. interpretation services. 	<p>counsel and tribunals give due consideration to implementing case management techniques designed to make arbitration fair and efficient.</p> <p>7. Many of these techniques are not new. The Court has issued guidance in Appendix IV to the Rules and in the <u>Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration</u> ("Note"). Additional guidance is available in the ICC Commission on Arbitration and ADR reports entitled "<u>Controlling Time and Costs in Arbitration</u>" and "<u>Effective Management of Arbitration – A Guide for In-House Counsel and Other party Representatives.</u>"</p> <p>8. To ensure continued effective case</p>	<p>efficient. (A - Increasing the Efficiency of the Arbitral Procedure)</p> <p>8. To ensure continued effective case management, Article 24(3) of the Rules provides that the tribunal may adopt appropriate procedural measures or modify the procedural timetable by means of a further case management conference or otherwise. Such measures, taken after consulting the parties, may include the following:</p> <ul style="list-style-type: none"> • Disposing expeditiously of certain claims or defences as provided in §§ 74-79 of the Note; • Resolving the issues in dispute in stages by rendering one or more partial awards when doing so is likely to result in a more efficient resolution of the case; • Identifying whether the entirety of the dispute or discrete issues may be resolved on the basis of documents only, with no evidentiary hearing; • Identifying issues that may be resolved by agreement between the parties, as the case may be with the assistance of their experts; • Organising mid-stream procedural conferences in order to assess with the parties the most relevant issues and to consider possibilities for focusing on the most efficient means to resolve those issues;
---	---	--	---	---

<p>Technical assistance and monitoring of the status of connection at all stages of remote proceedings should be provided for wherever possible and arranged in advance.</p> <p>1.4. The highest possible quality of audio and/or video connection available to parties should be used. Connections should be capable of showing a full image of the persons involved and clear audio of their pleadings and interventions. This will not only ensure more dynamic proceedings, but also eliminate prolongation of time frames needed for due process observance.</p> <p>1.5. The level of cybersecurity and security technology required to cover remote proceedings should be taken into</p>	<p>communication or technological breakdowns.</p>	<p>A member of the HKIAC team will respond within 24 hours to discuss your needs. HKIAC will provide a breakdown of the costs early on and make suggestions to ensure your hearing proceeds as seamlessly and effectively as possible.</p> <p>4. Arrange testing with all participants in advance of the hearing. HKIAC arranges testing and will assist in training participants as required.</p> <p>5. HKIAC can provide:</p> <ol style="list-style-type: none"> a. IP-based encrypted video conferencing that supports up to eight different locations; b. cloud-based video conferencing compatible with all major video conferencing 	<p>management, Article 24(3) of the Rules provides that the tribunal may adopt appropriate procedural measures or modify the procedural timetable by means of a further case management conference or otherwise. Such measures, taken after consulting the parties, may include the following:</p> <ul style="list-style-type: none"> • Disposing expeditiously of certain claims or defences as provided in §§ 74-79 of the Note; • Resolving the issues in dispute in stages by rendering one or more partial awards when doing so is likely to result in a more efficient resolution of the case; 	<ul style="list-style-type: none"> • Considering whether potentially dispositive issues, such as the application of a contractual limitation of liability or the inclusion of a non-signatory in the proceedings, can be decided without a phase for the production of documents, or with a highly limited production of documents that are deemed to be material only to the issue(s) to be decided; • Identifying issues that may be resolved without witness and/or expert evidence or on the basis of written questions from the opposite party or the tribunal and written answers from the witness or expert; • Considering whether site visits or inspections by experts can be replaced by video presentations or joint reports of experts; • Considering whether direct recourse to a tribunal-appointed expert (experts with various skills are available for appointment by the ICC International Centre for ADR free of charge to ICC tribunals; Article 3 Appendix II of the ICC Expert Rules for the Proposal of Experts and Neutrals) as opposed to party-appointed experts is appropriate; • Using either audioconference or videoconference for conferences and hearings where possible and appropriate;
--	---	---	--	--

<p>consideration and agreed by the parties in advance of any remote meeting, conference, or hearing.</p> <p>1.6 In the case of a semi-remote hearing, parties should discuss and agree in advance whether a party and a neutral may be physically in the same room. This can arise where one party and one or more neutrals are located in a jurisdiction where they are not subject to social distancing restrictions. In the interests of equality, it is preferable that if one party must appear to the tribunal remotely, both parties should do so. However, parties may agree otherwise.</p>		<p>platforms (Zoom, Cisco Webex, Microsoft Teams, Bluejeans).</p> <p>When using cloud-based systems, participants should use LAN/Ethernet internet connections instead of WiFi connections to the extent possible, or ensure that they have access to high-quality, secured WiFi networks. Technical specifications differ between platforms and many factors affect stability. HKIAC can advise on appropriate technical specifications.</p> <p>6. In addition to the primary system, HKIAC will arrange a back-up system for each hearing in consultation with the participants.</p> <p>7. Arrange to have an IT specialist in attendance at all times ("hearing manager"). HKIAC provides hearing managers to monitor the</p>	<ul style="list-style-type: none"> • Identifying whether the entirety of the dispute or discrete issues may be resolved on the basis of documents only, with no evidentiary hearing; • Identifying issues that may be resolved by agreement between the parties, as the case may be with the assistance of their experts; • Organising mid-stream procedural conferences in order to assess with the parties the most relevant issues and to consider possibilities for focusing on the most efficient means to resolve those issues; 	<ul style="list-style-type: none"> • Requesting that the parties establish an agreed chronology of facts, joint lists of issues in dispute or other similar jointly produced documents that help define and narrow the range of issues in dispute; • Considering whether and how the number and size of submissions can be limited; and • Considering whether the parties would agree to opt-in to the ICC Expedited Rules Provisions. <p>9. The foregoing non-exhaustive list of procedural options illustrates that parties, counsel and tribunals have many tools at their disposal to mitigate potential delays, even those caused by the COVID-19 pandemic. Tribunals should accordingly communicate pro-actively with the parties to consider which measures, if any, may be implemented in the specific circumstances of each case to mitigate COVID-19 procedural disruptions (A - Increasing the Efficiency of the Arbitral Procedure).</p> <p>PART 1. Technology and Logistical Matters</p> <p>1. Preliminary considerations</p> <p>1.1. Procedures to be followed, schedules and deadlines, as well as participants to be involved in</p>
---	--	--	--	--

		<p>proceedings and provide IT support as needed. HKIAC can provide support across all time zones.</p> <p>8. Turn all other devices to mute and flight-mode and disable alerts. This will avoid feedback/audio disruption. When relying on WiFi connections, participants should minimise the use of other devices to ensure maximum bandwidth.</p>	<ul style="list-style-type: none"> • Considering whether potentially dispositive issues, such as the application of a contractual limitation of liability or the inclusion of a non-signatory in the proceedings, can be decided without a phase for the production of documents, or with a highly limited production of documents that are deemed to be material only to the issue(s) to be decided; • Identifying issues that may be resolved without witness and/or expert evidence or on the basis of written questions from the opposite party or the tribunal and written answers from the witness or expert; 	<p>the remote proceeding should be planned and agreed in advance. All important information to this end should be circulated between such participants via email. Physical post should only be used where a non-physical alternative does not exist or where domestic legislation requires it.</p> <p>1.2. Technology, software, equipment and type of connection to be used in a remote proceeding should be agreed upon by the parties and tested with all participants in advance of any meetings or hearings.</p> <p>1.3. Sufficient Time Frames should be allocated to eliminate possible connection or other technical failures once a meeting or hearing has begun. Technical assistance and monitoring of the status of connection at all stages of remote proceedings should be provided for wherever possible and arranged in advance.</p> <p>1.4. The highest possible quality of audio and/or video connection available to parties should be used. Connections should be capable of showing a full image of the persons involved and clear audio of their pleadings and interventions. This will not only ensure more dynamic proceedings, but also eliminate prolongation of time frames needed for due process observance.</p> <p>1.5. The level of cybersecurity and security technology required to cover remote proceedings should be taken into consideration and agreed by</p>
--	--	--	---	--

			<ul style="list-style-type: none"> • Considering whether site visits or inspections by experts can be replaced by video presentations or joint reports of experts; • Considering whether direct recourse to a tribunal-appointed expert (experts with various skills are available for appointment by the ICC International Centre for ADR free of charge to ICC tribunals; Article 3 Appendix II of the ICC Expert Rules for the Proposal of Experts and Neutrals) as opposed to party-appointed experts is appropriate; • Using either audioconference or videoconference for conferences and hearings 	<p>the parties in advance of any remote meeting, conference, or hearing.</p> <p>1.6 In the case of a semi-remote hearing, parties should discuss and agree in advance whether a party and a neutral may be physically in the same room. This can arise where one party and one or more neutrals are located in a jurisdiction where they are not subject to social distancing restrictions. In the interests of equality, it is preferable that if one party must appear to the tribunal remotely, both parties should do so. However, parties may agree otherwise.</p> <p><u>Article 9 - Preparatory Arrangements</u></p> <p>9.1 To the extent possible, the Parties should make the request to the Tribunal to use video conferencing at the hearing at least 72 hours before the commencement of hearing. The Party who requests the use of video conferencing (the "Requesting Party") should liaise with the appropriate individuals to ensure the video conferencing can be conducted smoothly. This includes the booking of video conferencing facilities and notifying all participants of the video conferencing arrangements. The Requesting Party shall bear the extra costs of the video conferencing facilities, if any.</p> <p>9.2 The Parties shall endeavor to agree on the seating plan so as to allow each participant to be able to see the participants with whom they will be speaking to during the video conference.</p>
--	--	--	---	--

			<p>where possible and appropriate;</p> <ul style="list-style-type: none"> • Requesting that the parties establish an agreed chronology of facts, joint lists of issues in dispute or other similar jointly produced documents that help define and narrow the range of issues in dispute; • Considering whether and how the number and size of submissions can be limited; and • Considering whether the parties would agree to opt-in to the ICC Expedited Rules Provisions. <p>9. The foregoing non-exhaustive list of procedural options illustrates that parties, counsel and tribunals have many tools at their disposal to mitigate</p>	<p>9.3 Where an interpreter is required during the video conference, the interpreter shall be briefed by the appointing Party before the commencement of the hearing, including in relation to this Protocol and the arrangements for video conferencing that may impact or require adjustment of their interpretation service.</p> <p>9.4 Before the commencement of the hearing, the Parties shall inform the participants of any backup plans in case of communication or technological breakdowns.</p> <p>3. Complete HKIAC’s <u>online enquiry form</u>. This form focuses participants on five services that are key to organising a fully or partially virtual hearing:</p> <ul style="list-style-type: none"> f. video conferencing; g. audio conferencing; h. electronic bundling and presentation of evidence; i. transcription services; and j. interpretation services. <p>A member of the HKIAC team will respond within 24 hours to discuss your needs. HKIAC will provide a breakdown of the costs early on and make suggestions to ensure your hearing proceeds as seamlessly and effectively as possible.</p> <p>4. Arrange testing with all participants in advance of the hearing. HKIAC arranges</p>
--	--	--	--	---

			<p>potential delays, even those caused by the COVID-19 pandemic. Tribunals should accordingly communicate proactively with the parties to consider which measures, if any, may be implemented in the specific circumstances of each case to mitigate COVID-19 procedural disruptions.</p>	<p>testing and will assist in training participants as required.</p> <p>5. HKIAC can provide:</p> <ul style="list-style-type: none"> c. IP-based encrypted video conferencing that supports up to eight different locations; d. cloud-based video conferencing compatible with all major video conferencing platforms (Zoom, Cisco Webex, Microsoft Teams, Bluejeans). <p>When using cloud-based systems, participants should use LAN/Ethernet internet connections instead of WiFi connections to the extent possible, or ensure that they have access to high-quality, secured WiFi networks. Technical specifications differ between platforms and many factors affect stability. HKIAC can advise on appropriate technical specifications.</p> <p>6. In addition to the primary system, HKIAC will arrange a back-up system for each hearing in consultation with the participants.</p> <p>7. Arrange to have an IT specialist in attendance at all times ("hearing manager"). HKIAC provides hearing managers to monitor the proceedings and provide IT support as needed.</p>
--	--	--	---	---

				<p>HKIAC can provide support across all time zones.</p> <p>8. Turn all other devices to mute and flight-mode and disable alerts. This will avoid feedback/audio disruption. When relying on WiFi connections, participants should minimise the use of other devices to ensure maximum bandwidth.</p>
CIArb Guidance Note on Remote DR Proceedings	Seoul Protocol on Video Conferencing	HKIAC Guidelines for Virtual Hearings	ICC Guidance Note on Possible Measures Aimed at Mitigating the Effects of the COVID-19 Pandemic	CHOSEN PROVISIONS
GUIDELINES ON VIRTUAL PROCEEDINGS				
<p>3. Virtual proceedings</p> <p>3.1. Virtual hearing rooms are the preferred way to conduct hearings remotely. These are organised via the use of commercial digital platforms and can be equipped to create an atmosphere approximating face-to-face proceedings. All participants should be</p>	<p><u>Article 6 – Test Conferencing and Audio Conferencing Backup</u></p> <p>6.1 As a general principle, testing of all video conferencing equipment shall be conducted at least twice: once in advance of the commencement of the hearing, and once immediately prior to the video conference itself.</p> <p>6.2 The Parties shall ensure that there are adequate backups in</p>	<p>9. When appearing by video conference, participants should:</p> <p>a. mute microphones unless speaking;</p> <p>b. use physical gestures to announce that they wish to speak, e.g., by raising a hand and keeping it raised, or use the raise hand function on the</p>	<p>III - Guidance on the organisation of virtual hearings</p> <p>16. Health and safety considerations as well as travel restrictions may significantly affect conferences and hearings, and may even make it impossible to convene physically in a single location.</p>	<p>III - Guidance on the organisation of virtual hearings</p> <p>18. Health and safety considerations as well as travel restrictions may significantly affect conferences and hearings, and may even make it impossible to convene physically in a single location.</p> <p>19. When faced with such a situation, parties, counsel and tribunals should consider whether the hearing or conference should be postponed, whether it can be conducted by</p>

<p>visible and audible in the chosen virtual hearing room. Simultaneous access to shared documentation through means such as screen sharing should also be provided.</p> <p>3.2. A breakout room, or a separate meeting from the virtual hearing room, can be used for caucus proceedings. The other party should not have the ability to hear or view muted caucus proceedings as body language of participants, important in mediation proceedings.</p> <p>3.3 In arbitration proceedings, separate virtual breakout rooms for tribunal deliberations and caucusing by parties are recommended. However, party breakout rooms should never be visible or audible to neutrals to</p>	<p>place in the event that the video conference fails. At a minimum, these should include cable back-ups, teleconferencing, or alternative methods of video/audio conferencing.</p>	<p>electronic system if available;</p> <p>c. avoid speaking at the same time as any other participant;</p> <p>d. avoid back-lighting such as sitting in front of a window or bright light. Back-lighting will prevent the participant being seen clearly on screen;</p> <p>e. ensure their camera is positioned at eye-level;</p> <p>f. look at the camera, not their screen;</p> <p>g. use a headset with integrated microphone where possible to protect the privacy of the proceedings at their location and improve audio quality for all participants;</p> <p>h. avoid wearing a face-mask when cameras that automatically track speakers by facial movement are being used. If that is not possible, manually operated cameras should be used.</p>	<p>17. When faced with such a situation, parties, counsel and tribunals should consider whether the hearing or conference should be postponed, whether it can be conducted by physical presence with special precautions, or whether to proceed with a virtual hearing.</p> <p>A - Means of Conducting Conferences or Hearings</p> <hr/> <p>18. In deciding on the appropriate procedural measures to proceed with the arbitration in an expeditious and cost-effective manner, a tribunal should take account of all the circumstances, including those that are the consequence of the COVID-19 pandemic, the nature and length of the conference or hearing, the complexity</p>	<p>physical presence with special precautions, or whether to proceed with a virtual hearing.</p> <p>A - Means of Conducting Conferences or Hearings</p> <hr/> <p>26. In deciding on the appropriate procedural measures to proceed with the arbitration in an expeditious and cost-effective manner, a tribunal should take account of all the circumstances, including those that are the consequence of the COVID-19 pandemic, the nature and length of the conference or hearing, the complexity of the case and number of participants, whether there are particular reasons to proceed without delay, whether rescheduling the hearing would entail unwarranted or excessive delays, and as the case may be the need for the parties to properly prepare for the hearing.</p> <p>27. If the parties agree, or the tribunal determines, that convening in a single physical location is indispensable yet impossible under current conditions, tribunals and parties should make every effort to reschedule the hearing or conference in a way that minimises delay. Parties and tribunals should in such case consider available options to make progress on at least part of the case despite the postponement, including by using the</p>
---	---	--	--	--

<p>prevent the possibility of inadvertent ex parte communication. Likewise, tribunal deliberations should never be visible or audible to parties. Should a neutral or party find that they are able to hear a separate caucus within a breakout room, they should report this to all participants immediately and sever the connection.</p> <p>3.4 In mediation proceedings, parties should allow for neutrals to participate in their caucuses as necessary. However, neutrals in mediation should follow 3.3 above in the event they find they have been given access to a caucus untimely or unwittingly.</p>			<p>of the case and number of participants, whether there are particular reasons to proceed without delay, whether rescheduling the hearing would entail unwarranted or excessive delays, and as the case may be the need for the parties to properly prepare for the hearing.</p> <p>19. If the parties agree, or the tribunal determines, that convening in a single physical location is indispensable yet impossible under current conditions, tribunals and parties should make every effort to reschedule the hearing or conference in a way that minimises delay. Parties and tribunals should in such case consider available options to make progress on at least part of the case despite the postponement, including</p>	<p>procedural tools discussed in the present Guidance Note.</p> <p>28. If the parties agree, or the tribunal determines, that convening in a single physical location is indispensable and that doing so is possible despite current conditions, the tribunal and the parties should consult to discuss and apply the specific rules and advisory guidance at the physical location of the hearing and the appropriate sanitary measures to ensure the safety of all participants, in particular by allowing sufficient distance between participants, making masks and disinfectant gel available, and any other appropriate measures.</p> <p>29. If the parties agree, or the tribunal determines, to proceed with a virtual hearing, then the parties and the tribunal should take into account, openly discuss and plan for special features of proceeding in that manner, including those addressed below and in the attached Annexes. The Secretariat stands ready to assist the parties in this regard.</p> <p>30. If a tribunal determines to proceed with a virtual hearing without party agreement, or over party objection, it should carefully consider the relevant circumstances, including those mentioned in paragraph 18 above, assess whether the award will be enforceable</p>
--	--	--	--	---

			<p>by using the procedural tools discussed in the present Guidance Note.</p> <p>20. If the parties agree, or the tribunal determines, that convening in a single physical location is indispensable and that doing so is possible despite current conditions, the tribunal and the parties should consult to discuss and apply the specific rules and advisory guidance at the physical location of the hearing and the appropriate sanitary measures to ensure the safety of all participants, in particular by allowing sufficient distance between participants, making masks and disinfectant gel available, and any other appropriate measures.</p> <p>21. If the parties agree, or the tribunal determines, to proceed with a virtual</p>	<p>at law, as provided by Article 42 of the Rules, and provide reasons for that determination. In making such a determination, tribunals may wish to take account of their broad procedural authority under Article 22(2) of the Rules, to, after consulting the parties, "adopt such procedural measures as [the tribunal] considers appropriate, provided that they are not contrary to any agreement of the parties." Additionally, amendments to the Rules and practice guidance has progressively acknowledged the possibility of virtual hearings, including in Article 24(4) of the Rules with respect to case management conferences, Article 3(5) of Appendix VI of the Rules with respect to Expedited Arbitration, and paragraph 77 of the Note with respect to dispositive issues.</p> <p>31. While Article 25(2) of the Rules provides that after studying the written submissions of the parties and all documents relied upon, the tribunal "shall hear the parties together in person if any of them so requests," this language can be construed as referring to the parties having an opportunity for a live, adversarial exchange and not to preclude a hearing taking place "in person" by virtual means if the circumstances so warrant.</p> <p>32. Article 25(1) broadly provides that the tribunal "shall proceed within as short a time as</p>
--	--	--	---	--

			<p>hearing, then the parties and the tribunal should take into account, openly discuss and plan for special features of proceeding in that manner, including those addressed below and in the attached Annexes. The Secretariat stands ready to assist the parties in this regard.</p> <p>22. If a tribunal determines to proceed with a virtual hearing without party agreement, or over party objection, it should carefully consider the relevant circumstances, including those mentioned in paragraph 18 above, assess whether the award will be enforceable at law, as provided by Article 42 of the Rules, and provide reasons for that determination. In making such a determination, tribunals may wish to take account of their broad procedural</p>	<p>possible to establish the facts of the case <i>by all appropriate means</i>" (emphasis added). In context, Article 25(2) is structured to regulate whether the tribunal can decide the dispute based on written submissions and documents only or whether there should also be a live hearing. The French version of Article 25(2) reflects this meaning, providing: "Après examen des écritures des parties et de toutes pièces versées par elles aux débats, le tribunal arbitral entend <i>contradictoirement</i> les parties si l'une d'elles en fait la demande; à défaut, il peut décider d'office de leur audition". Hence the Secretariat's Guide to ICC Arbitration notes that "whether the arbitral tribunal construes Article 25(2) as requiring a face-to-face hearing, or whether the use of video or teleconferencing suffices, will depend on the circumstances of the case."</p> <p>33. While tribunals have often erred on the side of caution and decided to hold at least one faceto-face hearing on the merits if a party so requires, the COVID-19 pandemic may mean that it is not possible to hold a face-to-face hearing in a reasonable time and that waiting until it becomes possible would produce unwarranted and even prejudicial delay. Accordingly, a tribunal may, in appropriate circumstances, adopt different approaches as it exercises its authority to establish procedures suitable to the particular circumstances of each arbitration and fulfills its</p>
--	--	--	--	---

			<p>authority under Article 22(2) of the Rules, to, after consulting the parties, "adopt such procedural measures as [the tribunal] considers appropriate, provided that they are not contrary to any agreement of the parties." Additionally, amendments to the Rules and practice guidance has progressively acknowledged the possibility of virtual hearings, including in Article 24(4) of the Rules with respect to case management conferences, Article 3(5) of Appendix VI of the Rules with respect to Expedited Arbitration, and paragraph 77 of the Note with respect to dispositive issues.</p> <p>23. While Article 25(2) of the Rules provides that after studying the written submissions of the parties and all</p>	<p>overriding duty to conduct the arbitration in an expeditious and cost-effective manner.</p> <p>3. Virtual proceedings</p> <p>3.1. Virtual hearing rooms are the preferred way to conduct hearings remotely. These are organised via the use of commercial digital platforms and can be equipped to create an atmosphere approximating face-to-face proceedings. All participants should be visible and audible in the chosen virtual hearing room. Simultaneous access to shared documentation through means such as screen sharing should also be provided.</p> <p>3.2. A breakout room, or a separate meeting from the virtual hearing room, can be used for caucus proceedings. The other party should not have the ability to hear or view muted caucus proceedings as body language of participants, important in mediation proceedings.</p> <p>3.3 In arbitration proceedings, separate virtual breakout rooms for tribunal deliberations and caucusing by parties are recommended. However, party breakout rooms should never be visible or audible to neutrals to prevent the possibility of inadvertent ex parte communication. Likewise, tribunal deliberations should never be visible or audible to parties. Should a neutral or party find that they are able to hear a separate caucus within a breakout room, they should report this to all participants immediately and sever the connection.</p>
--	--	--	---	---

			<p>documents relied upon, the tribunal "shall hear the parties together in person if any of them so requests," this language can be construed as referring to the parties having an opportunity for a live, adversarial exchange and not to preclude a hearing taking place "in person" by virtual means if the circumstances so warrant.</p> <p>24. Article 25(1) broadly provides that the tribunal "shall proceed within as short a time as possible to establish the facts of the case <i>by all appropriate means</i>" (emphasis added). In context, Article 25(2) is structured to regulate whether the tribunal can decide the dispute based on written submissions and documents only or whether there should also be a live hearing. The French version of</p>	<p>3.4 In mediation proceedings, parties should allow for neutrals to participate in their caucuses as necessary. However, neutrals in mediation should follow 3.3 above in the event they find they have been given access to a caucus untimely or unwittingly.</p> <p><u>Article 6 – Test Conferencing and Audio Conferencing Backup</u></p> <p>6.1 As a general principle, testing of all video conferencing equipment shall be conducted at least twice: once in advance of the commencement of the hearing, and once immediately prior to the video conference itself.</p> <p>6.2 The Parties shall ensure that there are adequate backups in place in the event that the video conference fails. At a minimum, these should include cable back-ups, teleconferencing, or alternative methods of video/audio conferencing.</p> <p>10. When appearing by video conference, participants should:</p> <ul style="list-style-type: none"> i. mute microphones unless speaking; j. use physical gestures to announce that they wish to speak, e.g., by raising a hand and keeping it raised, or use the raise hand function on the electronic system if available; k. avoid speaking at the same time as any other participant; l. avoid back-lighting such as sitting in front of a window or bright light. Back-lighting will
--	--	--	---	---

			<p>Article 25(2) reflects this meaning, providing: "Après examen des écritures des parties et de toutes pièces versées par elles aux débats, le tribunal arbitral entend <i>contradictoirement</i> les parties si l'une d'elles en fait la demande; à défaut, il peut décider d'office de leur audition". Hence the Secretariat's Guide to ICC Arbitration notes that "whether the arbitral tribunal construes Article 25(2) as requiring a face-to-face hearing, or whether the use of video or teleconferencing suffices, will depend on the circumstances of the case."</p> <p>25. While tribunals have often erred on the side of caution and decided to hold at least one face-to-face hearing on the merits if a party so requires, the COVID-19 pandemic may mean</p>	<p>prevent the participant being seen clearly on screen;</p> <ul style="list-style-type: none"> m. ensure their camera is positioned at eye-level; n. look at the camera, not their screen; o. use a headset with integrated microphone where possible to protect the privacy of the proceedings at their location and improve audio quality for all participants; p. avoid wearing a face-mask when cameras that automatically track speakers by facial movement are being used. If that is not possible, manually operated cameras should be used.
--	--	--	--	--

			<p>that it is not possible to hold a face-to-face hearing in a reasonable time and that waiting until it becomes possible would produce unwarranted and even prejudicial delay. Accordingly, a tribunal may, in appropriate circumstances, adopt different approaches as it exercises its authority to establish procedures suitable to the particular circumstances of each arbitration and fulfills its overriding duty to conduct the arbitration in an expeditious and cost-effective manner.</p>	
CIArb Guidance Note on Remote DR Proceedings	Seoul Protocol on Video Conferencing	HKIAC Guidelines for Virtual Hearings	ICC Guidance Note on Possible Measures Aimed at Mitigating the Effects of the COVID-19 Pandemic	CHOSEN PROVISIONS
WITNESS EXAMINATION				

<p>4. Interpreters, witnesses and experts</p> <p>4.1. While remote proceedings can provide an opportunity to increase the time efficiency of proceedings, witnesses and experts in some cases may require more time to present their information. Adjusted time frames may also be necessary for interpreters in remote proceedings, as consecutive interpretation is commonly used. Parties are encouraged to consider and agree the time and duration needed to present information and make oral pleadings before commencing remote hearings.</p> <p>4.2 For further efficiency, parties should utilize electronic bundles for cross examination of</p>	<p><u>Article 1 – Witness Examination Generally</u></p> <p>1.1 The Parties shall ensure that any and all Venues meet the logistical and technological requirements as stated in this Protocol.</p> <p>1.2 The video conferencing system at the Venue shall allow a reasonable part of the interior of the room in which the Witness is located to be shown on screen, while retaining sufficient proximity to clearly depict the Witness.</p> <p>1.3 The Witness shall give his/her evidence sitting at an empty desk or standing at a lectern, and the Witness’s face shall be clearly visible.</p> <p>1.4 As a general principle, the Witness shall give his/her evidence during the course of the hearing under the direction of the Tribunal. Only under exceptional circumstances and subject to the direction of the Tribunal would evidence from a Witness be given/conducted outside of the hearing.</p>	<p>11. Where a witness or expert is participating in a video conference remotely, it may be necessary:</p> <p>a. to arrange, where possible, for a hearing invigilator to attend at the same premises as the witness or expert, to ensure the integrity of the premises (i.e., that there is no person or recording-device present that was not approved or agreed);</p> <p>b. to arrange for a 360-degree viewing of the room by video at the beginning of each session of the virtual hearing to ensure the integrity of the room;</p>		<p><u>Article 1 – Witness Examination Generally</u></p> <p>1.1 The Parties shall ensure that any and all Venues meet the logistical and technological requirements as stated in this Protocol.</p> <p>1.2 The video conferencing system at the Venue shall allow a reasonable part of the interior of the room in which the Witness is located to be shown on screen, while retaining sufficient proximity to clearly depict the Witness.</p> <p>1.3 The Witness shall give his/her evidence sitting at an empty desk or standing at a lectern, and the Witness’s face shall be clearly visible.</p> <p>1.4 As a general principle, the Witness shall give his/her evidence during the course of the hearing under the direction of the Tribunal. Only under exceptional circumstances and subject to the direction of the Tribunal would evidence from a Witness be given/conducted outside of the hearing.</p> <p>1.5 A computer with email facilities and a printer should be located at all Venues.</p> <p>1.6 The parties shall ensure that an agreed translation of the oath to be administered is placed before the Witness in the remote hearing room</p> <p>1.7 The Tribunal may terminate the video conference at any time if the Tribunal deems the</p>
--	---	---	--	---

<p>witnesses and experts. Electronic bundles may be shared immediately before the commencement of the cross examination.</p>	<p>1.5 A computer with email facilities and a printer should be located at all Venues.</p> <p>1.6 The parties shall ensure that an agreed translation of the oath to be administered is placed before the Witness in the remote hearing room</p> <p>1.7 The Tribunal may terminate the video conference at any time if the Tribunal deems the video conference so unsatisfactory that it is unfair to either Party to continue.</p> <p><u>Article 7 – Interpretation</u></p> <p>7.1 The Parties shall ensure that interpretation services are made available to the Witness, if applicable.</p> <p>7.2 As a general principle, consecutive interpretation shall be preferred to simultaneous interpretation.</p>	<p>c. for the tribunal to recall the witness’s or expert’s obligation of truthfulness including by presenting their evidence in the manner agreed and without improper influence (by administering an oath, declaration, affirmation or otherwise).</p>		<p>video conference so unsatisfactory that it is unfair to either Party to continue.</p> <p><u>Article 7 – Interpretation</u></p> <p>7.1 The Parties shall ensure that interpretation services are made available to the Witness, if applicable.</p> <p>7.2 As a general principle, consecutive interpretation shall be preferred to simultaneous interpretation.</p> <p>12. Where a witness or expert is participating in a video conference remotely, it may be necessary:</p> <ul style="list-style-type: none"> d. to arrange, where possible, for a hearing invigilator to attend at the same premises as the witness or expert, to ensure the integrity of the premises (i.e., that there is no person or recording-device present that was not approved or agreed); e. to arrange for a 360-degree viewing of the room by video at the beginning of each session of the virtual hearing to ensure the integrity of the room; f. for the tribunal to recall the witness’s or expert’s obligation of truthfulness including by presenting their evidence in the manner agreed and without improper influence (by administering an oath, declaration, affirmation or otherwise).
--	---	---	--	--

				.2 For further efficiency, parties should utilize electronic bundles for cross examination of witnesses and experts. Electronic bundles may be shared immediately before the commencement of the cross examination.
CIArb Guidance Note on Remote DR Proceedings	Seoul Protocol on Video Conferencing	HKIAC Guidelines for Virtual Hearings	ICC Guidance Note on Possible Measures Aimed at Mitigating the Effects of the COVID-19 Pandemic	CHOSEN PROVISIONS
VENUE				
2. Venue 2.1. Some arbitral institutions and chambers are able to offer their venues for conducting hearings depending on the restrictions imposed in their jurisdictions. Their technological and connection services are	<u>Article 2 –Video Conferencing Venue</u> 2.1 To the extent possible, and as may be agreed to by the Parties or ordered by the Tribunal, the video conference shall occur at a Venue which meets the following minimum standards: a. The Parties shall use best efforts to ensure that the connection between the Hearing			<u>Article 2 –Video Conferencing Venue</u> 2.1 To the extent possible, and as may be agreed to by the Parties or ordered by the Tribunal, the video conference shall occur at a Venue which meets the following minimum standards: a. The Parties shall use best efforts to ensure that the connection between the Hearing Venue and the Remote Venue is as smooth as possible, with sounds and images being accurately and properly aligned so as to minimize any delays. This principle applies equally to situations where there is

<p>usually of a high level and are able to provide necessary equipment, software, high-quality internet connection and minimal chance of signal interruptions. Any domestic government regulations on physical meetings should be strictly followed when using such facilities.</p> <p>2.2. While some countries may not be severely affected by distancing restrictions, it is highly advisable to take precautionary measures in order to protect yourself and others when deciding whether hearings or meetings should be conducted in physical form.¹</p>	<p>Venue and the Remote Venue is as smooth as possible, with sounds and images being accurately and properly aligned so as to minimize any delays. This principle applies equally to situations where there is more than one Remote Venue. Where a connection between additional Venues is required (for example when an interpreter is connected from a third location), the connection may be established through the use of a third party video conferencing bridge service, such as multi-point control units or third party router vendors that interlink and connect multiple video conferencing systems together in a single conference.</p> <p>b. The Venue shall have at least one on-call individual with adequate technical knowledge to assist in planning, testing and conducting the video conference.</p> <p>c. The Venue shall be in a location that provides for fair, equal and reasonable right of access to the Parties and their related persons, as appropriate. Similarly, cross-border connections should be</p>			<p>more than one Remote Venue. Where a connection between additional Venues is required (for example when an interpreter is connected from a third location), the connection may be established through the use of a third party video conferencing bridge service, such as multi-point control units or third party router vendors that interlink and connect multiple video conferencing systems together in a single conference.</p> <p>b. The Venue shall have at least one on-call individual with adequate technical knowledge to assist in planning, testing and conducting the video conference.</p> <p>c. The Venue shall be in a location that provides for fair, equal and reasonable right of access to the Parties and their related persons, as appropriate. Similarly, cross-border connections should be adequately safeguarded so as to prevent unlawful interception by third parties, for example, by IP-to-IP encryption.</p> <p>2. Venue</p> <p>2.1. Some arbitral institutions and chambers are able to offer their venues for conducting hearings depending on the restrictions imposed in their jurisdictions. Their technological and connection services are usually of a high level and are able to provide necessary equipment, software, high-quality internet connection and minimal chance of signal interruptions. Any domestic government regulations on physical meetings should be strictly followed when using such facilities.</p>
--	--	--	--	---

¹ Please see for example the [Delos checklist on holding arbitration and mediation hearings in times of COVID-19](#) and note that this is the latest version of the checklist at the time of drafting of this Guidance Note.

	adequately safeguarded so as to prevent unlawful interception by third parties, for example, by IP-to-IP encryption. 2.2 The Parties shall use their best efforts to ensure the security of the participants of the video conferencing, including the Witnesses, Observers, interpreters, and experts, among others.			
CIArb Guidance Note on Remote DR Proceedings	Seoul Protocol on Video Conferencing	HKIAC Guidelines for Virtual Hearings	ICC Guidance Note on Possible Measures Aimed at Mitigating the Effects of the COVID-19 Pandemic	CHOSEN PROVISIONS
PROCEDURAL DOCUMENTATION				
5. Procedural documentation 5.1. In a remote proceeding, a list of documents to be presented in the remote hearing, including, but not limited to, memorials, witness statements, exhibits, slides, and graphics,	Article 4 – Documents 4.1 All documents on the record which the Witness will refer to during the course of his/her evidence must be clearly identified, paginated and made available to the Witness. 4.2 The Party whose Witness is giving evidence by video conference shall provide an unmarked copy (without any	1. Ensure that evidence bundles and documents that are to be shared virtually are supplied to the relevant service provider (“EPE manager”) well in advance of the hearing date in order for the EPE manager to familiarise themselves with the	B - Service of Documents and Notifications 10. The Secretariat of the Court (“Secretariat”) has also taken steps to streamline its processes to promote efficiency and avoid COVID-19 related delays.	5. Procedural documentation 5.1. In a remote proceeding, a list of documents to be presented in the remote hearing, including, but not limited to, memorials, witness statements, exhibits, slides, and graphics, should be available to all parties in digital form. 5.2 A procedure and a digital platform for transmission and storage of documentation for a remote proceeding should be agreed by parties before commencing the proceeding. This is to

<p>should be available to all parties in digital form.</p> <p>5.2 A procedure and a digital platform for transmission and storage of documentation for a remote proceeding should be agreed by parties before commencing the proceeding. This is to prevent duplicate communication of documents and to ensure the accessibility of all documentation that has been made available to neutrals.</p> <p>5.3 Parties should agree and list which documents can be shared with all or with only certain participants during the proceedings and to create secure digital platforms to this end. It is recommended to choose platforms which allow files to have permissions set to allow or restrict the ability to</p>	<p>annotations, notes or mark-ups) of the Agreed Bundle of Documents (or such volumes of the Agreed Bundle of Documents as the Parties agree or are required) at the start of the examination of the Witness.</p> <p>4.3 The Parties may agree on utilizing a shared virtual document repository (i.e. document server) to be made available via computers at all Venues, provided that the Parties use best efforts to ensure the security of the documents (i.e. from unlawful interception or retention by third parties).</p> <p>4.4 If available, a separate display screen/window (other than the screen/window used to display the video transmission) shall be used to show the relevant documents to the Witness during the course of questioning.</p>	<p>bundles. The parties should also notify the EPE manager if there are certain exhibits which require annotation or guidance from the parties (e.g., technical blueprints, large maps).</p> <p>2. Where transcription services are required, participants shall inform all parties, the tribunal and HKIAC as soon as possible. The parties must specify whether real-time display is required and whether transcription shall be provided remotely or in-person at a specified location (if the hearing is partially virtual). HKIAC will arrange testing with transcribers as necessary. Any audio recording of the hearing (including separate audio feeds for multiple languages) and circulation thereof is subject to party</p>	<p>11. The <u>Secretariat's communication of 17 March 2020</u> expressly requires that new requests for arbitration (including pertinent exhibits) and other initiating documents be filed with the Secretariat in electronic form. The Secretariat thereafter promptly liaises with the claimant parties to ascertain whether notification of the request for arbitration by email is feasible (Article 3(2) of the Rules).</p> <p>12. Tribunals and parties are encouraged to sign the Terms of Reference in counterparts and electronic form, as described in the Note (§161).</p> <p>13. To mitigate the current difficulties for the submissions of hard copies, tribunals should</p>	<p>prevent duplicate communication of documents and to ensure the accessibility of all documentation that has been made available to neutrals.</p> <p>5.3 Parties should agree and list which documents can be shared with all or with only certain participants during the proceedings and to create secure digital platforms to this end. It is recommended to choose platforms which allow files to have permissions set to allow or restrict the ability to download and / or print the documents shared.</p> <p>5.4 The use of electronic bundles is also encouraged to allow participants to share content concurrently (for instance, in a “share screen” mode).</p> <hr/> <p><u>Article 4 – Documents</u></p> <p>4.1 All documents on the record which the Witness will refer to during the course of his/her evidence must be clearly identified, paginated and made available to the Witness.</p> <p>4.2 The Party whose Witness is giving evidence by video conference shall provide an unmarked copy (without any annotations, notes or mark-ups) of the Agreed Bundle of Documents (or such volumes of the Agreed Bundle of Documents as the Parties agree or are required) at the start of the examination of the Witness.</p> <p>4.3 The Parties may agree on utilizing a shared virtual document repository (i.e. document server)</p>
--	---	--	--	---

<p>download and / or print the documents shared.</p> <p>5.4 The use of electronic bundles is also encouraged to allow participants to share content concurrently (for instance, in a “share screen” mode).</p>		<p>agreement or tribunal direction.</p> <p>3. Where interpretation services are required, participants shall inform all parties, the tribunal and HKIAC as soon as possible. The parties must specify whether interpretation will be simultaneous or consecutive to allow appropriate audio arrangements to be made. Consecutive interpretation simplifies the audio arrangements but requires more time than simultaneous interpretation. HKIAC will arrange testing with interpreters as necessary.</p>	<p>encourage the parties to use electronic means of communication for the submissions and exhibits to the full extent possible. The Note (§8) <i>expressly requires</i> that communications with and from the Secretariat be in electronic form.</p> <p>14. Timely notification of awards to the parties requires proactive communication between tribunals and the Secretariat. To minimise delay, arbitral tribunals should promptly alert the Secretariat as soon as they have begun signing originals of the award. The Secretariat’s counsel in charge of the file shall thereafter indicate to the tribunal the office of the Secretariat to which the originals should be sent.</p> <p>15. Subject to any requirements of</p>	<p>to be made available via computers at all Venues, provided that the Parties use best efforts to ensure the security of the documents (i.e. from unlawful interception or retention by third parties).</p> <p>4.4 If available, a separate display screen/window (other than the screen/window used to display the video transmission) shall be used to show the relevant documents to the Witness during the course of questioning.</p> <hr/> <p>TRANSCRIPTION AND INTERPRETATION</p> <ol style="list-style-type: none"> 1. Ensure that evidence bundles and documents that are to be shared virtually are supplied to the relevant service provider (“EPE manager”) well in advance of the hearing date in order for the EPE manager to familiarise themselves with the bundles. The parties should also notify the EPE manager if there are certain exhibits which require annotation or guidance from the parties (e.g., technical blueprints, large maps). 2. Where transcription services are required, participants shall inform all parties, the tribunal and HKIAC as soon as possible. The parties must specify whether real-time display is required and whether transcription shall be provided remotely or in-person at a specified location (if the hearing is partially virtual). HKIAC will arrange testing with transcribers as necessary. Any audio recording of the hearing (including separate audio feeds for multiple
--	--	--	--	--

			<p>mandatory law that may be applicable, the parties may agree that: (i) any award be signed by the members of the tribunal in counterparts, and/or (ii) all such counterparts be assembled in a single electronic file and notified to the parties by the Secretariat by email or any other means that provides a record of the sending thereof, pursuant to Article 35 (§164 of the Note). Parties are encouraged to agree, whenever possible, to the electronic notification of the award. The Secretariat shall in principle not proceed with an electronic notification of the award unless explicitly agreed by the parties.</p>	<p>languages) and circulation thereof is subject to party agreement or tribunal direction.</p> <p>Where interpretation services are required, participants shall inform all parties, the tribunal and HKIAC as soon as possible. The parties must specify whether interpretation will be simultaneous or consecutive to allow appropriate audio arrangements to be made. Consecutive interpretation simplifies the audio arrangements but requires more time than simultaneous interpretation. HKIAC will arrange testing with interpreters as necessary.</p> <hr/> <p>SERVICE, NOTICE AND RECORD KEEPING</p> <p>B - Service of Documents and Notifications</p> <hr/> <p>16. The Secretariat of the Court ("Secretariat") has also taken steps to streamline its processes to promote efficiency and avoid COVID-19 related delays.</p> <p>17. The <u>Secretariat's communication of 17 March 2020</u> expressly requires that new requests for arbitration (including pertinent exhibits) and other initiating documents be filed with the Secretariat in electronic form. The Secretariat thereafter promptly liaises with the claimant parties to ascertain whether notification of the</p>
--	--	--	--	---

				<p>request for arbitration by email is feasible (Article 3(2) of the Rules).</p> <p>18. Tribunals and parties are encouraged to sign the Terms of Reference in counterparts and electronic form, as described in the Note (§161).</p> <p>19. To mitigate the current difficulties for the submissions of hard copies, tribunals should encourage the parties to use electronic means of communication for the submissions and exhibits to the full extent possible. The Note (§8) <i>expressly requires</i> that communications with and from the Secretariat be in electronic form.</p> <p>20. Timely notification of awards to the parties requires proactive communication between tribunals and the Secretariat. To minimise delay, arbitral tribunals should promptly alert the Secretariat as soon as they have begun signing originals of the award. The Secretariat’s counsel in charge of the file shall thereafter indicate to the tribunal the office of the Secretariat to which the originals should be sent.</p> <p>21. Subject to any requirements of mandatory law that may be applicable, the parties may agree that: (i) any award be signed by the members of the tribunal in counterparts, and/or (ii) all</p>
--	--	--	--	--

				such counterparts be assembled in a single electronic file and notified to the parties by the Secretariat by email or any other means that provides a record of the sending thereof, pursuant to Article 35 (§164 of the Note). Parties are encouraged to agree, whenever possible, to the electronic notification of the award. The Secretariat shall in principle not proceed with an electronic notification of the award unless explicitly agreed by the parties.
CIArb Guidance Note on Remote DR Proceedings	Seoul Protocol on Video Conferencing	HKIAC Guidelines for Virtual Hearings	ICC Guidance Note on Possible Measures Aimed at Mitigating the Effects of the COVID-19 Pandemic	CHOSEN PROVISIONS
CONFIDENTIALITY and PRIVACY CONCERNS				

<p>6. CONFIDENTIALITY and PRIVACY CONCERNS</p> <p>6.1. It is imperative to ensure that the technology used allows the participants to feel secure about the confidentiality of the information they disclose in a remote hearing. Access to all virtual hearing rooms and breakout rooms should be strictly limited to their allocated participants.</p> <p>6.2. Full names and roles of all participants to a remote proceeding including, but not limited to, council, parties, witnesses, interpreters, tribunal secretaries and computer technicians as well as their allocated virtual hearing and breakout rooms should be circulated between parties and neutrals in advance and strictly adhered to.</p>	<p><u>Article 3 – Observers</u></p> <p>3.1 During the course of the video conference, the only persons present in the Remote Venue shall be the Witness giving evidence (with his/her counsel, if applicable), interpreters, paralegals to assist with the documents, and representatives from each Party’s legal team on a watching brief. Each Party shall provide the identities of every individual in the room to the other Party/Parties and to the Tribunal prior to the video conference and the Tribunal shall take steps to verify the identity of each individual present at the start of the video conference.</p> <p><u>Article 8 - Recordings</u></p> <p>8.1 No recordings of the video conference shall be taken without leave of the Tribunal. 8.2 Any recordings of the video conference shall be circulated to the Tribunal and the Parties within 24 hours of the end of the video conference.</p>	<p>3. Ensure the confidentiality and security of virtual hearings, particularly when using cloud-based platforms. To achieve this:</p> <ul style="list-style-type: none"> a. all cloud-based video conferences should be password protected; b. a list of participants, their full names, roles, professional affiliation, and details of the locations from which they will be joining the hearing, should be agreed and circulated to the parties and the tribunal in advance; c. the tribunal or hearing manager shall only allow 	<p>B - Cyber-Protocol</p> <p>26. Any virtual hearing requires a consultation between the tribunal and the parties with the aim of implementing measures – often called a cyber-protocol – sufficient to comply with any applicable data privacy regulations. Such measures shall also deal with the privacy of the hearing and the protection of the confidentiality of electronic communications within the arbitration proceeding and any electronic document platform.</p> <p>27. Annex II to this Guidance includes a number of suggested clauses for inclusion in cyberprotocols of procedural orders dealing with the</p>	<p>.2. Full names and roles of all participants to a remote proceeding including, but not limited to, council, parties, witnesses, interpreters, tribunal secretaries and computer technicians as well as their allocated virtual hearing and breakout rooms should be circulated between parties and neutrals in advance and strictly adhered to.</p> <p>6.3. Physical rooms occupied by participants in a remote proceeding, either at homes, offices, or in special hearing venues, should be completely separate from non-participants to the remote proceeding, soundproofed where possible, and have sufficient visibility to eliminate possibility of the presence of undisclosed non-participating individuals in the room and/or any audio/video recording equipment that has not been agreed to. The use of headsets is recommended to increase both privacy and audibility of participants.</p> <hr/> <p>4. Ensure the confidentiality and security of virtual hearings, particularly when using cloud-based platforms. To achieve this:</p> <ul style="list-style-type: none"> e. all cloud-based video conferences should be password protected; f. a list of participants, their full names, roles, professional affiliation, and details of the locations from which they will be joining the hearing, should be agreed and
---	---	--	---	---

<p>6.3. Physical rooms occupied by participants in a remote proceeding, either at homes, offices, or in special hearing venues, should be completely separate from non-participants to the remote proceeding, soundproofed where possible, and have sufficient visibility to eliminate possibility of the presence of undisclosed non-participating individuals in the room and/or any audio/video recording equipment that has not been agreed to. The use of headsets is recommended to increase both privacy and audibility of participants.</p>		<p>individuals on the approved list of participants to join the hearing. Any change to the list of participants shall be immediately circulated to the parties and the tribunal and notified to the hearing manager;</p> <p>d. where the parties and/or the tribunal have separate virtual break-out rooms facilitated by separate video-conferencing sessions, these shall be password protected. Separate lists of participants to those rooms shall be provided to the hearing manager, who shall adhere to them strictly.</p>	<p>organisation of virtual hearings.</p>	<p>circulated to the parties and the tribunal in advance;</p> <p>g. the tribunal or hearing manager shall only allow individuals on the approved list of participants to join the hearing. Any change to the list of participants shall be immediately circulated to the parties and the tribunal and notified to the hearing manager;</p> <p>where the parties and/or the tribunal have separate virtual break-out rooms facilitated by separate video-conferencing sessions, these shall be password protected. Separate lists of participants to those rooms shall be provided to the hearing manager, who shall adhere to them strictly.</p> <hr/> <p><u>Article 3 – Observers</u></p> <p>3.1 During the course of the video conference, the only persons present in the Remote Venue shall be the Witness giving evidence (with his/her counsel, if applicable), interpreters, paralegals to assist with the documents, and representatives from each Party’s legal team on a watching brief. Each Party shall provide the identities of every individual in the room to the other Party/Parties and to the Tribunal prior to the video conference and the Tribunal shall take steps to verify the identity of each individual present at the start of the video conference.</p>
---	--	---	--	--

				<p><u>Article 8 - Recordings</u></p> <p>8.1 No recordings of the video conference shall be taken without leave of the Tribunal.</p> <p>8.2 Any recordings of the video conference shall be circulated to the Tribunal and the Parties within 24 hours of the end of the video conference.</p> <p>28. Any virtual hearing requires a consultation between the tribunal and the parties with the aim of implementing measures – often called a cyber-protocol – sufficient to comply with any applicable data privacy regulations. Such measures shall also deal with the privacy of the hearing and the protection of the confidentiality of electronic communications within the arbitration proceeding and any electronic document platform.</p> <p>29. Annex II to this Guidance includes a number of suggested clauses for inclusion in cyberprotocols of procedural orders dealing with the organisation of virtual hearings.</p>
CIArb Guidance Note on Remote DR Proceedings	Seoul Protocol on Video Conferencing	HKIAC Guidelines for Virtual Hearings	ICC Guidance Note on Possible Measures Aimed at Mitigating the Effects of the COVID-19 Pandemic	CHOSEN PROVISIONS

TECHNICAL REQUIREMENTS

Article 5 – Technical Requirements

5.1 The video conference shall be of sufficient quality so as to allow for clear video and audio transmission of the Witness, the Tribunal and the Parties, and there shall be compatibility between the hardware and software used at the Venues. While the Parties and the Tribunal may agree on the technical requirements for the video conferencing, as a guide, minimum transmission speeds should not be less than 256 kbs/second, 30 frames/second, and the minimum resolution should be HD standard. The Hearing Venue should also be equipped with both ISDN and IP communication line capabilities and all Venues should be equipped with appropriate portable equipment in the event of unforeseen technical complications.

5.2 For any individual participating in the video conference, there shall be

Article 5 – Technical Requirements

5.1 The video conference shall be of sufficient quality so as to allow for clear video and audio transmission of the Witness, the Tribunal and the Parties, and there shall be compatibility between the hardware and software used at the Venues. While the Parties and the Tribunal may agree on the technical requirements for the video conferencing, as a guide, minimum transmission speeds should not be less than 256 kbs/second, 30 frames/second, and the minimum resolution should be HD standard. The Hearing Venue should also be equipped with both ISDN and IP communication line capabilities and all Venues should be equipped with appropriate portable equipment in the event of unforeseen technical complications.

5.2 For any individual participating in the video conference, there shall be sufficient microphones to allow for the amplification of the individual's voice, as well as sufficient microphones to allow for the transcription of the individual's testimony as appropriate. There shall also be adequate placement and control of the cameras to ensure that all participants can be seen.

5.3 Article 5.2 shall apply to interpreters or other participants referred to in Article 3.1, as appropriate.

	<p>sufficient microphones to allow for the amplification of the individual's voice, as well as sufficient microphones to allow for the transcription of the individual's testimony as appropriate. There shall also be adequate placement and control of the cameras to ensure that all participants can be seen.</p> <p>5.3 Article 5.2 shall apply to interpreters or other participants referred to in Article 3.1, as appropriate.</p> <p>5.4 There shall be appropriate microphones and connections to allow for the amplification of the relevant persons at the Hearing Venue so that the Witness and Observers may adequately hear the relevant individual(s) at the Hearing Venue.</p> <p>5.5 Under appropriate circumstances, Parties may agree to use web-based video conferencing solutions instead of ISDN or IP communication lines. When using a web-based video conferencing solution, the Venue should provide for a sufficiently large</p>			<p>5.4 There shall be appropriate microphones and connections to allow for the amplification of the relevant persons at the Hearing Venue so that the Witness and Observers may adequately hear the relevant individual(s) at the Hearing Venue.</p> <p>5.5 Under appropriate circumstances, Parties may agree to use web-based video conferencing solutions instead of ISDN or IP communication lines. When using a web-based video conferencing solution, the Venue should provide for a sufficiently large screen that can project the video transmission displayed through the video conferencing solution and ensure that the Ethernet or wireless internet connection is secure and stable throughout the proceedings.</p> <p>5.6 If the Witness is located in the Remote Venue and is giving testimony through a web-based video conferencing solution, the audio output device in the Hearing Venue should be of sufficient quality and volume so as to ensure that the testimony can be accurately transcribed or recorded in the Hearing Venue.</p> <p>5.7 For additional detail on technical specifications, please refer to Annex I.</p>
--	--	--	--	--

	<p>screen that can project the video transmission displayed through the video conferencing solution and ensure that the Ethernet or wireless internet connection is secure and stable throughout the proceedings.</p> <p>5.6 If the Witness is located in the Remote Venue and is giving testimony through a web-based video conferencing solution, the audio output device in the Hearing Venue should be of sufficient quality and volume so as to ensure that the testimony can be accurately transcribed or recorded in the Hearing Venue.</p> <p>5.7 For additional detail on technical specifications, please refer to Annex I.</p>			
LEGAL MATTERS AND PROCEDURAL ARRANGEMENTS				
CIArb Guidance Note on Remote DR Proceedings	Seoul Protocol on Video Conferencing	HKIAC Guidelines for Virtual Hearings	ICC Guidance Note on Possible Measures Aimed at Mitigating the	CHOSEN PROVISIONS

			Effects of the COVID-19 Pandemic	
Part 2. Legal Matters and Procedural Arrangements				
<p>7. Dispute resolution clauses</p> <p>7.1. In the context of both current and future proceedings, it is important to demonstrate parties' affirmative agreement to the use of a particular type of remote proceeding.</p> <p>7.2 Parties should be aware of any applicable regulations or requirements of relevant domestic jurisdictions regarding the use of remote or non-physical proceedings in dispute resolution. In certain jurisdictions, domestic court proceedings may be suspended under local public health restrictions and there</p>			<p>C - Procedural Issues</p> <hr/> <p>28. To ensure that parties are treated with equality and each party is given a full opportunity to present its case during a virtual hearing, the tribunal should consider:</p> <ul style="list-style-type: none"> • Different time zones in fixing the hearing dates, start and finish times, breaks and length of each hearing day; • Logistics of the location of participants including but not limited to total number of participants, number of remote 	<p>Part 2. Legal Matters and Procedural Arrangements</p> <p>. Dispute resolution clauses</p> <p>7.1. In the context of both current and future proceedings, it is important to demonstrate parties' affirmative agreement to the use of a particular type of remote proceeding.</p> <p>7.2 Parties should be aware of any applicable regulations or requirements of relevant domestic jurisdictions regarding the use of remote or non-physical proceedings in dispute resolution. In certain jurisdictions, domestic court proceedings may be suspended under local public health restrictions and there may be no facility for remote hearings with those courts. It is each party's responsibility to ensure compliance of their procedures with relevant and applicable domestic laws. The Guidance Note should be used only where it is not in conflict with applicable laws and regulations.</p> <p>7.3 Due to differences in legal opinions and interpretations across jurisdictions, remote means</p>

<p>may be no facility for remote hearings with those courts. It is each party's responsibility to ensure compliance of their procedures with relevant and applicable domestic laws. The Guidance Note should be used only where it is not in conflict with applicable laws and regulations.</p> <p>7.3 Due to differences in legal opinions and interpretations across jurisdictions, remote means of reaching a resolution to a dispute might be questioned by some enforcing domestic courts or may be used a ground for challenge by parties. Parties should be aware of this possibility and adjust where necessary to ensure enforceable resolutions to disputes.</p> <p>7.4 Even though digital technology is rapidly</p>			<p>locations, extent to which any participants will be in the same physical venue, extent to which members of the tribunal may be in the same physical venue as one another and/or any other participants, availability and control of break out rooms;</p> <ul style="list-style-type: none"> • Use of real-time transcript or another form of recording; • Use of interpreters, including whether simultaneous or consecutive; • Procedures for verifying the presence of and identifying all participants, including any technical administrator; 	<p>of reaching a resolution to a dispute might be questioned by some enforcing domestic courts or may be used a ground for challenge by parties. Parties should be aware of this possibility and adjust where necessary to ensure enforceable resolutions to disputes.</p> <p>7.4 Even though digital technology is rapidly becoming a widely accepted business and legal tool, it is advisable to keep key procedural documents in both soft and hard copies, containing signatures of participants where necessary. The same applies to arbitral awards, mediated settlements or any other outcomes of remote dispute resolution proceedings, as some national courts may reject enforcement if such documents were produced solely via digital means.</p> <p>C - Procedural Issues</p> <hr/> <p>34. To ensure that parties are treated with equality and each party is given a full opportunity to present its case during a virtual hearing, the tribunal should consider:</p> <ul style="list-style-type: none"> • Different time zones in fixing the hearing dates, start and finish times, breaks and length of each hearing day; • Logistics of the location of participants including but not limited to total number of participants, number of remote locations, extent to which any
---	--	--	---	---

<p>becoming a widely accepted business and legal tool, it is advisable to keep key procedural documents in both soft and hard copies, containing signatures of participants where necessary. The same applies to arbitral awards, mediated settlements or any other outcomes of remote dispute resolution proceedings, as some national courts may reject enforcement if such documents were produced solely via digital means.</p>			<ul style="list-style-type: none"> • Procedures for the taking of evidence from fact witnesses and experts to ensure that the integrity of any oral testimonial evidence is preserved; • Use of demonstratives, including through shared screen views; and • Use of an electronic hearing bundle hosted on a shared document platform that ensures access by all participants. <p>29. The ICC Hearing Centre in Paris is able to offer standard technical support and assistance to tribunals seeking to better understand the options for virtual hearing and electronic bundle facilities and how to operate those facilities</p>	<p>participants will be in the same physical venue, extent to which members of the tribunal may be in the same physical venue as one another and/or any other participants, availability and control of break out rooms;</p> <ul style="list-style-type: none"> • Use of real-time transcript or another form of recording; • Use of interpreters, including whether simultaneous or consecutive; • Procedures for verifying the presence of and identifying all participants, including any technical administrator; • Procedures for the taking of evidence from fact witnesses and experts to ensure that the integrity of any oral testimonial evidence is preserved; • Use of demonstratives, including through shared screen views; and • Use of an electronic hearing bundle hosted on a shared document platform that ensures access by all participants. <p>Various videoconference platform options are available for virtual hearings. A third-party comparative table of available options can be found here. These range from customised hearing solutions offered by some hearing centres and/or service providers to licenced publicly available platforms to free-to-use public platforms. Customised or licensed,</p>
---	--	--	--	--

			<p>in a manner that best preserves the integrity of the arbitral process, preserves confidentiality and ensures proper data protection. In addition, ICC has signed Memoranda of Understanding with other hearing centres in most major arbitral seats and is able to coordinate with tribunals in order to access virtual hearing facilities on offer at those centres and obtain necessary technical support and guidance. Additional information may be obtained by emailing to: infohearingcentre@iccwbo.org.</p> <p>30. Various videoconference platform options are available for virtual hearings. A third-party comparative table of available options can be found here. These range from customised hearing</p>	<p>feebased videoconference platforms may offer greater security, confidentiality and data protection than free use, public platforms.</p> <p>Tribunals should ensure with the parties that any video sharing platform that is used for virtual hearings is licensed and is set to maximum security settings. ICC has licensed access to the following videoconference platform options: Microsoft Teams, Vidyocloud and Skype for Business. ICC technical support is available remotely to assist tribunals with using such platforms, joining a meeting (or hearing), operating in-meeting audio and video functions, and operating screen sharing functions. Other platforms that have been used in recent cases include Zoom, BlueJeans and GoToMeeting.</p> <p>Various documents sharing platforms are available for electronic bundles. Like videoconference platforms, these also range from customised hearing solutions offered by some hearing centres and/or service providers (such as Opus, Transperfect and XBundle) to licensed publicly available platforms to free-to-use public platforms. Customised or licensed, fee-based document sharing platforms may offer greater security, confidentiality and data protection than free-to-use, public platforms.</p>
--	--	--	---	---

			<p>solutions offered by some hearing centres and/or service providers to licenced publicly available platforms to free-to-use public platforms. Customised or licensed, feebased videoconference platforms may offer greater security, confidentiality and data protection than free use, public platforms.</p> <p>31. Tribunals should ensure with the parties that any video sharing platform that is used for virtual hearings is licensed and is set to maximum security settings. ICC has licensed access to the following videoconference platform options: Microsoft Teams, Vidyocloud and Skype for Business. ICC technical support is available remotely to assist tribunals with using such platforms,</p>	<p>35. ICC does not endorse or make any representation or warranty with respect to any of the third-party vendors mentioned in this Guidance Note. Parties, counsel and tribunals should make their own due diligence as to the suitability of each of them in any given case.</p>
--	--	--	--	--

			<p>joining a meeting (or hearing), operating in-meeting audio and video functions, and operating screen sharing functions. Other platforms that have been used in recent cases include Zoom, BlueJeans and GoToMeeting.</p> <p>32. Various documents sharing platforms are available for electronic bundles. Like videoconference platforms, these also range from customised hearing solutions offered by some hearing centres and/or service providers (such as Opus, Transperfect and XBundle) to licensed publicly available platforms to free-to-use public platforms. Customised or licensed, fee-based document sharing platforms may offer greater security, confidentiality and data</p>	
--	--	--	---	--

			<p>protection than free-to-use, public platforms.</p> <p>33. ICC does not endorse or make any representation or warranty with respect to any of the third-party vendors mentioned in this Guidance Note. Parties, counsel and tribunals should make their own due diligence as to the suitability of each of them in any given case.</p>	
<p>8. Choice of neutrals 8.1. CIArb understands the parties' choice of neutrals will be influenced by numerous factors. However, in order to assure efficiency in remote dispute resolution, consideration of a potential neutral's practical acquaintance with and a positive attitude towards remote</p>				

<p>proceedings is strongly recommended.</p> <p>8.2. Remote proceedings inherently limit personal connections between all participants to a dispute. Therefore, active listening and verbal engagement, expressive body language and clear speech, as well as any other step necessary to create a comfortable professional environment should be used. This is particularly important for neutrals who should take every opportunity to assure parties of their full attention to proceedings.</p> <p>8.3 Neutrals in remote arbitration proceedings should make themselves visible and audible to all the parties in the proceeding at all times, save in cases of deliberations and/or</p>				
--	--	--	--	--

discussions between members of the arbitral tribunal.				
Part 3. Institutional and Ad Hoc Proceedings				
<p>At the time of drafting of this Guidance Note, many arbitral institutions are faced with requests for postponement or suspension of pending hearings. However, their case management teams remain fully, though remotely, operational. It is therefore possible to proceed with commencing or continuing dispute resolution proceedings, arbitration or otherwise, with them.</p> <p>9. Institutional proceedings 9.1 Where parties have agreed to use institutionally administered procedures, parties</p>				

<p>should consult directly with the applicable institution and follow any guidelines on remote proceedings the relevant institution has issued.</p> <p>10. <i>Ad hoc</i> proceedings <i>ad hoc</i> proceedings, as they allow parties to orchestrate resolution of their disputes, both physically and remotely, in</p> <p>10.2. CIArb along with a number of dispute resolution bodies worldwide offer <i>ad hoc</i> procedures across a variety of schemes give parties the ability to create bespoke approaches to their disputes and reduce the risk of stagnation of their business dealings, regardless of external circumstances.</p> <p>10.3 Throughout the 2020 global pandemic, CIArb Dispute</p>				
---	--	--	--	--

<p>Appointment Service will be up and running and ready to provide high-quality assistance for parties interested in initiation of <i>ad hoc</i> dispute resolution proceedings. CI Arb recognises the importance of meeting the needs of parties seeking to resolve their dispute, especially in times of Appointment Service, CI Arb's ad hoc rules, guidelines and other important resources please visit www.ciarb.org.</p>				
<p>CHECKLIST (please see comparison with DELOS)</p>	<p><u>Annex 1 Technical Specifications</u></p> <p>Video conferencing equipment used should meet minimum industry standards in order to ensure the efficient and smooth operation of each hearing. The common industry standards recommended by the International Telecommunications Union - the United</p>			

	<p>Nations specialized agency in the field of telecommunications, are listed below, and is intended to serve as a guideline as to the technical specifications that each Venue adopting video conferencing should entail.</p> <p><u>Video</u></p> <p>x For ISDN-based networks:</p> <ul style="list-style-type: none"> o H.320 Standard (umbrella recommendation for narrow-band video conferencing over circuit-switched networks i.e. N-ISDN, SW56, dedicated networks); and o H.310 Standard (wide-band (MPEG-2) video conferencing over ATM and B-ISDN) <p>x For video over Internet/LAN-conferencing:</p> <ul style="list-style-type: none"> o H.323 Standard (narrow-band video conferencing over non-guaranteed quality-of-service packet networks (Internet, LAN, etc.)) 			
--	--	--	--	--

	<p><u>Data Conference / Data Collaboration</u></p> <p>x T.120 Standard.</p> <p><u>Audio</u></p> <p>x Standards for audio coding:</p> <ul style="list-style-type: none"> o G.711 (3kHz audio-coding within 64 kbit/s) o G.722 (7kHz audio-coding within 48 or 56 kbit/s) <p>x Echo-cancellation microphones with a frequency range of 100-7,000 Hz, audio muting, on/off switch and full-duplex audio.</p> <p>x H.281 (umbrella standard for local and far-end camera control protocol for ISDN (H.320) video conferencing calls, with camera(s) that have the ability to pan, tilt and zoom, both manually and using pre-sets).</p> <p><u>Picture</u></p> <p>x H.263 (video coding for low bitrate communication i.e. less than 64 Kbps);</p> <p>x H.264 (new video codec standard that offers major</p>			
--	--	--	--	--

	<p>improvements to image quality. Picture quality standard of 30 frames per second Common Intermediate Format (CIF) at between 336 and 384 kbps); or</p> <p>x H.239 (Picture-in-picture (PIP) or DuoVideo H.239. H.239 defines the role management and additional media channels for H.300-series multimedia terminals, and allows endpoints that support H.239 to receive and transmit multiple, separate media streams).</p> <p><u>Channels, bandwidth and bridging</u></p> <p>x Minimum of six channels for room video-conferencing systems using ISDN that has the capacity to use 3 ISDN lines.</p> <p>x Standards for Codecs:</p> <ul style="list-style-type: none"> o H.261 (full motion video coding for audiovisual services at p x 64 Kbps); o H.263 (video coding for low bitrate communication i.e. less than 64 Kbps); 			
--	--	--	--	--

	<p>or</p> <p>o H.264 (new video codec standard that offers major improvements to image quality. Picture quality standard of 30 frames per second Common Intermediate Format (CIF) at between 336 and 384 kbps).</p> <p>x Bandwidth On Demand Inter-Networking Group (BONDING) standards (ISDN and H.320 only) for inverse multiplexers.</p> <p>x H.243 (the H.320/H.323 Standard for Bridging Technology).</p> <p>x H.460 (the standard for the traversing of H.323 videoconferencing signals across firewalls and network address translation (NAT)).</p>			

CHECKLISTs

DELOS (Checklist on Holding Virtual Hearings)	APPENDIX I. CIArb Preliminary Checklist Prior to Conducting Remote Dispute Resolution Proceedings	ICC Guidance Notes ANNEX I CHECKLIST FOR A PROTOCOL ON VIRTUAL HEARINGS	SIAC Guides (Taking Your Arbitration Remote)	CHOSEN PROVISIONS
<p>1. CONSIDERING WHETHER TO PROCEED WITH THE IN-PERSON HEARING</p> <ul style="list-style-type: none"> a) Where is the original hearing location? b) Who are the hearing participants? Do they all need to attend? c) Are the participants able to travel to the location? d) Where is everyone coming from? 	<p>Appendix 1 Preliminary checklist prior to conducting remote dispute resolution proceedings</p> <ul style="list-style-type: none"> 1. Applicable governmental requirements on social distancing have been followed. 2. Relevant institutional guidelines on remote proceedings have been consulted where applicable. 3. Domestic laws and regulations regarding the validity and enforceability of remote dispute resolution outcomes have been considered. 4. A record of parties' affirmative agreement to 	<p>A - Pre-hearing Plan, Scope and Logistics</p> <ul style="list-style-type: none"> (i) Identifying whether and which issues are essential to be on a hearing agenda and which can be dealt with on "documents only"; (ii) Agreeing the number and list of participants (arbitrators, parties, counsel, witnesses, experts, administrative secretaries, interpreters, stenographers, technicians, etc.); (iii) Agreeing the number of participants per virtual room and whether a 360° 	<p>Issues to Consider</p> <p>A. Preliminaries</p> <ul style="list-style-type: none"> (17) Is a Remote Hearing a more cost effective and efficient option compared to an in-person hearing for your case (18) Is a combination of a Remote Hearing and in-person hearing appropriate for your case? (19) Are there any requirements under the contract, or under any 	<p>APPENDIX I. CIArb Preliminary Checklist Prior to Conducting Remote Dispute Resolution Proceedings</p> <p>Appendix 1 Preliminary checklist prior to conducting remote dispute resolution proceedings</p> <ul style="list-style-type: none"> 1. Applicable governmental requirements on social distancing have been followed. 2. Relevant institutional guidelines on remote proceedings have been consulted where applicable. 3. Domestic laws and regulations regarding the validity and enforceability of remote dispute resolution outcomes have been considered. 4. A record of parties' affirmative agreement to use remote proceedings have been made. 5. Relevant scheduling amendments or extensions to facilitate remote proceedings have been agreed to by both parties and a record made.

<p>e) Have any of the participants been in close physical proximity with people affected at least 14 days prior to the hearing?</p> <p>f) Do any of the participants have any compelling personal reason related to COVID-19 for not being able to attend the hearing in person?</p> <p>g) Can the hearing be shortened?</p> <p>h) What about the cost implications due to COVID-19 of maintaining or postponing the hearing?</p>	<p>use remote proceedings have been made.</p> <p>5. Relevant scheduling amendments or extensions to facilitate remote proceedings have been agreed to by both parties and a record made.</p> <p>6. A neutral(s) has been selected that has practical familiarity with remote proceedings and the required technology.</p> <p>7. An online video/audio conferencing platform has been agreed by parties and a record made.</p> <p>8. Cybersecurity requirements have been considered, agreed by parties and a record made.</p> <p>9. Technical support for all participants to the remote proceeding has been arranged.</p> <p>10. A platform and procedure for transfer and storage of documentation has been agreed by parties and arranged.</p> <p>11. A list of attendees to the remote proceeding has been circulated and agreed by parties.</p>	<p>view for all participating rooms is required or necessary;</p> <p>(iv) Agreeing regarding virtual rooms that will permit the arbitrators, and each side in the case, to confer privately amongst themselves during the hearing;</p> <p>(v) Identifying all log-in locations and points of connection;</p> <p>(vi) Agreeing that each individual present in each virtual room will be identified at the start of the videoconference; and</p> <p>(vii) In light of the above, consulting and agreeing among parties and tribunal on the hearing date, duration and daily timetable taking into account the different time zones.</p> <p>B - Technical Issues, Specifications, Requirements and Support Staff</p>	<p>applicable law(s), in relation to Remote Hearings?</p> <p>(20) Have parties agreed to the use of Remote Hearings?</p> <p>(21) Are there any procedural rules, which impact the use of Remote Hearing platforms ("Platform(s)")?</p> <p>(22) Do the Tribunal, parties, witnesses and experts have access to the necessary hardware to participate in a Remote Hearing?</p> <p>(23) Do the Tribunal, parties, witnesses and experts have access to the necessary software to participate in a Remote Hearing?</p> <p>(24) Do the Tribunal, parties, witnesses and experts have access to reliable Internet connectivity?</p>	<p>6. A neutral(s) has been selected that has practical familiarity with remote proceedings and the required technology.</p> <p>7. An online video/audio conferencing platform has been agreed by parties and a record made.</p> <p>8. Cybersecurity requirements have been considered, agreed by parties and a record made.</p> <p>9. Technical support for all participants to the remote proceeding has been arranged.</p> <p>10. A platform and procedure for transfer and storage of documentation has been agreed by parties and arranged.</p> <p>11. A list of attendees to the remote proceeding has been circulated and agreed by parties.</p> <p>12. An order of appearance and timeline making consideration for specific needs of witnesses and for translation where necessary has been circulated and agreed by the parties.</p> <p>13. A list of documents to be presented by each party in the remote proceeding has been distributed.</p> <p>14. Electronic bundles for use in presentation and in cross examination have been prepared and timely distributed.</p> <p>15. Attendees have chosen physical rooms that are fully enclosed and separated from non-attendees, those rooms have been soundproofed where possible, and headsets are in use where possible.</p> <p>16. Attendees' physical rooms can be made visible to all participants to the extent to show</p>
---	--	---	---	--

<p><i>Based on the answers to the above questions, decide whether (i) to maintain a physical hearing for at least some of the participants, (ii) to maintain the original location or change it to another, safer, location, or (iii) to hold all or part of the hearing online. If the hearing is taking place in-person (for at least some participants), consider the following additional questions:</i></p> <p>a) Daily Checker</p> <p>b) Is the hearing venue adequately setup?</p> <p>c) Is it safe to send documents by courier from an affected area?</p> <p>d) Do the answers to the above questions impact any existing</p>	<p>12. An order of appearance and timeline making consideration for specific needs of witnesses and for translation where necessary has been circulated and agreed by the parties.</p> <p>13. A list of documents to be presented by each party in the remote proceeding has been distributed.</p> <p>14. Electronic bundles for use in presentation and in cross examination have been prepared and timely distributed.</p> <p>15. Attendees have chosen physical rooms that are fully enclosed and separated from non-attendees, those rooms have been soundproofed where possible, and headsets are in use where possible.</p> <p>16. Attendees' physical rooms can be made visible to all participants to the extent to show that no individual or recording device is present that was not agreed to.</p> <p>17. A procedure for virtual breakout rooms and for deliberations and private</p>	<p>(i) Consultation between the tribunal and the parties regarding:</p> <ul style="list-style-type: none"> - the preferred platform and technology to be used (including legal access to such platform and technology); - the minimum system specifications and technical requirements for smooth connectivity (audio and video), adequate visibility and lighting in each location; - whether certain equipment is required in each location (phones, back-up computers, connectivity boosters/extenders, any other equipment or audio-visual aids as deemed necessary by the parties); <p>(ii) Preliminary check on compatibility of selected platform and technology to be used;</p>	<p>(25) How long will each hearing day be?</p> <p>(26) Is there any time difference between the participants in the Remote Hearing?</p> <p>Choice of Platform</p> <p>(27) Have parties identified a suitable Platform?</p> <p>(28) Is the Tribunal comfortable with the selected Platform?</p> <p>(29) Does the administering institution / hearing centre offer a Platform?</p> <p>(30) Does the administering institution / hearing centre offer support for Remote Hearings?</p> <p>(31) Is it desirable to record the Remote Hearing?</p> <p>(32) Are there issues of confidentiality and data security?</p>	<p>that no individual or recording device is present that was not agreed to.</p> <p>17. A procedure for virtual breakout rooms and for deliberations and private caucusing has been agreed by parties and arranged.</p> <p>18. All software as well as telephone and internet connections have been tested beforehand and are of sufficient audio-visual quality.</p> <p>19. Screen sharing is available to participants and has been tested beforehand.</p> <p>A - Pre-hearing Plan, Scope and Logistics</p> <p>(i) Identifying whether and which issues are essential to be on a hearing agenda and which can be dealt with on "documents only";</p> <p>(ii) Agreeing the number and list of participants (arbitrators, parties, counsel, witnesses, experts, administrative secretaries, interpreters, stenographers, technicians, etc.);</p> <p>(iii) Agreeing the number of participants per virtual room and whether a 360° view for all participating rooms is required or necessary;</p> <p>(iv) Agreeing regarding virtual rooms that will permit the arbitrators, and each side in the case, to confer privately amongst themselves during the hearing;</p> <p>(v) Identifying all log-in locations and points of connection;</p> <p>(vi) Agreeing that each individual present in each virtual room will be identified at the start of the videoconference; and</p>
---	--	--	---	--

<p>Procedural Order in the proceeding?</p> <p>e) What if a participant develops COVID-19</p>	<p>caucusing has been agreed by parties and arranged.</p> <p>18. All software as well as telephone and internet connections have been tested beforehand and are of sufficient audio-visual quality.</p> <p>19. Screen sharing is available to participants and has been tested beforehand.</p>	<p>(iii) Considering the need for tutorials for participants who are not familiar with the technology, platform, applications and/or equipment to be used in the hearing;</p> <p>(iv) Consultation between the tribunal and the parties regarding the contingency measures to be implemented in case of sudden technical failures, disconnection, power outages (alternative communication channels and virtual technical support for all participants); and</p> <p>(v) Running a minimum of two mock sessions within the month preceding the hearing to test connectivity and streaming, with the last session being held one day before the hearing to ensure everything is in order.</p>	<p>B. Pre-Hearing Preparations</p> <p>(33) How many participants are expected at the Remote Hearing, and how many locations are involved?</p> <p>(34) Are there any special logistical arrangements that need to be made (e.g. booking a hearing centre or physical space, delivery of physical copies of arbitration documents, etc.)?</p> <p>(35) If witnesses are giving evidence from a different jurisdiction, is it necessary to engage co-counsel or arrange for the presence of counsel in that jurisdiction?</p> <p>(36) Do arbitration documents, evidence and submissions exist in</p>	<p>(vii) In light of the above, consulting and agreeing among parties and tribunal on the hearing date, duration and daily timetable taking into account the different time zones.</p> <p>C - Confidentiality, Privacy and Security</p> <p>(iii) Consultation between the tribunal and the parties on whether the virtual hearing will remain private and confidential to participants;</p> <p>(iv) Agreeing an access and confidentiality undertaking that binds all participants; (iii) Consultation between the tribunal and the parties on:</p> <ul style="list-style-type: none"> - the recording of the virtual hearing (audio-visual recording, confidentiality of the recording and value of recording compared to any produced written transcript, etc.); - any overriding privacy requirements or standards that may impact access or connectivity of certain participants; and - the minimum requirements of encryption to safeguard the integrity and security of the virtual hearing against any hacking, illicit access, etc. <p>D - Online Etiquette and Due Process Considerations</p>
--	--	---	--	---

		<p>C - Confidentiality, Privacy and Security</p> <p>(i) Consultation between the tribunal and the parties on whether the virtual hearing will remain private and confidential to participants;</p> <p>(ii) Agreeing an access and confidentiality undertaking that binds all participants;</p> <p>(iii) Consultation between the tribunal and the parties on:</p> <ul style="list-style-type: none"> - the recording of the virtual hearing (audio-visual recording, confidentiality of the recording and value of recording compared to any produced written transcript, etc.); - any overriding privacy requirements or standards that may 	<p>a form suitable for use in a Remote Hearing?</p> <p>(37) How will documents and submissions be displayed or shared during the Remote Hearing?</p> <p>(38) Is there any agreement on hearing etiquette, schedule and procedure?</p> <p>(39) Who will be the “host” for the Virtual Hearing?</p> <p>(40) Is there a backup “host”?</p> <p>(41) Is there a backup channel of communication between the counsel and the Tribunal?</p> <p>(42) Have parties and the Tribunal agreed on a technical failure protocol for the Remote Hearing?</p> <p>(43) Has a list of Remote Hearing participants been finalized?</p>	<p>(v) Consultation between the tribunal and the parties on the practices needed to safeguard the rights and obligations of participants in a virtual environment. This includes: identifying lead speakers, non-interruption, observing reasonable and responsible use of the platform and bandwidth, avoiding use of equipment that interferes with connectivity or allows illicit recording, agreeing a procedure for objections, etc.;</p> <p>(vi) Obtaining written statements from the parties/counsel that the tested platform and technology are adequate as tested by the parties;</p> <p>(vii) Confirming the parties’ agreement on proceeding with a virtual hearing or identifying the legal basis for proceeding with a virtual hearing absent such agreement by the parties; and</p> <p>(viii) Advising the parties on their duty to cooperate on technical matters prior to and during the virtual hearing.</p> <p>Issues to Consider</p> <p>A. Preliminaries</p> <p>(17) Is a Remote Hearing a more cost effective and efficient option compared to an in-person hearing for your case</p> <p>(18) Is a combination of a Remote Hearing and in-person hearing appropriate for your case?</p>
--	--	---	---	--

		<p>impact access or connectivity of certain participants; and</p> <ul style="list-style-type: none"> - the minimum requirements of encryption to safeguard the integrity and security of the virtual hearing against any hacking, illicit access, etc. <p>D - Online Etiquette and Due Process Considerations</p> <p>(i) Consultation between the tribunal and the parties on the practices needed to safeguard the rights and obligations of participants in a virtual environment. This includes: identifying lead speakers, non-interruption, observing reasonable and responsible use of the platform and bandwidth, avoiding use of equipment that interferes with</p>	<p>(44) Has the list been provided to the Tribunal, “host” and parties?</p> <p>(45) Is there a schedule for participants to join the Remote Hearing?</p> <p>(46) Is there a backup option / contingency plan in case the selected Platform does not function at the time of the Remote Hearing?</p> <p>(47) Does the Platform provide real-time technical support?</p> <p>(48) Have parties scheduled at least two test runs for the Remote Hearing with all the participants involved, including witnesses and experts?</p>	<p>(19) Are there any requirements under the contract, or under any applicable law(s), in relation to Remote Hearings?</p> <p>(20) Have parties agreed to the use of Remote Hearings?</p> <p>(21) Are there any procedural rules, which impact the use of Remote Hearing platforms (“Platform(s)”)?</p> <p>(22) Do the Tribunal, parties, witnesses and experts have access to the necessary hardware to participate in a Remote Hearing?</p> <p>(23) Do the Tribunal, parties, witnesses and experts have access to the necessary software to participate in a Remote Hearing?</p> <p>(24) Do the Tribunal, parties, witnesses and experts have access to reliable Internet connectivity?</p> <p>(25) How long will each hearing day be?</p> <p>(26) Is there any time difference between the participants in the Remote Hearing?</p> <p>. Pre-Hearing Preparations</p> <p>(49) How many participants are expected at the Remote Hearing, and how many locations are involved?</p>
--	--	---	--	--

		<p>connectivity or allows illicit recording, agreeing a procedure for objections, etc.;</p> <p>(ii) Obtaining written statements from the parties/counsel that the tested platform and technology are adequate as tested by the parties;</p> <p>(iii) Confirming the parties' agreement on proceeding with a virtual hearing or identifying the legal basis for proceeding with a virtual hearing absent such agreement by the parties; and</p> <p>(iv) Advising the parties on their duty to cooperate on technical matters prior to and during the virtual hearing.</p>		<p>(50) Are there any special logistical arrangements that need to be made (e.g. booking a hearing centre or physical space, delivery of physical copies of arbitration documents, etc.)?</p> <p>(51) If witnesses are giving evidence from a different jurisdiction, is it necessary to engage co-counsel or arrange for the presence of counsel in that jurisdiction?</p> <p>(52) Do arbitration documents, evidence and submissions exist in a form suitable for use in a Remote Hearing?</p> <p>(53) How will documents and submissions be displayed or shared during the Remote Hearing?</p> <p>(54) Is there any agreement on hearing etiquette, schedule and procedure?</p> <p>(55) Who will be the "host" for the Virtual Hearing?</p> <p>(56) Is there a backup "host"?</p> <p>(57) Is there a backup channel of communication between the counsel and the Tribunal?</p> <p>(58) Have parties and the Tribunal agreed on a technical failure protocol for the Remote Hearing?</p> <p>(59) Has a list of Remote Hearing participants been finalized?</p>
--	--	---	--	--

				<p>(60) Has the list been provided to the Tribunal, “host” and parties?</p> <p>(61) Is there a schedule for participants to join the Remote Hearing?</p> <p>(62) Is there a backup option / contingency plan in case the selected Platform does not function at the time of the Remote Hearing?</p> <p>(63) Does the Platform provide real-time technical support?</p> <p>Have parties scheduled at least two test runs for the Remote Hearing with all the participants involved, including witnesses and experts?</p> <p>Choice of Platform</p> <p>(64) Have parties identified a suitable Platform?</p> <p>(65) Is the Tribunal comfortable with the selected Platform?</p> <p>(66) Does the administering institution / hearing centre offer a Platform?</p> <p>(67) Does the administering institution / hearing centre offer support for Remote Hearings?</p> <p>(68) Is it desirable to record the Remote Hearing?</p> <p>(69) Are there issues of confidentiality and data security?</p>
--	--	--	--	---

<p>2. AT THE IN-PERSON HEARING Before the start of the hearing, general check of the hearing venue Greeting etiquette Should participants wear masks? Daily checks for COVID-19 updates Coffee breaks, lunch breaks Online hearing What to do if, during the hearing, a participant develops symptoms of COVID19?</p>		<p>E - Presentation of Evidence and Examination of Witnesses and Experts</p> <p>(i) Consultation between the tribunal and the parties on the organisation and presentation of oral pleadings;</p> <p>(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;</p> <p>(iii) Consultation between the tribunal and the parties on the examination of witnesses and experts (order of calling and examining witnesses/experts, connection time and duration of availability, virtual sequestration, the permission/prohibition of synchronous or asynchronous communications between</p>	<p>C. Day of Hearing</p> <p>(32) Is the “host” logged into the Platform?</p> <p>(33) Are the correct participants being allowed access to the Remote Hearing?</p> <p>(34) Are there any technical difficulties that need to be first addressed / remedied?</p>	
---	--	--	---	--

		<p>witnesses and parties/counsel in chat rooms or through concealed channels of communications, interaction between the examiner and the witness/expert in an online environment, etc.); and</p> <p>(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.</p>		
<p>3. FOLLOWING THE IN-PERSON HEARING Continuing the daily checks for COVID-19 updates What to do if, after the hearing, a participant develops symptoms of COVID19?</p>				
<p>Appendix 1 to the Delos COVID-19 hearing checklist –</p>		<p>ANNEX II - SUGGESTED CLAUSES FOR CYBER-PROTOCOLS AND</p>	<p>APPENDIX A Choosing the Right Remote Hearing Platform</p>	<p>ANNEX II - SUGGESTED CLAUSES FOR CYBER-PROTOCOLS AND PROCEDURAL</p>

<p>Non-exhaustive list of considerations in deciding whether to maintain or postpone a hearing</p> <p>There may be cases in which the parties and/or the tribunal take a different view as to whether the hearing should be maintained or postponed due to COVID-19.</p> <p>Considerations may include the difficulty in securing the attendance of witnesses and/or experts, availability of interpreters, personal or legal preferences about conducting examinations by way of videoconference (whether from the perspective of the examiner or the tribunal), uncertainty about future date at which another hearing may be scheduled or significant delay this could add to the proceeding, and/or due process issues.</p>		<p>PROCEDURAL ORDERS DEALING WITH THE ORGANISATION OF VIRTUAL HEARINGS</p> <p>I. PARTICIPANTS II. TECHNICAL ISSUES, SPECIFICATIONS, REQUIREMENTS AND SUPPORT STAFF III. CONFIDENTIALITY, PRIVACY AND SECURITY IV. ONLINE ETIQUETTE AND DUE PROCESS CONSIDERATIONS V. PRESENTATION OF EVIDENCE AND EXAMINATION OF WITNESSES AND EXPERTS</p> <p>ANNEX TO PROCEDURAL ORDER- Technical/Technological Requirements</p> <p><i>[to be discussed/agreed with the parties – case specific]</i></p>	<p>Considerations</p> <ol style="list-style-type: none"> 1) Choice of Platform: Self-managed vs institutionally-managed 2) Number of allowable participants per session and at each remote location 3) Minimum internet bandwidth and speed Requirements 4) Video quality 5) Audio quality 6) Is the Platform supported by the operating system(s) (“OS”) used e.g. Microsoft Windows / Mac OS 7) Data protection regulations and cybersecurity requirements 8) File sharing / screen sharing capabilities 9) Availability of a recording function 10) Availability of break-out rooms / separate discussion rooms 	<p>ORDERS DEALING WITH THE ORGANISATION OF VIRTUAL HEARINGS</p> <p>I. PARTICIPANTS II. TECHNICAL ISSUES, SPECIFICATIONS, REQUIREMENTS AND SUPPORT STAFF III. CONFIDENTIALITY, PRIVACY AND SECURITY IV. ONLINE ETIQUETTE AND DUE PROCESS CONSIDERATIONS V. PRESENTATION OF EVIDENCE AND EXAMINATION OF WITNESSES AND EXPERTS</p> <p>ANNEX TO PROCEDURAL ORDER- Technical/Technological Requirements</p> <p><i>[to be discussed/agreed with the parties – case specific]</i></p>
--	--	---	--	--

<p>In the case of mediation hearings, parties may be concerned about not being able to initiate arbitration proceedings due to the requirements of their multi-tier dispute resolution clause, and possible related timebar issues.</p> <p>Finally, in fast-track arbitrations based on the arbitration agreement, when deciding whether to maintain or postpone the hearing, the tribunal and parties should consider requirements at the seat of arbitration, if any, regarding modifying time limits established in the arbitration agreement.</p> <p>The decision of whether to hold or postpone a hearing will need to be made on a case-by-case basis by the tribunal / mediator considering all of the relevant circumstances.</p>			<ul style="list-style-type: none"> 11) Availability of a chat function (private and broadcast mode) 12) Parties' and the Tribunal's prior experience with a particular Platform 13) Availability of technical support (both prior to and during the Remote Hearing) 	
<p>Appendix 2 to the Delos COVID-19</p>			<p>APPENDIX B</p>	

<p>hearing checklist – Personal grounds related to COVID-19 for not being able to participate in person at a hearing</p> <p>With reference to checklist item no. A6, participants should consider the following personal statements and decide for themselves if any apply. If they do, it may be better for them not to participate in person at a hearing.</p> <p>Health x I am a person more at risk of developing a severe form of COVID-19, as described by the WHO.² x I am pregnant.</p> <p>Parenting x As a result of closures of nurseries / pre-schools / schools in my area of residence due to COVID-19, I</p>			<p>Checklist for Remote Hearing Procedural Orders³</p> <p>APPENDIX C Remote Hearing Etiquette</p>	
--	--	--	--	--

² According to the WHO, older persons and persons with pre-existing medical conditions (such as high blood pressure, heart disease, lung disease, cancer or diabetes) appear to develop serious illness more often than others (see [here](#), last accessed on 11 March 2020).

³ Tribunals may consider using this Appendix B as a guide when discussing with parties and preparing procedural orders relating to the conduct of a Remote Hearing.

<p>need to work from home and am not able to arrange for childcare for the duration of the hearing.</p> <p>Should the tribunal / mediator and/or parties consider it necessary to address the above in further detail, they can do so in the following manner:</p> <ul style="list-style-type: none"> x E i : <i>Do any of the participants wish to invoke personal reasons for not being able to participate in person at the hearing (see Appendix 2 to the Delos COVID-19 hearing checklist?)</i> x If the answer is affirmative, the participant(s) could be invited to provide a statement of truth in place f e ide ce (e.g.: <i>One or more</i> 				
--	--	--	--	--

<p><i>of the grounds stated in Appendix 2 to the Delos COVID-19 hearing checklist</i></p> <p>The above exchange may not be dispositive of the question of how to approach the hearing; and it may be necessary in specific instances to clarify how many participants are covered by the statement.</p>				
---	--	--	--	--