

# Virtual Arbitration Hearings: A View Across Institutional Rules

---

### Table of Content:

Introduction
<b>I.</b> International Chamber of Commerce
<b>II.</b> London Court of International Arbitration
<b>III.</b> International Centre for Dispute Resolution
<b>IV.</b> International Centre for Settlement of Investment Disputes
<b>V.</b> Stockholm Chamber of Commerce
<b>VI.</b> Singapore International Arbitration Centre
<b>VII.</b> Hong Kong International Arbitration Centre

### Introduction

In light of the different governmental restrictions issued all around the world, including travel bans and stay-at-home orders, the conduction of arbitration proceedings has inevitably been affected. Despite these restrictions, most stages of international arbitration proceedings can continue without any particular disruption. However, the question arises as to whether the parties should still hold arbitral hearings remotely or virtually.

Of course, this is a question that must be analyzed on a case by case basis. However, international arbitral institutions are offering different online solutions to conduct arbitral proceedings virtually, while some had already put in place these options before the outbreak.

Some institutional rules expressly allow the parties to conduct Virtual Hearings,<sup>1</sup> while some rules remain silent, giving the parties and the tribunals the power to agree to conduct the proceedings in whatever manner they see fit.

Further, some arbitral institutions have drafted specific guidelines and recommendations for conducting Virtual Hearings, others refer to third-party platforms and guidelines, and others have made no particular recommendation.

There is still a lot of uncertainty as to when travel restrictions will be lifted, and as to when in-person hearings will be able to take place again. Thus, it is likely that virtual hearings will become the new normal, at least for now.

With this in mind, arbitration users should start familiarizing themselves with the different online services offered by these institutions, so as to carefully choose the technology solutions most suitable for their specific cases and guarantee the continuity of their proceedings.

---

<sup>1</sup> For the purposes of this paper, the term “**Virtual Hearing**” refers to an arbitral hearing in which the majority or all of the participants are situated in different geographical locations, and which is being conducted through the use of any sort of video-conferencing platform or any other type of technology. .

This paper includes information on some of the main arbitral institutions around the world, and attempts to address some of the main questions that we have identified, surrounding the use of these online technologies.

## I. International Chamber of Commerce (ICC)

### 1. *Are Virtual Hearings allowed under the ICC Arbitration Rules?*

Virtual Hearings are implicitly allowed under the ICC Arbitration Rules, by virtue of interpretation of certain provisions:

**Article 22.2 (Conduct of the Arbitration)**, which allows the tribunal to adopt such procedural measures as it considers appropriate, provided that they are not contrary to any agreement of the parties.

**Article 24 (Case Management Conference and Procedural Timetable)** allows for case management conferences to be conducted by videoconference, telephone or similar means of communication.

**Article 25(1) (Establishing the facts of the case)**, provides that the arbitral tribunal shall proceed within as short a time as possible to establish the facts of the case by all appropriate means.

**Article 25(2) (Establishing the facts of the case):** *“After studying the written submissions of the parties and all documents relied upon, the arbitral tribunal shall hear the parties together in person if any of them so requests or, failing such a request, it may of its own motion decide to hear them.”*

The ICC has recently interpreted this section of Article 25(2), stating that *“this language can be construed as referring to the parties having opportunity for a live, adversarial exchange and not to preclude a hearing taking place “in person” by virtual means if the circumstances so warrant”*.

**Appendix IV (Case Management Techniques, Section f):** allows for the use of telephone or video conferencing for procedural and other hearings where attendance in person is not essential and use of IT that enables online communication among the parties, the arbitral tribunal and the Secretariat of the Court.

**Article 4 of the Emergency Arbitrator Rules** allows for any meetings with the emergency arbitrator to be conducted through videoconference, telephone or similar means of communication.

**Article 3 of the Expedited Procedure Rules** allows the arbitral tribunal, after consulting the parties, to decide the dispute solely on the basis of the documents submitted, with no hearing or examination of witnesses or experts. The same article allows the hearing to be conducted by videoconference, telephone or similar means of communication.

### 2. *Has the ICC issued guidance notes, recommendations or protocols on Virtual Hearings?*

The ICC recently issued a “Guidance Note on Possible Measures Aimed at Mitigating the Effects of the COVID-19 Pandemic”, (the “**Guidance Note**”), which describes some of the particular measures that tribunals and parties to an arbitration can adopt to ensure continued effective case management, including the use of audio-conference or videoconference for conferences and hearings, where possible and appropriate.

Click [here](#) to see the ICC Guidance Note.

### 3. *Does the ICC offer its own online case management platform?*

The ICC does not offer its own online case management platform.

### 4. *Does the ICC offer its own Virtual Hearing platform?*

The ICC does not offer its own Virtual Hearing platform.

**5. Has the ICC issued any particular recommendation regarding third-party Virtual Hearing platforms?**

In its Guidance Note, the ICC has shared a comparative table of available videoconference platforms for virtual hearings ([https://en.wikipedia.org/wiki/Comparison\\_of\\_web\\_conferencing\\_software](https://en.wikipedia.org/wiki/Comparison_of_web_conferencing_software)).

The ICC has licensed access to Microsoft Teams, Vidyocloud and Skype for Business and has stated that platforms such as Zoom, BlueJeans and GoToMeeting have been used in recent cases.

The ICC does not endorse or make any representation or warranty with respect to any third-party vendor mentioned in its Guidance Note.

The Guidance Note recommends tribunals and parties to ensure that any video sharing platform used is licensed and is set to maximum security settings.

**6. Has the ICC issued any particular recommendation regarding third-party document sharing platforms for electronic bundles?**

The Guidance Note makes reference to the following document sharing platforms:

- Opus
- Transperfect
- XBundle

The ICC does not endorse or make any representation or warranty with respect to any third-party vendor mentioned in its Guidance Note.

As the Guidance Note indicates, customized or licensed, fee-based document sharing platforms may offer greater security, confidentiality and data protection than free-to-use, public platforms.

**7. Does this institution offer remote technical support for Virtual Hearings?**

The ICC offers remote technical support to assist tribunals with using Virtual Hearing and document sharing platforms, either by joining the hearing, operating in-meeting audio and video functions and operating screen sharing functions.

The ICC Hearing Centre in Paris also offers standard technical support and assistance to tribunals seeking to better understand the options for virtual hearings and electronic bundle facilities.

**8. Has this institution issued any suggested procedural order for the organization of Virtual Hearings?**

In its [Guidance Note](#), the ICC has included an Annex titled “Suggested Clauses for Cyber-Protocols and Procedural Orders dealing with the Organization of Virtual Hearings”.

**9. What are some of the institution’s most relevant recommendation for Virtual Hearings?**

- ✓ Identify which claims can be disposed or resolved in advance through agreement of the parties or partial awards on the basis of documents only.
- ✓ Identify which issues can be resolved on the basis of written questions from the parties or the tribunal and written answers from witnesses and/or experts.
- ✓ Establish an agreed chronology of facts, joint lists of issues in dispute or other documents to help define and narrow the scope of the dispute.
- ✓ Consider agreeing to opt-in to the ICC Expedited Rules Provisions.
- ✓ Consider the different time zones of all participants, total number of participants, use of real-time transcript or other forms of recording, use of interpreters, procedures for verifying the presence and identity of all participants, procedures for the taking of evidence from fact witnesses and experts, use of shared screen views and electronic hearing bundles.

- ✓ Consider the need for tutorials for participants who are not familiar with these technologies and platforms
- ✓ Consider the need for contingency measures to be implemented in case of technical failures, disconnections, power outages, etc.
- ✓ Run at least two mock sessions before the hearing.
- ✓ Obtain written statements from the parties that the tested platform and technology are adequate as tested by the parties.
- ✓ Confirm the parties' agreement on proceeding with a Virtual Hearing or identifying the legal basis for proceeding with virtual hearings absent such agreement by the parties.
- ✓ Agree on the permission or prohibition of communications between witnesses, experts and parties/counsels in chat rooms or through separate channels of communications.

## II. London Court of International Arbitration (LCIA)

### 1. Are Virtual Hearings allowed under the LCIA Arbitration Rules?

Virtual Hearings are expressly allowed in Article 19(2) of the LCIA Arbitration Rules:

*19.2 The Arbitral Tribunal shall organize the conduct of any hearing in advance, in consultation with the parties. The Arbitral Tribunal shall have the fullest authority under the Arbitration Agreement to establish the conduct of a hearing, including its date, form, content, procedure, time-limits and geographical place. As to form, a hearing may take place by video or telephone conference or in person (or a combination of all three) (...).*

### 2. Has the LCIA issued guidance notes, recommendations or protocols on Virtual Hearings?

The LCIA has not issued any particular guidance note on Virtual Hearings at this time.

The “LCIA Notes for Arbitrators”, issued in October 2017, contains certain recommendations for Virtual Hearings:

*33. It might, in some cases, be appropriate for certain hearings (for example, procedural conferences) to be held by telephone or by videoconference, rather than in person. The Arbitral Tribunal should also consider, where appropriate, whether some or all of those who must attend any meeting or hearing might do so by video conference, rather than in person (for example, if a witness is unable to travel due to health issues).*

Click [here](#) to see the LCIA Notes for Arbitrators.

### 3. Does the LCIA offer its own online case management platform?

The LCIA has developed a platform for online filing of Requests for Arbitration, Responses, applications for expedited formation of the tribunal, applications for expedited appointment of a replacement arbitrator, applications for the appointment of an Emergency Arbitrator and any other supporting documentation. This platform also allows the parties to pay any filing fees online.

Click [here](#) to go to the LCIA Online Filing site.

### 4. Does the LCIA offer its own Virtual Hearing platform?

The LCIA does not offer its own Virtual Hearing platform.

### 5. Has the LCIA issued any particular recommendation regarding third-party Virtual Hearing platforms?

The LCIA has not made any particular recommendation on this matter.

**6. Has the LCIA issued any particular recommendation regarding third-party document sharing platforms for electronic bundles?**

The LCIA has not made any particular recommendation on this matter.

**7. Does the LCIA offer remote technical support for Virtual Hearings?**

The LCIA has made no express statement on this matter.

**8. Has the LCIA issued a suggested procedural order for the organization of Virtual Hearings?**

The LCIA has made no express statement on this matter.

**9. What are some of the LCIA's most relevant recommended settings for Virtual Hearings?**

N/A.

### **III. American Arbitration Association - International Centre for Dispute Resolution (AAA-ICDR)**

**1. Are Virtual Hearings allowed under the ICDR Arbitration Rules?**

**Article 20(1)** grants the tribunal the power to conduct the arbitration “*in whatever manner it considers appropriate, provided that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case*”.

**Article 20(2):** “In establishing procedures for the case, *the tribunal and the parties may consider how technology, including electronic communications, could be used* to increase the efficiency and economy of the proceedings”.

**Article 23(5)** allows for the examination of witnesses “*through means that do not require their physical presence*”.

**Article 6(3) of the ICDR Arbitration Rules** allows the emergency arbitrator to conduct the proceedings by *telephone, video, written submissions, or other suitable means*, as alternatives to an in-person hearing.

**Article E-9 of the International Expedited Procedures Rules** states that hearings may take place in person or via video conference or other suitable means, at the discretion of the arbitrator.

**2. Has the AAA-ICDR issued guidance notes, recommendations or protocols on Virtual Hearings?**

The AAA-ICDR has issued the following documents:

- “**Virtual Hearing Guide for Arbitrators and Parties**” (Click [here](#) to see the document).
- “**Virtual Hearing Guide for Arbitrators and Parties Utilizing ZOOM**” (Click [here](#) to see the document).
- “**Model Order and Procedures for a Virtual Hearing via Videoconference**” (Click [here](#) to see the document).

**3. Does the AAA-ICDR offer its own online case management platform?**

The ICDR had already developed an online filing system for arbitration and mediation cases as well as payment of fees.

Click [here](#) to go to the AAA-ICDR Online Filing System.

**4. Does the AAA-ICDR offer its own Virtual Hearing platform?**

The ICDR does not offer its own Virtual Hearing platform.

**5. Has this institution issued any particular recommendation regarding third-party Virtual Hearing platforms?**

The AAA-ICDR has stated that it does not endorse any platform over another, however, it has issued a particular guide note titled “Virtual Hearing Guide for Arbitrators and Parties Utilizing Zoom”, which includes a variety of practical considerations and recommended settings when using the Zoom platform (*Click [here](#) for the document*).

**6. Has the AAA-ICDR issued any particular recommendation regarding third-party document sharing platform for electronic bundles?**

The AAA-ICDR has not made any particular statement on this matter.

**7. Does the AAA-ICDR offer remote technical support for Virtual Hearings?**

The AAA-ICDR does not offer any particular remote technical support for Virtual Hearings.

**8. Has the AAA-ICDR issued a suggested procedural order for the organization of Virtual Hearings?**

Yes. *Click [here](#) to see the “AAA-ICDR Model Order and Procedures for a Virtual Hearing via Videoconference”*.

**9. What are some of the AAA-ICDR’s most relevant recommended settings for Virtual Hearings?**

- ✓ Basic recommendations such as the use of a good quality webcam and good lighting conditions.
- ✓ Determine the best method for best audio quality, minimize background noise, etc.
- ✓ Use a platform with a unique, automatically generated meeting ID for each virtual hearing and which is password protected.
- ✓ Use a secure internet connection.
- ✓ Make a list of the participants.
- ✓ Use security features available to prevent ex parte communications with the arbitrators.
- ✓ Disable “private” chat features.
- ✓ Have a trial run with the panel, representatives and any technical support people before the hearing.

## **IV. International Centre for Settlement of Investment Disputes (ICSID)**

**1. Are Virtual Hearings Allowed under the ICSID Convention?**

Neither the ICSID Convention nor the ICSID Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings (ICSID Arbitration Rules) make any express reference to Virtual Hearing.

**2. Has the ICSID issued guidance notes, recommendations or protocols on Virtual Hearings?**

The ICSID has been conducting Virtual Hearings for years. However, in March 23, 2020 the ICSID published a document titled “A Brief Guide to Online Hearings at ICSID”, which provides a general overview of its Virtual Hearing services. *Click [here](#) to see the publication*.

**3. Does the ICSID offer its own online case management platform?**

No.

**4. Does the ICSID offer its own Virtual Hearing platform?**

ICSID provides a video-conferencing platform, which requires no special hardware or software. If internet connectivity is poor, participants may join by telephone.

This platform allows for hearings of any size (even hundreds of participants). All participants can share audio, video and other content. A virtual chat allows participants to communicate amongst each other or with the entire group. A virtual court stenographer provides real-time transcript of the proceedings, visible to all participants.

ICDIS's online hearing services are available at no extra charge, even to arbitrations conducted under UNCITRAL and other non-ICSID procedural rules.

**5. *Has the ICSID issued any particular recommendation regarding third-party Virtual Hearing platforms?***

No.

**6. *Has the ICSID issued any particular recommendation regarding third-party document sharing platforms for electronic bundles?***

No.

**7. *Does the ICSID offer remote technical support for Virtual Hearings?***

When using the ICSID's platform, IT professionals are present during the hearing to ensure it runs smoothly.

**8. *Has the ICSID issued a suggested procedural order for the organization of Virtual Hearings?***

No.

**9. *What are some of the ICSID's most relevant recommended settings for Virtual Hearings?***

N/A.

## **V. Stockholm Chamber of Commerce (SCC)**

**1. *Are Virtual Hearings allowed under the SCC Arbitration Rules?***

**Article 28 (2)** (Case Management Conference and Timetable) stipulates that the case management conference may be conducted in person or by any other means.

**Article 32** (Hearings) makes no specific mention to the possibility of holding virtual hearings.

**2. *Has the SCC issued guidance notes, recommendations or protocols on Virtual Hearings?***

The SCC has not issued any particular guidance note on Virtual Hearings.

**3. *Does the SCC offer its own online case management platform?***

In September 2019 the SCC launched a platform for administering arbitrations. The SCC Platform is used to communicate and file case materials in the arbitration (procedural orders, exhibits, submissions, etc.). The site also includes a calendar and a notice board for the tribunal to communicate practical information to the parties as well as an archiving service to the tribunal after the case is concluded.

Access and use of the Platform are included in the SCC administrative fee (unless the parties require additional storage beyond the limit available with the administrative storage fee).

The SCC's platform provides for its own guidelines, which are available directly on the Platform for participants in SCC arbitrations.

The SCC Platform is powered by "HighQ", a supplier of secure digital solutions for the legal profession. The files uploaded to the platform "are kept in cloud-based storage in high-security facilities with separate back-up facilities at a different location".

All data is encrypted using military-grade encryption and all files are scanned for malware and viruses when uploaded. The system has other security systems in place and is designed “to minimize the risk of human error compromising security or confidentiality”.

See the SCC Online Platform site [here](#).

Since May 2020, the SCC has also offered a platform providing secure and efficient communication in ad hoc arbitrations. The platform for ad hoc arbitrations will be free of charge during the Covid-19 crisis.

See the SCC Ad Hoc Platform site [here](#).

#### **4. Does the SCC offer its own Virtual Hearing platform?**

On April 2020, the Stockholm International Hearing Centre (SIHC) launched its own virtual platform for “digital hearings”.

The SIHC will e-mail a link to all participants wishing to connect to the hearing.

“The virtual hearing platform allows for each of the parties or the tribunal to have their own encrypted and private conference when the hearing is not in session. It further caters for the examination of witness statements online and court reporters off-site, etc. SIHC can further provide court reporters where needed. The underlying technical solution used is Microsoft Teams.”

To see the SCC’s full publication regarding its Virtual Hearing platform, click [here](#).

#### **5. Has the SCC issued any particular recommendation regarding third-party Virtual Hearing platforms?**

The SCC has made no particular recommendation in this regard. However, it has shared in its website the Seoul Protocol on Video Conferencing in International Arbitration and the Delos’ protocol on hearings in times of COVID-19 ([click here](#) to see the Seoul Protocol and [here](#) to see the Delos’ protocol).

#### **6. Has the SCC issued any particular recommendation regarding third-party document sharing platforms for electronic bundles?**

The SCC has made no particular recommendation in this regard.

#### **7. Does the SCC offer remote technical support for Virtual Hearings?**

The SIHC staff and technicians are available to support remote participants with technical issues that may arise before, during or after the Virtual Hearing.

#### **8. Has the SCC issued a suggested procedural order for the organization of Virtual Hearings?**

No.

#### **9. What are some of the SCC’s most relevant recommended settings for Virtual Hearings?**

N/A.

## **VI. Singapore International Arbitration Centre (SIAC)**

### **1. Are Virtual Hearings allowed under the SIAC Arbitration Rules?**

Rule 19.1 of the SIAC Rules provides that the Tribunal shall conduct the arbitration *in such manner as it considers appropriate*, after consulting with the parties, to ensure the fair, expeditious, economical and final resolution of the dispute.



Rule 19.3 allows the Tribunal to conduct a preliminary meeting with the parties in *person or by any other means*. Rule 24 (Hearings) makes no specific mention to the possibility for virtual hearings.

**2. *Has the SIAC issued guidance notes, recommendations or protocols on Virtual Hearings?***

No. However, the SIAC issued a communication encouraging to take note of the precautionary measures stipulated by Maxwell Chambers if in-person meetings or hearings are scheduled.

**3. *Does the SIAC offer its own online case management platform?***

No.

**4. *Does the SIAC offer its own Virtual Hearing platform?***

No.

**5. *Has the SIAC issued any particular recommendation regarding third-party Virtual Hearing platforms?***

The SIAC has recommended Maxwell Chambers Virtual ADR Services for cases in place of in-person meetings or hearings. Maxwell Chambers offers a platform for case preparation and connected hearing room services for the parties and tribunals. This is a secure cloud-based platform. Maxwell Chambers also offer the necessary assistance to conduct hearings via their platforms, including remote transcription, interpretation and digital hearing solutions.

See Maxwell Chambers Virtual ADR Services site [here](#).

**6. *Has the SIAC issued any particular recommendation regarding third-party document sharing platforms for electronic bundles?***

No.

**7. *Does the SIAC offer remote technical support for Virtual Hearings?***

The SIAC has designated and trained a number of counsel in the Secretariat as Remote Technology Specialists and introduced a Live Help Desk feature on the SIAC website for ease of contacting the SIAC Secretariat.

**8. *Has the SIAC issued a suggested procedural order for the organization of Virtual Hearings?***

No.

**9. *What are some of the SIAC's most relevant recommended settings for Virtual Hearings?***

N/A.

## **VII. Hong Kong International Arbitration Centre (HKIAC)**

**1. *Are Virtual Hearings allowed under the KHIAC Arbitration Rules?***

**Article 13** (General Provisions) gives power to the arbitral tribunal to “adopt suitable procedures for the conduct of the arbitration in order to avoid unnecessary delay or expense, having regard to the complexity of the issues, the amount in dispute *and the effective use of technology*, and provided that such procedures ensure equal treatment of the parties and afford the parties a reasonable opportunity to present their case”.

**Article 22** (Hearings) makes no express reference to Virtual Hearings. However, Article 22.5 gives the arbitral tribunal the power to determine the manner in which a witness or expert is examined.

**2. Has the HKIAC issued guidance notes, recommendations or protocols on Virtual Hearings?**

The KHIAC recently issued its Guidelines for Virtual Hearings. Click [here](#) to see the document.

**3. Does the HKIAC offer its own online case management platform?**

No.

**4. Does the HKIAC offer its own Virtual Hearing platform?**

The HKIAC has put in place its own Virtual Hearing services, which includes:

- An IP-based encrypted video conferencing system that can support up to 8 different locations. This is a cloud-based video conferencing compatible with all major video conferencing platforms (Zoom, Cisco Webex, Microsoft Teams, Bluejeans); and
- An audio-conferencing system that can support up to 30 lines.

The HKIAC also offers electronic bundles services, electronic presentation of evidence, transcription and interpretation services through external providers.

To see more on the HKIAC virtual services click [here](#).

**5. Has the HKIAC issued any particular recommendation regarding third-party Virtual Hearing platforms?**

No particular recommendation has been made by the HKIAC at this time.

**6. Has the HKIAC issued any particular recommendation regarding third-party document sharing platforms for electronic bundles?**

No particular recommendation has been made by the HKIAC at this time.

**7. Does the HKIAC offer remote technical support for Virtual Hearings?**

The KHIAC can arrange to have an IT specialist in attendance during the Virtual Hearing.

**8. Has the HKIAC issued a suggested procedural order for the organization of Virtual Hearings?**

No.

**9. What are some of the HKIAC most relevant recommended settings for Virtual Hearings?**

- ✓ Contact the HKIAC as early as possible to discuss hearing dates and virtual hearing services required and complete HKIAC's [online enquiry form](#).
- ✓ Arrange testing with all participants in advance of the hearing.
- ✓ Use LAN/Ethernet internet connections instead of WiFi connections.
- ✓ Arrange to have an IT specialist in attendance at all times.
- ✓ Turn all other devices to mute and flight-mode and disable alerts.
- ✓ Ensure the confidentiality and security of Virtual Hearings (using password protected cloud-based video conferences, drafting a list of participants, etc.).
- ✓ Mute microphones unless speaking; use physical gestures to announce that you wish to speak; avoid speaking at the same time as other participants; avoid back-lighting; ensure the camera is positioned at eye-level; look at the camera, not the screen; use a headset with integrated microphone; avoid wearing a face-mask when using facial movement recognition cameras.
- ✓ Arrange, where possible, for a "hearing invigilator" to attend the same premises as the witness or expert, to ensure the integrity of the premises; or arrange for a 360-degree viewing of the room.
- ✓ Ensure that evidence bundles and documents that are to be shared virtually are supplied to the relevant service provider well in advance of the hearing.

To obtain additional information contact our experts:

**Claus von Wobeser**, Partner:

+52 (55) 5258 1011 | [cvonwobeser@vwys.com.mx](mailto:cvonwobeser@vwys.com.mx)

**Adrián Magallanes**, Partner:

+52 (55) 5258 1077 | [amagallanes@vwys.com.mx](mailto:amagallanes@vwys.com.mx)

**Montserrat Manzano**, Partner:

+52 (55) 5258 1018 | [mmanzano@vwys.com.mx](mailto:mmanzano@vwys.com.mx)

**Diego Sierra**, Partner:

+52 (55) 5258 1039 | [dsierra@vwys.com.mx](mailto:dsierra@vwys.com.mx)

**VON WOBESER Y SIERRA, S.C.**

Mexico City, May 25, 2020.

---

**S I N C E R E L Y**

**VON WOBESER**

**VON WOBESER Y SIERRA, S.C.**

Paseo de los Tamarindos 60  
05120 Mexico City  
+52 (55) 5258 1000  
[vonwobeser.com](http://vonwobeser.com)