

COVID-19: HOW ARE STAKEHOLDERS IN INTERNATIONAL ARBITRATION RESPONDING?

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International Arbitration Alert

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INTRODUCTION

As International Arbitration involves parties, their counsel, tribunal members and expert and fact witnesses, many of whom will be located in different countries, it has found itself significantly impacted by the travel restrictions and social distancing measures implemented by governments around the world. This alert pulls together all the latest announcements made by the leading arbitral institutions, many of which involve accepting submissions by email and discussing alternative hearing options with tribunals, counsel and parties. The situation is changing rapidly and we expect many institutions to release further updates in the coming days and weeks. This alert considers the possible immediate ramifications for arbitrations administered by these institutions.

The Dispute Resolution teams at K&L Gates continue to be available to discuss the impact this situation may have on any current or contemplated disputes affecting your business.

ANNOUNCEMENTS BY LEADING ARBITRAL INSTITUTIONS

- International Chamber of Commerce (ICC): on 17 March 2020, the ICC issued an urgent communication confirming that the offices of the Secretariat of the ICC Court and the ICC Alternative Dispute Resolution (ADR) Centre remain operational but all communications, including new requests for arbitration, should be conducted by email only. Hearings and other meetings scheduled to take place at the ICC Hearing Centre in Paris until 13 April 2020 have been postponed or cancelled, all business travel by staff members has been suspended and meetings scheduled to place at ICC offices worldwide are being conducted virtually. The full communication can be found [here](#).
- London Court of International Arbitration (LCIA): LCIA staff have been working remotely from 19 March 2020. All new requests for arbitration should be filed using the LCIA's online filing system, or by email, and all other documents and correspondence should be sent by email. The LCIA will, in all but exceptional cases, transmit awards to parties electronically, with originals and certified copies to follow once the LCIA office has reopened. The LCIA's news page, containing its most recent LCIA updates, can be found [here](#).

- American Arbitration Association (AAA) / International Centre for Dispute Resolution (the international arm of the AAA) (ICDR): while the AAA-ICDR remains active and operational, no hearings will take place at its hearing facilities between 20 March and 17 April 2020. The AAA-ICDR will help to address concerns about hearings held elsewhere. Alternative arrangements for any hearings will include the use of video and teleconferencing facilities, or postponements. All non-essential in-person activity has been suspended, although case, IT and finance operations continue to function. The AAA-ICDR's latest update can be found [here](#).
- International Centre for Settlement of Investment Disputes (ICSID): the ICSID Secretariat remains fully operational from remote work-stations. New requests for arbitration or post-award applications may be filed electronically, and ICSID encourages parties and tribunals to implement electronic-only filing of written pleadings. ICSID is coordinating closely with tribunals and parties on ICSID hearings to ensure these can proceed safely and with minimal disruption. ICSID is posting updates regarding its COVID-19 response on its news page, [here](#).
- Stockholm Chamber of Commerce (SCC): similarly, the SCC is fully operational but working remotely. Requests for arbitration are filed online, and there is a devoted email address (emergencyarbitrator@chamber.se) for applications for the appointment of an emergency arbitrator. The SCC has published a [checklist](#) on holding hearings in the time of COVID-19, which will be continually updated. Ideas on how to conduct hearings are currently being developed, and the SCC encourages other organisations to reach out and share their information. The latest news from the SCC can be found [here](#).
- Singapore International Arbitration Centre (SIAC): SIAC has released an [announcement](#) requesting that arbitrators, counsel, parties and others take into account the relevant official directives issued by the governments of any countries of departure, transit and arrival in respect of any individuals considering in-person meetings or hearings.
- Swiss Chambers' Arbitration Institution (SCAI): SCAI has requested that communication be made by email, with applications for emergency relief, notices of arbitration, answers to the notice of arbitration and requests for mediation being filed not only by post/courier but also and until further notice by email. While email communication is encouraged, the SCAI team remains available by phone.
- Hong Kong International Arbitration Centre (HKIAC): HKIAC's premises in Hong Kong remain operational and accessibly for hearings and meetings, and it is implementing temperature checks on all persons entering the premises. Following government policy, no persons arriving from outside of China and from Mainland China shall be permitted to enter the HKIAC's premises for at least 14 days after their arrival and thereafter only if asymptomatic. All guests are required to complete a [Health Declaration Form](#). Parties are asked to consider using HKIAC's [virtual hearing service](#).
- Vienna International Arbitral Centre (VIAC): Until further notice, all submissions to and communications with VIAC are exclusively dealt with electronically. VIAC has also published the same [checklist](#) on holding hearings that has been published by the SCC.
- German Institution of Arbitration (DIS): [DIS](#) has temporarily closed its Berlin office, and its overnight mailbox in Berlin. Its Bonn office remains open, and physical post should be exclusively addressed to the

Bonn office. The DIS Arbitration Rules already provide for requests for arbitration to be sent to DIS in electronic form, as well as paper form.

CONSIDERATIONS FOR THE IMMEDIATE FUTURE

The approaches of specific institutions range from those that have closed all offices and hearing centres and moved to fully electronic submissions and communications to those whose hearing centres continue to be available and only encourage (rather than require) online communication. However, it is clear that all institutions have understood the need to consider the impact of COVID-19 and adjust their working practices to some extent accordingly. Institutions are reassessing the situation continuously and are updating their policies to react to the latest advice from governments and public health officials.

Most institutions have suggested that parties to ongoing proceedings discuss the issue of hearings with each other, the tribunal and their case management team. While some hearings in the immediate future have been postponed, if the so-called 'social distancing' guidelines in place in many relevant jurisdictions remain in place for a considerable time, alternatives will have to be considered. We expect these conversations to result in an increased use of technological solutions to overcome the current barriers to face-to-face contact, and that we will see more detailed announcements regarding how to enable a more virtual form of arbitration in the coming weeks. SIAC highlights the possibility of using the [virtual hearing solutions](#) offered by Maxwell Chambers, the HKIAC has existing facilities for [e-Hearings](#), and many mediators are offering mediations via [Zoom](#) or other forms of videoconferencing accessible through individual laptop computer, rather than requiring participants to travel to a purpose-equipped location.

All stakeholders in the arbitral process are likely to be forced to consider how they can effectively conduct arbitral proceedings without the in-person hearings that have been viewed by many as the cornerstone of due process (allowing for counsel to cross-examine whilst in the presence of the witness and the tribunal members to see and analyse both the answers given by the witness and their body language/demeanour).

Alongside this, ADR providers are likely to need to grapple with their own challenges as they seek to adapt their tried and trusted techniques that were devised to capitalise upon the in-person meetings that have been seen as pivotal in achieving settlements. These are indeed challenging times.

We will continue to monitor and report on the efforts of International Arbitration stakeholders as the situation develops.

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