



VIRTUAL ARBITRAL HEARINGS IN UZBEK AND INTERNATIONAL LEGISLATION

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INTRODUCTION

"Once a new technology rolls over you, if you are not part of the steamroller, you are part of the road."

Stewart Brand

The faster interstate relations progress the more need for dispute settlement emerges. In turn, this phenomenon requires another methods to resolve the dispute unlike national courts since a foreigner is unwilling to bring the disputable issue to national courts owing to lack of confidence for them. In order to satisfy these needs, alternative dispute resolution (ADR) is regarded the most effective way to reach the desired settlement.

As might be expected, with the sudden onset of COVID-19 and related confinement measures imposed by many states, impending implications have made impossible to be present in courtroom triggering virtual proceedings. International arbitration hearings

ABSTRACT

Recent achievements and issues related to online arbitration have been provided in this article. This article also reports theoretical and practical significance of newly adopted Law of the Republic of Uzbekistan on International commercial arbitration and opportunities for foreign investors. Special attention is paid to the role of virtual arbitration court in order to diminish volume of international disputes in pandemic period. Moreover, available drawbacks of remote hearing and testimony have been thoroughly discussed.

globally was nearly to cancel such hearings until a later date. However, the solution was remotely using online video platforms. Whereas many arbitration practitioners were aware of holding procedural hearings by telephone or videolink, the thought of holding a completely remote merits hearing was unheard of.

Implementing technological advances into dispute settlement has both advantages and disadvantages which have not been mentioned in legislations but defined in litigations.

MAIN PART

Since technology is developing rapidly, most fields are 'affected' by it, even litigation proceedings. As a result, although in-person hearings are generally deemed to be important for effective communication between participants, arbitration hearings which are ordinarily held in person are likely to be held



virtually. In spite of the fact that sufficient opportunities are available in online courtroom, there still exist inconveniences and drawbacks in screen-based conferences. However, some arbitrators may use virtual hearing as an emergency method when there is no any other option to hold the proceedings due to pandemic period or incapacity to show up in person. Many arbitration rules either expressly provide for, or at least leave open, the possibility of dealing with matters “remotely” through the use of technology, including video hearings and telephone hearings.

Before analysing international rules on arbitration, it should be clarified that the difference between two notions: seat of arbitration and form of hearing. However, it is totally confusional to differentiate the meaning of seat of arbitration (geographical place) that parties have agreed in advance, and form of proceedings. It is because that online court makes both seat of arbitration and form of hearing be virtual. As a confirmation of the abovementioned views, some of the key provisions are provided below.

[1.8 of the Attachment 1 of the TIAC Rules](#) provides that the emergency arbitrator must as soon as possible, but in any case within two working days from the date of appointment, establish a schedule for considering an application for the provision of emergency security for the claim. Such a schedule provides each Party with a reasonable opportunity to be heard, but *may provide for proceedings by teleconference or videoconference* or in the form of written submissions as alternatives to a formal hearing.

[Article 25.2 of the Law of the Republic of Uzbekistan on International commercial arbitration](#) (concerning Seat of arbitration) which is not yet in force, does not directly address video hearings but exclude them considering unless the parties have agreed otherwise, the Arbitral Tribunal may meet at

any place which is appropriate for holding consultations between its members, hearing witnesses, experts or parties, or inspecting goods, other property or documents. Article 40 (concerning Oral hearings) represents that considering any agreement of the parties, the Arbitral Tribunal will decide whether to conduct an oral hearing for the presentation of evidence or oral argument, or to conduct proceedings only on the basis of documents and other materials.

[Article 24.4 of the ICC Rules](#) represents that case management conferences may be conducted through a meeting *in person, by video conference, telephone or similar means of communication* where in-person attendance is not essential.

According to [Article 19.2 of the LCIA Arbitration Rules 2020](#), the Arbitral Tribunal shall organise the conduct of any hearing in advance, in consultation with the parties. The Arbitral Tribunal shall have the fullest authority under the Arbitration Agreement to establish the conduct of a hearing, regarding its date, duration, form, content, procedure, time-limits and geographical place (if applicable). As to form, *a hearing may be held in person, or virtually by conference call, videoconference or using other communications technology* with participants in one or more geographical places (or in a combined form)[1].

[Rule 19.3 of the SIAC Arbitration Rules 2016](#) allows for the Tribunal to hold at least the initial preliminary hearing “*in person or by any other means*”. As such Rule 24 of the SIAC Arbitration Rules 2016 (concerning “Hearings”) does not directly mean the issue of video hearings, but does not exclude them.

[Article 32 of the SCC Arbitration Rules 2017](#) (concerning “Hearings”) does not directly mean video hearings, but does not exclude them.



Rule 32 of the ICSID Arbitration Rules

(concerning “The Oral Procedure”) does not directly state video hearings, but does not exclude them.

However, Article 39.7 of the RAC Arbitration Rules (as amended January 21, 2019 January) directly addresses that the oral hearings may be conducted *via tele- or videoconferencing*.

As provided above that most of the arbitration rules do not exclude virtual hearings using currently available videoconferencing technology. The observed increase in legislation concerning using technology in arbitration proceedings is due to the Covid-19 pandemic which has made impossible to appear at an appointed place at a right time. But videoconferencing via computer monitors or screensfalls have come to the stage despite the shortage of providing the rich interactive experience of in-person hearings. Participants in videoconferences may find it difficult to "connect" with other participants, a video camera may not express all of the mannerisms and demeanor of witnesses, and witnesses tend to modify their behaviour to fit within the video boundaries. And, of course, videoconferencing can still suffer from technical glitches.

Many arbitration practitioners thought that Online Dispute Resolution (ODR) was not ready for use in the arbitration sector after the failure of the first experiment (the Virtual Magistrate program) in 1999. However, the coronavirus pandemic has dramatically affected the business and social activity, in particular, the area of international arbitration that related organizations have adopted special rules and guidelines for the parties and their counsel in order to encourage them to conduct their hearings online. As for an example, The Singapore International Arbitration Centre SIAC advises its users to make any inquiries or submissions electronically, as SIAC is fully

operational and working remotely. According to the SIAC guidance, provision of the need to implement measures ensuring the security and confidentiality of the hearing is utmost important. The Stockholm Chamber of Commerce (SCC) also started to offer its online case management tool to parties to use free of charge during the COVID-19 pandemic which is stated as revolution in arbitration in Kluwer Arbitration Blog [2]. In connection with the above, one of the parts of the II International Legal Forum “Tashkent Law Spring” has been devoted to the ADR namely mediation and arbitration during the period of coronavirus restrictions. Moreover, one of the topical issues discussed has been appropriate dispute resolution for the infrastructure sector[3]. Thus, it can be summarized that legal relationships exist first, and then regulative measures will be adopted. As it has been apparent from the current pandemic period, some alternative forms of dispute settlement ought to be stated in arbitration rules inspite of several drawback like lack of confidentiality, unfair witness testimony, time zone difference, etc.

CONCLUSION

To conclude, mankind has experienced a real dilemma whether to use another method in dispute settlement other than in-person participation or to postpone appointed arbitral proceedings. It is obvious from the above that alternative dispute settlement is a commonly preferred way by many to resolve their dispute requiring regular amendments to both substantive and procedural rules of arbitration. Unlike state courts, it is preferable that ADR ought to have several options to offer regarding the form of arbitral procedure as parties know arbitration as an alternative method to prioritize parties’ preferences. As it is analysed from the above that not in all arbitration rules, possibility of virtual arbitral proceedings is mentioned which parties may set an objection



for the Tribunal later on blaming for any inconveniences occurred during tele- or videoconferencing. In terms of Uzbek Arbitration Law, it can be stated that there exist same uncertainty in the use of remote

communication in proceedings, and therefore, it is recommended that Arbitration Rules should include a clear clause which refers the use of virtual hearings if necessary.

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1. [1.8 of the Attachment 1 of the TIAC Rules](#)
2. [Article 25.2 of the Law of the Republic of Uzbekistan on International commercial arbitration](#)
3. [Article 24.4 of the ICC Rules](#)
4. [19.2 of the LCIA Arbitration Rules 2020](#)
5. Michael Ostrove/Kate Brown de Vejar/Ben Sanderson/Peter Anagnostou ‘Online Arbitration Hearings’ September 2020. page 5. <file:///C:/Users/user/Downloads/Virtual%20Hearings%20report%20%20September%2020%20updateV6.pdf>
6. [Rule 19.3 of the SIAC Arbitration Rules 2016](#)
7. [Article 32 of the SCC Arbitration Rules 2017](#)
8. [Rule 32 of the ICSID Arbitration Rules](#)
9. [Article 39.7 of the RAC Arbitration Rules \(as amended January 21, 2019 January\)](#)
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