

APPENDIX A CHECKLIST FOR A PROTOCOL ON VIRTUAL HEARINGS

1. Pre-hearing Plan, Scope and Logistics
 - a. Identifying whether and which issues are essential to be on a hearing agenda and which can be dealt with on "documents only";
 - b. Agreeing the number and list of participants (arbitrators, parties, counsel, witnesses, experts, administrative secretaries, interpreters, stenographers, technicians, etc.);
 - c. Agreeing the number of participants per virtual room and whether a 360° view for all participating rooms is required or necessary;
 - d. Agreeing regarding virtual rooms that will permit the arbitrators, and each side in the case, to confer privately amongst themselves during the hearing;
 - e. Identifying all log-in locations and points of connection;
 - f. Agreeing that each individual present in each virtual room will be identified at the start of the videoconference; and
 - g. In light of the above, consulting and agreeing among parties and arbitral tribunal on the hearing date, duration and daily timetable taking into account the different time zones.
2. Technical Issues, Specifications, Requirements and Support Staff
 - a. Consultation between the arbitral tribunal and the parties regarding:
 - i. the preferred platform and technology to be used (including legal access to such platform and technology);
 - ii. the minimum system specifications and technical requirements for smooth connectivity (audio and video), adequate visibility and lighting in each location;
 - iii. 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);
 - b. Preliminary check on compatibility of selected platform and technology to be used;
 - c. 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;
 - d. Consultation between the arbitral 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

- e. 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.

3. Confidentiality, Privacy and Security

- a. Consultation between the arbitral tribunal and the parties on whether the virtual hearing will remain private and confidential to participants;
- b. Agreeing an access and confidentiality undertaking that binds all participants;
- c. Consultation between the arbitral tribunal and the parties on:
 - i. the recording of the virtual hearing (audio-visual recording, confidentiality of the recording and value of recording compared to any produced written transcript, etc.);
 - ii. any overriding privacy requirements or standards that may impact access or connectivity of certain participants; and
 - iii. the minimum requirements of encryption to safeguard the integrity and security of the virtual hearing against any hacking, illicit access, etc.

4. Online Etiquette and Due Process Considerations

- a. Consultation between the arbitral 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.;
- b. Obtaining written statements from the parties/counsel that the tested platform and technology are adequate as tested by the parties;
- c. 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
- d. Advising the parties on their duty to cooperate on technical matters prior to and during the virtual hearing.

5. Presentation of Evidence and Examination of Witnesses and Experts

- a. Consultation between the arbitral tribunal and the parties on the organization and presentation of oral pleadings;
- b. 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;

- c. Consultation between the arbitral 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 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
- d. Consultation between the arbitral 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.