

How will the COVID-19 outbreak affect my ongoing arbitration

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PRACTICES International, International Arbitration

Thousands of disputes are dealt with by way of international arbitration every year and it is inevitable that when most countries started introducing social distancing measures, a number of arbitrations were either part heard or just about to start and will have been derailed, at least to some extent.

However, it is not just part heard or imminent hearings that are affected, both the LCIA and the ICC have shut their offices and are working remotely, so what is the impact?

With regards to hearings, the parties should consider whether they can transition to a virtual hearing by video conferencing. Many arbitral rules allow for this (including the LCIA, ICC and LMAA) and the Bar Ethics Council has published a note on good practice^[1]. The Korean Commercial Arbitration Board has also developed a protocol that can be adopted for hearings by video conference which, although not mandatory, could be adopted by the parties.^[2]

Parties also need to consider potential practical barriers, such as:

- Are the documents available in an electronic format or can they be easily put into electronic format?
- How many parties are there and how many connections would be required to conduct the hearing by video conference?
- What technology do the parties have available to them where they are?
- What is the nature of the evidence being tested at the hearing?

Most barriers can be overcome, however, the further away a hearing is, the easier it is to put plans in place to conduct it via video conferencing. Documents can be uploaded to suitable platforms and with careful planning, it should be possible to plan so that only those participants that are absolutely essential to the hearing attend.

Part heard hearings or hearings that are about to start are likely to be trickier if planning has been on the basis of an in person hearing. If documents are not available electronically and not easily capable of being converted, then it may be necessary to wait until restrictions are lifted so at least some staff can be deployed to make the necessary arrangements.

In addition to considerations regarding hearings, it is worth noting that most arbitral institutions have adopted purely electronic working for the time being and have dispensed with any requirements for hard copy documents to be sent^[3]. Whilst there may be some disruption to procedural steps, our experience is that international arbitration these days is largely conducted electronically in any event and therefore, apart from hearings, procedural steps can carry on as normal.

The firm has recent experience of dealing with these issues both in arbitration and recently also in a mediation. Please contact Maren Strandevold or William Cecil for further information.

[1] <https://www.barcouncilethics.co.uk/wp-content/uploads/2017/10/Online-Arbitration-and-Mediation.pdf>

[2] http://www.kcabinternational.or.kr/user/Board/comm_notice_view.do?BBS_NO=548&BD_NO=169&CURRENT_MENU_CODE=MENU0025&TOP_MENU_CODE=MENU0024

[3] LMAA: <http://lmaa.org.uk/news-article.aspx>

LCIA: <https://www.lcia.org/lcia-services-update-covid-19.aspx>

ICC: <https://iccwbo.org/media-wall/news-speeches/covid-19-urgent-communication-to-drs-users-arbitrators-and-other-neutrals/>