

The background of the page is a technical drawing or blueprint. It features various geometric shapes, including circles, arcs, and lines, some of which are dashed. There are also some faint, illegible text elements scattered throughout the drawing. A prominent red rectangular box is overlaid on the right side of the page, containing the title text.

Debevoise & Plimpton LLP
Checklist for Arbitrations
Impacted by COVID-19

Debevoise & Plimpton's International Dispute Resolution Group has compiled the following checklist to address concerns arising from the impact of the COVID-19 pandemic on international arbitration. For additional general guidance on international arbitration, please refer to Debevoise & Plimpton's [Efficiency Protocol](#) and its [Cybersecurity Protocol](#) for International Arbitration.

First Steps

1. Consider negotiating a tolling agreement to preserve potential arbitration claims if limitations periods apply.
2. Consider negotiating a temporary suspension of ongoing proceedings.
3. Ensure that any agreements between the parties to adapt procedures in response to the pandemic are in writing to minimize the risk of future challenges to the arbitral award based on procedural objections.
4. In deciding whether to file a claim or suspend ongoing proceedings, consider whether the following key steps can or should be done remotely based on the considerations below: (i) document management; (ii) working with fact and expert witnesses; and (iii) procedural conferences and hearings.

Document Management

5. Document Collection:
 - 5.1 Consider whether there are any hard-copy documents that may be difficult to collect and digitize.
 - 5.2 Consider whether potential custodians have remote access to relevant electronic files.
 - 5.3 Consider document retention policies to account for any employment changes related to the pandemic.
6. Document Production:
 - 6.1 Consider the impact of the pandemic on any current or future document production and on any document management protocol.
7. Document Submission:
 - 7.1 Confirm whether the relevant arbitral institution has implemented any new electronic submissions policies in response to the pandemic.
 - 7.2 If not, consider agreeing with the tribunal and opposing counsel to only use electronic submissions.
8. For any transmission of documents, consider implementing additional security protections, such as using a secure FTP portal instead of email and requiring multifactor authentication.¹

¹ See Debevoise Cybersecurity Protocol at 1, 4.

Working with Fact and Expert Witnesses

9. Consider conducting sessions with fact and expert witnesses via telephone or videoconference.
 - 9.1 Consider the number of potential witnesses, their locations, and volume of relevant documents.
 - 9.2 Consider the stage of the interview (initial fact development; witness statement preparation; hearing preparation).
10. Consider whether the locations of witnesses affect the applicable law of privilege and take steps to ensure privilege is not waived under the law of any applicable jurisdiction.
11. Consider asking the witness to participate in the interview from a secure and private location outside the hearing range of third-parties.
12. Develop electronic witness bundles by using electronic PDF binders (“e-binders”) or PDF Portfolios.
13. Consider measures to ensure that all document transmittals to witnesses are secure such as sending “view only” files and using a FTP portal instead of email.

Hearings and Conferences

14. Assess the legal framework for virtual hearings to determine if a virtual hearing is an available option.
 - 14.1 Consider applicable provisions addressing hearings in (i) the law of the seat of arbitration; (ii) the relevant institutional rules; and (iii) the arbitration agreement.
15. Because virtual hearings require less travel and cost, consider whether it would be more efficient to hold separate hearings on different issues.
16. Determine whether to conduct the hearing remotely.
 - 16.1 Consider whether the relevant arbitral institution can provide a virtual hearing platform. If so, consider the type of services that the platform offers.
 - 16.2 Consider the volume of documents and witnesses required.
 - 16.3 Consider the need for credibility assessments of witnesses (cross-examination, etc.).
 - 16.4 Consider the need for counsel and clients to be in the same location or to communicate effectively as the hearing progresses.
 - 16.5 Subject to public health guidance, consider holding a semi-remote hearing where, at a minimum, lead counsel from both parties or the tribunal members are in the same physical location.
17. Consider whether to conduct procedural conferences remotely.
 - 17.1 Consider creating agreed electronic bundles of relevant documents in advance.
 - 17.2 Consider agreeing to an agenda with opposing counsel and the tribunal to keep discussions organized and focused.
18. Consider whether examination and cross-examination of fact witnesses and experts are feasible and what safeguards are necessary to ensure procedural fairness.
 - 18.1 Consider developing guidelines and obtaining written commitments to prevent improper communication between counsel and witnesses during testimony.
 - 18.2 Consider requiring written commitments from the parties not to record or take screenshots of the proceedings.
 - 18.3 Consider whether transcription and translation can occur remotely and whether secure video recording of the hearing or conference is available and preferred.

- 18.4** Options for translation include the use of onscreen captioning in addition to simultaneous interpretation and consecutive interpretation.
- 18.5** Consider how to ensure the tribunal has a real-time attendance list of all participants, that no one else is in the room, and whether participants should identify themselves each time they speak to facilitate reliable transcription.
- 19.** Assess whether documents can be effectively prepared, organized, and presented virtually.
- 19.1** If the arbitral institution's virtual hearing platform does not include document management, consider whether separate document management and presentation software is necessary and is compatible with the videoconferencing platform.
- 19.2** Consider options for document organization including electronic binders ("e-binders") of documents and PDF Portfolios.
- 19.3** Consider whether participants should use a separate device such as a monitor or tablet for viewing documents.
- 20.** Consider the appropriate length for virtual hearing sessions.
- 21.** Consider the technical capabilities and level of security necessary to conduct a hearing or procedural conference remotely.
- 21.1** If audio is sufficient, select a robust and secure telephonic conference platform.
- 21.2** If video is required, select a secure videoconferencing platform with end-to-end encryption. Assess security history of the platform and whether it shares any user data with third-parties.
- 21.3** Consider whether additional videoconferencing features, such as document displays, joint sessions, and breakout rooms are necessary.
- 21.4** Ensure that the platform used to host documents (such as a cloud-based software) for the hearing or conference is secure.
- 21.5** Consider using secure instant messaging applications, breakout rooms on a videoconference platform, or a separate secure teleconference line to ensure stable and confidential communication channels (i) between counsel team members and (ii) between counsel and clients.
- 21.6** Consider whether to establish 360° camera coverage of the room where the witness is testifying from and/or to give control of the camera feed to tribunal members so they can appropriately assess nonverbal cues.
- 22.** Anticipate potential technical issues.
- 22.1** Consider training sessions to establish the familiarity of all parties, witnesses, experts, and tribunal members with the platform.
- 22.2** Consider the bandwidth available to participants and means-test the platform in advance to ensure all participants have an adequate Internet connection.
- 22.3** Consider whether to use a third party service provider to provide real-time technical support.
- 22.4** Consider developing a protocol for handling technical problems, including (i) replacing time lost by a party as a result, and (ii) preventing *ex parte* communications with the tribunal.