



INTERNATIONAL COURT OF ARBITRATION® | INTERNATIONAL CENTRE FOR ADR | LEADING DISPUTE RESOLUTION WORLDWIDE

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# ICC Guidance Note on Possible Measures Aimed at Mitigating the Effects of the COVID-19 Pandemic

## I - Purpose

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 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.
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 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.

## II - Mitigating COVID-19 related delays

3. 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 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.
4. 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.

5. 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 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.

## A - Increasing the Efficiency of the Arbitral Procedure

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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 efficient.
7. Many of these techniques are not new. The Court has issued guidance in Appendix IV to the Rules and in the [Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration](#) ("Note"). Additional guidance is available in the ICC Commission on Arbitration and ADR reports entitled "[Controlling Time and Costs in Arbitration](#)" and "[Effective Management of Arbitration – A Guide for In-House Counsel and Other party Representatives](#)."
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:
  - 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;
  - 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;
  - 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.
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.

## **B - Service of Documents and Notifications**

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10. The Secretariat of the Court ("Secretariat") has also taken steps to streamline its processes to promote efficiency and avoid COVID-19 related delays.
11. The [Secretariat's communication of 17 March 2020](#) 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).
12. Tribunals and parties are encouraged to sign the Terms of Reference in counterparts and electronic form, as described in the Note (§161).
13. 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) expressly requires that communications with and from the Secretariat be in electronic form.
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.
15. 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 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.

### **III - Guidance on the organisation of virtual hearings**

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.
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.

#### **A - Means of Conducting Conferences or Hearings**

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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 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.
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 by using the procedural tools discussed in the present Guidance Note.
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.
21. 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.
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 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.

23. 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.
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 *by all appropriate means*" (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 *contradictoirement* 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."
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 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.

## B - Cyber-Protocol

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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.
27. **Annex II** to this Guidance includes a number of suggested clauses for inclusion in cyber-protocols of procedural orders dealing with the organisation of virtual hearings.

## C - Procedural Issues

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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:
  - 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 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;
  - 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.
29. A checklist for a Protocol on virtual hearings is attached as **Annex I** to this Guidance.
30. 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 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](mailto:infohearingcentre@iccwbo.org).
31. 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 licenced, fee-based videoconference platforms may offer greater security, confidentiality and data protection than free use, public platforms.
32. Tribunals should ensure with the parties that any video sharing platform that is used for virtual hearings is licenced and is set to maximum security settings. ICC has licenced 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.
33. 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 licenced publicly available platforms to free-to-use public platforms. Customised or licenced, fee-based document sharing platforms may offer greater security, confidentiality and data protection than free-to-use, public platforms.
34. 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.

## ANNEX I

### CHECKLIST FOR A PROTOCOL ON VIRTUAL HEARINGS

#### A - Pre-hearing Plan, Scope and Logistics

- (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° view for all participating rooms is required or necessary;
- (iv) Agreeing regarding virtual rooms that will permit the arbitrators, and each side in the case, to confer privately amongst themselves during the hearing;
- (v) Identifying all log-in locations and points of connection;
- (vi) Agreeing that each individual present in each virtual room will be identified at the start of the videoconference; and
- (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.

#### B - Technical Issues, Specifications, Requirements and Support Staff

- (i) Consultation between the tribunal and the parties regarding:
  - 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);
- (ii) Preliminary check on compatibility of selected platform and technology to be used;
- (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;
- (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
- (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.

#### C - Confidentiality, Privacy and Security

- (i) Consultation between the tribunal and the parties on whether the virtual hearing will remain private and confidential to participants;
- (ii) Agreeing an access and confidentiality undertaking that binds all participants;
- (iii) Consultation between the tribunal and the parties on:

- 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.

## **D - Online Etiquette and Due Process Considerations**

- (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 connectivity or allows illicit recording, agreeing a procedure for objections, etc.;
- (ii) Obtaining written statements from the parties/counsel that the tested platform and technology are adequate as tested by the parties;
- (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
- (iv) Advising the parties on their duty to cooperate on technical matters prior to and during the virtual hearing.

## **E - Presentation of Evidence and Examination of Witnesses and Experts**

- (i) Consultation between the tribunal and the parties on the organisation and presentation of oral pleadings;
- (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;
- (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 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
- (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.



## ANNEX II

### SUGGESTED CLAUSES FOR CYBER-PROTOCOLS AND PROCEDURAL ORDERS DEALING WITH THE ORGANISATION OF VIRTUAL HEARINGS

#### I. PARTICIPANTS

"The tribunal confirms and directs that the hearing scheduled for *(insert date and time)* shall be conducted by videoconference.

Based on the information currently provided by the parties, the following participants ("**Participants**") shall take part in the hearing from the locations specified herein below:

- a. **Claimant**  
*(List names and log-in location(s) and point of connection)*
- b. **Claimant's Counsel**  
*(List names and log-in location(s) and point of connection)*
- c. **Respondent**  
*(List names and log-in location(s) and point of connection)*
- d. **Respondent's Counsel**  
*(List names and log-in location(s) and point of connection)*
- e. **Tribunal**  
*(List names of members of the tribunal and their location(s) and point of connection)*
- f. **Witnesses / Experts / Transcription Provider / Support Staff & Technicians / Other participants (as applicable)**  
*(List names and log-in location(s) and point of connection)*

Each Participant will promptly notify, by email communication circulated to all Participants, any change to their log-in location or connection details."

#### II. TECHNICAL ISSUES, SPECIFICATIONS, REQUIREMENTS AND SUPPORT STAFF

"The parties shall each secure a reliable video link connection of sufficient quality that will enable all Participants to participate effectively in the hearing through the chosen platform. The parties shall discuss amongst themselves and shall furnish the tribunal with a joint list of agreed providers of reliable video conferencing services within \_\_\_\_\_ days from the date hereof, and the tribunal shall consult the parties on their preferred choice from the list of agreed providers prior to selecting a provider.

The parties shall consult and seek to agree on the following within \_\_\_\_\_ days from the date hereof:

- (i) the minimum system specifications and technical requirements for continuous and adequate audio-visual connectivity (*types of operating systems to be used, processors' speeds, RAM capacity, transmission speeds, network bandwidth, etc.*);
- (ii) any hardware, equipment (*display screens, high-resolution webcams, noise cancelling microphones or headphones, phones, back-up computers, connectivity boosters/extenders, any other equipment or audio-visual aids as deemed necessary by the parties*) and software applications required for the hearing; and

- (iii) any location-specific requirements with respect to any location from which a connection is initiated.

If no agreement is reached regarding the points listed above, the parties shall communicate to the tribunal their separate proposals together with an explanation of technical reasons for the specifications and requirements they contend are reasonably required for the selected videoconference provider/platform within \_\_\_\_\_ days from the expiry of the date set in the prior paragraph. The parties' separate proposals shall be submitted to the tribunal in the format attached to this PO No. \_\_\_\_\_ as Annex (1).

The tribunal shall consider the parties' joint proposal or separate proposals and confirm or determine the reasonable requirements and technical specifications to be adopted for the hearing. In determining the said reasonable requirements and specifications the tribunal may be assisted by two party nominated IT experts or a tribunal appointed expert (at the parties' cost), acting independently and objectively assist the tribunal to facilitate the determination of the reasonable requirements and specifications. If needed, the tribunal shall, following consultation with the parties, issue any necessary protocol to set out the work and assistance to be provided by the IT experts.

When agreeing all or part of the specifications and requirements listed above, or when the parties communicate to the tribunal their separate proposals, the parties shall consider the compatibility of their reasonable requirements and specifications with (i) any requirements of the selected provider/platform and (ii) any location-specific requirements for all other participants.

Any tutorials needed for effective and efficient utilisation of the services of the selected video conference service shall be promptly scheduled. The parties shall furnish to the tribunal, within \_\_\_\_\_ days from the date of selection of the video conference provider/platform, a proposed schedule for such tutorials. The said tutorials will provide an overview of the features and tools available to Participants.

The parties shall consult and agree (or make separate proposals) on detailed contingency measures to be followed in case of technical failures, disconnection, power outages, or other interruptions to the hearing within \_\_\_\_\_ days from the date hereof.

Representatives of the parties, each of the members of the tribunal and any other Participants in the hearing shall participate in a minimum of two test runs to (i) establish that the equipment and technical requirements adopted for the hearing are functional and adequate, and (ii) simulate the connections for hearing conditions within the month preceding same. The parties shall coordinate and agree with the tribunal the dates, times and duration of such test runs.

For the avoidance of doubt, it is understood and agreed that the parties, in fulfilling their obligations herein, shall use competent support staff possessing the requisite expertise.

The above requirements shall apply regardless of the type of videoconferencing used, including point-to-point videoconferencing, multi-point video conferencing, web-based videoconferencing, videoconferencing over ISDN, etc.)."

### III. CONFIDENTIALITY, PRIVACY AND SECURITY

"As a matter of principle, attendance at the hearing will be restricted to the Participants identified in this PO No. \_\_\_\_\_ or in accordance with its terms. For the avoidance of doubt, any technical consultants/support staff working with the Participants to facilitate the conduct of the hearing shall also be considered to be attending the hearing and shall be identified as Participants. In the event that a party wishes any other person to attend any portion of the hearing, it shall raise a request well in advance with the reasons such attendance is necessary or desirable. The parties shall attempt to reach agreement on such requests, failing which the tribunal shall decide whether to authorise the request.

No recording of any part of the hearing (including the audio track) may be made unless authorised in advance by the tribunal. An audio recording of the hearing shall be made by the stenographers retained for the purposes of preparing a common transcript. Any other proposed recording shall be requested at least 48 hours in advance of the relevant portion of the hearing.

In any event, the official record of the hearing shall be the written transcript as corrected or commented upon by the parties.

The parties are responsible for jointly considering and raising well in advance of the hearing (no less than two weeks) any laws applicable at the location of any Participant that may present an obstacle or issue of legal compliance with privacy, confidentiality, data protection and security requirements. After consulting the parties, the tribunal shall decide on what measures, if any, to take to address any applicable privacy and security requirements or standards that may impact the access or connectivity of any of the Participants.

In the event that any party considers that further security measures are required to safeguard the integrity of the hearing or reduce the risk of cyber attacks, infiltration or unauthorised access to the hearing, that party must raise such concerns immediately upon learning of the reason for such concerns. After consulting the parties, the tribunal shall decide what further measures, if any, shall be taken in this regard."

### IV. ONLINE ETIQUETTE AND DUE PROCESS CONSIDERATIONS

"To achieve the necessary level of cooperation and coordination for a successful hearing by videoconference, each Participant undertakes to observe the following:

- (i) identify its lead speaker(s);
- (ii) refrain from interrupting any speaker;
- (iii) reasonable and responsible use of the video conference facilities;
- (iv) avoid using equipment that interferes with connectivity;
- (v) refrain from any unauthorised recording;
- (vi) avoid wasting time during the hearing;
- (vii) mute microphones when not speaking;
- (viii) require the Participants which it brings to the hearing to observe the same obligations; and
- (ix) take whatever measures or practices are necessary to support the procedural efficiency of the hearing.

The tribunal - in consultation with the parties - shall set the mechanism for objections on the first hearing day during the introductory discussion of housekeeping matters.

The parties shall each, within \_\_\_\_\_ days from the date hereof, confirm in writing that (i) they have conducted the test runs envisaged above and (ii) the service provider, equipment, technical specifications and requirements are adequate for their participation in the hearing."

## **V. PRESENTATION OF EVIDENCE AND EXAMINATION OF WITNESSES AND EXPERTS**

"The tribunal understands that the parties' oral pleadings will include the use of demonstrative exhibits and presentation of certain evidence on record. Accordingly, the parties should ensure that the demonstrative exhibits will be clear and visible on a screen to all tribunal members, the other party [parties] and any Participants authorised to attend that portion of the hearing. If multi-screens are required for the presentation of demonstrative exhibits and evidence, the parties should ensure that such multi-screens are included in the list of required equipment.

The parties shall coordinate amongst themselves, with a view to agreeing the following within \_\_\_\_\_ days from the date hereof:

- (i) order of calling and examining witnesses/experts;
- (ii) connection time and duration of availability for each witness/expert;
- (iii) modalities for virtual sequestration of witnesses/experts (if any);
- (iv) permissibility/prohibition of synchronous or asynchronous communications between witnesses/experts and parties/counsel in chat rooms or through concealed channels of communications;
- (v) whether the witness/expert will be sitting in his/her location together with anyone else and whether he/she will be assisted by anyone whilst giving his/her testimony; and
- (vi) whether a witness/expert will require the assistance of an interpreter and the arrangements needed to ensure that the interpreter is able to provide his/her services virtually, and whether interpretation will be simultaneous or consecutive, and whether certain additional equipment is needed to ensure that the examination process is efficiently well managed.

In case no agreement is reached regarding any or all of the items listed above, the parties shall communicate to the tribunal their separate proposals within \_\_\_\_\_ days from the expiry of the date set above.

The tribunal shall consider the parties' joint proposal or separate proposals with a view to making its determination.

The parties agree that the hearing shall be transcribed and the parties undertake to jointly propose a virtual transcription provider/stenographer who is capable and able to promptly deliver its service via video conference. If the use of transcription requires further additional equipment, then parties shall agree with the tribunal on the additional equipment which shall be included in the list of required equipment established per the above.

The tribunal may agree with the parties or require them to make their witnesses/experts available for a hot-tubbing session. If so agreed or required, the parties should ensure that their witnesses/experts are readily available at the time and for the duration of the hot-tubbing and the process shall proceed as instructed by the tribunal."

## ANNEX TO PROCEDURAL ORDER

### Technical/Technological Requirements [to be discussed/agreed with the parties – case specific]

	Party xxx	Party yyy	Provider/platform requirements	Tribunal's Determination
<b>System Specifications</b>				
<b>Connection Requirements</b>				
<b>Hardware &amp; Equipment</b>				
<b>Software Applications</b>				
<b>Other Requirements</b>				