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Conducting International Arbitrations During the COVID-19 Pandemic

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Amidst the uncertainty caused by global shutdowns due to the COVID-19 pandemic, parties to ongoing arbitrations or who are considering commencing arbitrations need to consider the impact of the shutdowns on international arbitration: in particular, whether and how virtual arbitration services can provide an effective means to advance their proceedings during the pandemic.

Given global travel bans and stay-at-home orders, in-person hearings have become virtually impossible. Some delays may be inevitable, but many aspects of international arbitration proceedings can continue on schedule. The principal question therefore becomes whether it is appropriate to hold certain hearings remotely. Many arbitral institutions have adopted useful measures to minimize disruption to the arbitration proceedings and to provide means to submit filings and conduct virtual hearings. However, virtual hearings can raise issues of fairness and due process, so the circumstances of each case need to be carefully considered.

Most of the major arbitral institutions continue to be operational. The [International Chamber of Commerce International Court of Arbitration](#) (“ICC”), the [International Centre for Settlement of Investment Disputes](#) (“ICSID”), the [Hong Kong International Arbitration Centre](#) (“HKIAC”), the [Singapore International Arbitration Centre](#) (“SIAC”), the [Arbitration Institute of the Stockholm Chamber of Commerce](#) (“SCC”), the [London Court of International Arbitration](#) (“LCIA”), the [American Arbitration Association’s International Centre for Dispute Resolution](#) (“AAA/ICDR”) and the [Korean Commercial Arbitration Board International](#) (“KCAB”) have reassured their users that they remain operational. These institutions have implemented remote-working and/or split-team arrangements and are contactable during regular business hours. The ICC Court meetings are also taking place remotely. However, except for the HKIAC and the KCAB, most institutions have closed their facilities for in-person meetings and hearings.

Parties should consider whether to conduct arbitrations electronically, and if so, how. Due process and fairness considerations unique to virtual arbitration proceedings can arise, for example, relating to such factors as a perceived impairment of the tribunal's or counsel's ability to assess witness credibility in virtual testimony, limitations on a party's inability to consult with its counsel in real time, and potential technological failures. Virtual hearings also give rise to various logistical and technical issues, including accommodating parties in different time zones, ensuring that all participants have access to sufficiently high-quality internet, getting the right technology and features to suit the specific needs of the hearing, and cybersecurity considerations. In addition, considerations may differ depending on whether the hearing is for procedural purposes or the final merits hearing.

Parties to arbitrations should, therefore, consider whether and to what extent to adopt online solutions to conduct their arbitrations. Ultimately, deciding whether to conduct a hearing virtually depends on the preferences and concerns of the parties, whose views should be taken into account by the tribunal.

Arbitral institutions are offering online solutions for the conduct of arbitrations. In light of the COVID-19 outbreak, the ICC, ICSID, HKIAC, SIAC, SCC, LCIA and AAA/ICDR have permitted (and some require) the electronic filing of requests for arbitration and applications for emergency interim relief and expedited proceedings. For some institutions, such as the SCC and the LCIA, such procedures were put in place even before the outbreak. For other institutions, such as ICSID, steps were already being considered to reduce reliance on paper submissions, and these changes to their filing procedures are well timed. All of the arbitral institutions mentioned above have stated that communications, payments and arbitral awards should be transmitted electronically.

Some arbitral institutions also offer online case management platforms. For example, in September 2019, the SCC launched the [SCC Platform](#), which provides parties, counsel and arbitral tribunals with a secure and efficient way of communicating and filing all case materials in the proceedings. The Platform also offers (i) a calendar for relevant dates and deadlines, (ii) a notice board for tribunal communications to the parties, and (iii) an archiving service once the proceedings are concluded. ICSID also sets up separate case folders in a secure cloud-based file-sharing platform for its cases.

In addition, several arbitral institutions are supporting or encouraging virtual hearings during a time when most in-person hearings are impracticable or impossible. Institutions such as the HKIAC, SIAC, KCAB and ICSID are proactively offering e-hearing services. The HKIAC provides [virtual hearing services](#) that can support up to eight different locations and can integrate all essential document management, including video-conferencing, audio-conferencing, electronic bundles and real-time

transcription. The SIAC is directing its users to Maxwell Chambers' [virtual alternative dispute resolution hearing platform](#), which allows Singapore-based parties to conduct hearings with overseas parties via its video-conferencing facilities and grants worldwide access to the arbitration materials on a secure cloud-based platform. The KCAB's Seoul International Dispute Resolution Centre [allows in-person evidentiary hearings to be substituted for video-conferencing](#). ICSID's [online platform](#) can accommodate hundreds of participants, with a virtual court stenographer, chat function and the possibility of participating by telephone where internet connectivity is poor.

In the People's Republic of China, online dispute resolution is promoted as part of the country's strategy to get its economy back on track. On 3 March 2020, for example, the Chinese Ministry of Justice issued [guidelines](#) calling for the strengthening of China's "internet arbitration systems", including the construction of online case management systems.

Parties should carefully consider what technology is needed to support virtual arbitration services. In order to minimize technical issues, parties should survey the technology solutions available and choose among them based on the specific characteristics of their proceedings. Technology solutions to consider may include, for instance:

- Video conferencing with options for joint sessions, breakout rooms and caucuses;
- Secure cloud-based file storage enabling access to materials from anywhere and online collaboration;
- Remote real-time transcription service with options of automated hyperlinking to online evidence platforms, onscreen captioning and the ability to function seamlessly with live interpretation; and
- Rotating cameras offering high-definition images that can be controlled by the arbitrators (or the presiding arbitrator or tribunal secretary) to assess the speaker's physical environment and nonverbal cues.

The use of virtual hearings and other online solutions for the conduct of arbitrations during the COVID-19 pandemic will be a testing ground for the viability of these measures in the long term. If the technologies can pass muster, over time users may become comfortable conducting more and more of arbitration proceedings electronically.

As an international law firm with offices around the world, Debevoise is well positioned to work across a number of time zones for our clients. We have successfully run virtual

hearings with participants in Australia, Hong Kong, New York and London and conducted witness examinations via video conference.

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For more information regarding COVID-19, please visit our [Coronavirus Resource Center](#).

Please do not hesitate to contact us with any questions.

NEW YORK



David W. Rivkin
dwrivkin@debevoise.com



Catharine Amirfar
camirfar@debevoise.com



Nawi Ukabiala
nukabial@debevoise.com

LONDON/PARIS



Lord Goldsmith QC
phgoldsmith@debevoise.com

LONDON/HONG KONG



Tony Dymond
tdymond@debevoise.com

HONG KONG



Z.J. Jennifer Lim
jlim@debevoise.com



Charlotte Lelong
clelong@debevoise.com