Arbitration

Impact of COVID-19 in International Arbitration

In light of the developing COVID-19 situation, the main arbitral institutions around the world are taking precautionary measures to minimise the potential impacts this may have on the progression of arbitrations and to safeguard the health and safety of everyone involved in arbitral proceedings. Such initiatives – most of them related to the adoption of videoconferences and various technology platforms for conducting hearings – may disrupt the ordinary course of the arbitral proceedings and require special attention from parties, lawyers and arbitrators.¹

This legal update describes the measures that the main arbitral institutions have recently adopted, as well as some challenges that our lawyers from our Global International Arbitration Practice have faced in the past few days.

The London Court of International Arbitration ("LCIA")²

Since 19 March 2020, the LCIA’s staff is working remotely. As a general rule, the LCIA will correspond with parties and arbitrators by email only. In practice, this means that:

- Filing new cases: parties intending to file new cases should either use the LCIA’s online filing system (accessible via this link) or notify the court through the following email (casework@lcia.org), with payment of registration fees;
- Questions, documents and correspondences: parties and arbitrators should avoid contacting the LCIA by telephone and should address all questions, documents and correspondences to the following emails (casework@lcia.org or accounts@lcia.org);
- Awards: arbitrators are requested to deliver their awards by email (casework@lcia.org). The LCIA will transmit awards to parties electronically, with originals and certified copies to follow, once the LCIA office has re-opened.
International Chamber of Commerce ("ICC")

All ICC offices worldwide are operational, but the ICC’s staff is working remotely. The ICC is strongly advising that all communications with the Secretariat (including those related to case management purposes) be conducted by email. In particular:

- Filing new cases: parties intending to file new cases should notify the Secretariat through the following emails:
  - Requests for arbitration (arb@iccwbo.org);
  - Applications for emergency arbitrators (emergencyarbitrator@iccwbo.org);
  - Requests for ADR proceedings (adr@iccwbo.org).
- Pending cases: although the Secretariat has advised that all communications be conducted by email, if parties or arbitrators need to send any correspondences (including awards and ADR decisions) to the Secretariat, they should promptly inform the case management team ahead of dispatch;
- Hearings at the ICC Hearing Centre in Paris: all hearings and meetings scheduled to take place at the ICC Hearing Centre in Paris until 13 April 2020 have been postponed or cancelled. For additional information, parties and arbitrators should contact the ICC’s staff through this email (infohearingcentre@iccwbo.org);
- Other meetings and travels: all business travels by ICC’s staff members has been suspended, and meetings scheduled to take place at the ICC offices worldwide are being conducted virtually.

Hong Kong International Arbitration Centre ("HKIAC")

The HKIAC’s premises in Hong Kong remain operational and accessible for hearings and meetings. However, all HKIAC’s staff have the option of working from home and any member who recently travelled to a country in respect of which the Hong Kong government has imposed a quarantine period is required to self-quarantine for at least 14 days. The HKIAC provided a list of general precautions concerning its staff and facilities, as follows:

- All HKIAC front-line service staff will wear face-masks at all times;
- All HKIAC’s staff will maintain a high standard of personal hygiene;
- Implementation of increased cleaning/sterilization of impacted parts of HKIAC’s facilities;
- All persons entering HKIAC’s headquarters in Hong Kong will be subject to a temperature check. Entry will only be granted to individuals with a temperature below 37.8 °C.

In respect of persons arriving in Hong Kong from other countries, the HKIAC – taking into account the Hong Kong government’s policy of imposing compulsory quarantine on all persons arriving from all places from outside of China (effective 19 March 2020) and from Mainland China (effective 8 February 2020) – has advised that any person to whom such policy applies shall not be permitted to enter HKIAC for at least 14 days from the date of arrival in Hong Kong and thereafter only if asymptomatic. In addition, all guests coming to HKIAC’s facilities are required to complete this Health Declaration Form. Finally, the HKIAC advises parties to also consider using HKIAC’s virtual hearing services, details of which can be found here.

Singapore International Arbitration Centre ("SIAC")
The SIAC has encouraged parties to use the Maxwell Chambers Virtual ADR Services for cases in place of in-person meetings or hearings. More information on this service can be accessed [here](#). The Maxwell Chambers has also issued a number of precautionary measures in light of COVID-19, such as:

- Self-declaration and temperature screening: all visitors to the chambers premises will be required to complete a health & travel declaration form and temperature screening upon arrival. Those who are found to have a temperature of 37.6 °C and above will be denied entry;
- Maxwell Chambers’ staff: all staff will be required to take their temperature at least twice a day. Those who are unwell will be asked to see a doctor and not come to work. The staff will be divided into two groups and part will be working from home, in order to minimise physical contact. Overseas business and leisure travel are temporarily suspended;
- Public common areas: the common areas will be disinfected at least four times a day and the frequency of cleaning may be increased;
- Hearing rooms, executive suites, business centre and arbitrators’ lounge: all contact areas and surfaces will be disinfected, including but not limited to: tables and chairs, sofas and couches, telephones, shelves, doors and handles.

International Centre for Settlement of Investment Disputes (“ICSID”)⁶

The ICSID is coordinating with arbitrators and parties on precautionary measures to be taken by all participants to ICSID hearings. The ICSID is encouraging parties in arbitrations to stay up-to-date on country advisories, screening measures and quarantines that may affect their travel.

For queries regarding specific cases, parties should contact the arbitral tribunal or committee secretary directly. For general queries, parties are advised to contact the ICSID Secretariat (icsidsecretariat@worldbank.org).

American Arbitration Association / International Centre for Dispute Resolution (“AAA/ICDR”)⁷

While the AAA/ICDR remains active and operational, no hearings will take place in AAA/ICDR hearing facilities from 20 March until 17 April. In cities where governmental authorities have shut down activities, AAA/ICDR’s physical offices will be closed immediately.

According to the AAA/ICDR update, case management staff will contact parties and arbitrators to discuss alternative arrangements, including the use of video, teleconferencing or postponements. However, the institution has advanced some guidelines and measures that parties and arbitrators shall take into account during this period:

- Hearings: AAA/ICDR case management staff will coordinate calls to address any concerns raised about participation in hearings. The AAA-ICDR is also monitoring its hearing docket, and will reaching out on some cases to raise these issues. To the extent in-person hearings may be taking place outside the AAA/ICDR’s facilities, parties, lawyers, arbitrators and mediators shall:
  - Consult city, state and federal and other applicable regulations and guidance to determine their impact on the hearing;
  - Promptly raise with each other and the AAA/ICDR any concerns about their participation resulting from limitations on travel imposed or urged by governmental and regulatory authorities. Sensitivity to individuals who are at a higher risk of COVID-19 must be taken
into account when considering alternative hearing arrangements;
- Not attend in-person hearings if:
  - They present fever, cough, shortness of breath, symptoms of respiratory distress, or other symptoms of an illness (further guidance from organisations such as the Centers for Disease Control and the World Health Organisation shall also be taken into account);
  - They are travelling from an affected area experiencing COVID-19 outbreaks or widespread transmission as defined by organisations such as the Centers for Disease Control and the World Health Organisation);
  - They have been in direct contact with someone known to have COVID-19.
- Alternative hearing capabilities: The AAA/ICDR is encouraging parties to contact case management staff to assist with alternative hearing arrangements, including the use of video teleconferencing that will allow for remote participation in hearings.

OUR RECENT EXPERIENCE

As expected, our team has faced in recent days several unexpected and unsettled situations caused COVID-19 that have affected the normal conduct of arbitration proceedings, for instance:

- In an ICC arbitration conducted by our London and Paris teams related to an infrastructure project in Africa, one of the parties involved in the case asked for an open-ended extension of time for filing its statement of defence. It remains unclear how the tribunal will react to this motion, even more considering that most of lawyers, experts and parties involved are from European countries;
- In an investor-State arbitration conducted by our arbitration team, a one-day hearing was originally scheduled to be held in the coming weeks. In theory, the hearing could be conducted through videoconference. In practice, however, many obstacles will be presented, since neither arbitrators nor lawyers are advisable to be clustered in the same space which requires, for instance, the coordination of numerous different connections;
- Our lawyers from the Singapore office report that anecdotally they are aware of many arbitral hearings being impacted with delays arising from postponements and rescheduling of hearings as well as a few suspensions of long ongoing hearings. In the case of some pending litigation in Europe that they are involved in, some hearings have been cancelled in favour of documents-only determination by the court (e.g. in Geneva court proceedings) and others involve injunction hearings taking place by telephone conference (e.g. London court proceedings);
- Our Asia teams in Hong Kong, Singapore and China are expecting to conduct future hearings through videoconference and other technology platforms as a new norm. This is not unfamiliar to international arbitration practitioners and hearings via video-conference have been increasingly common even without the COVID-19 pandemic. Mayer Brown partner, Yu-Jin Tay, is one of the lead drafters of the Seoul Protocol on Video Conferencing in International Arbitration (the “Seoul Protocol”), which was mooted at the Seoul ADR Festival in 2018 and has recently been published online (accessible here). The Seoul Protocol serves as a convenient VC protocol for counsel and arbitrators to adopt or adapt for their hearings. It also contains technical specifications and best practices for the planning, testing and logistical arrangements associated with conducting virtual hearings in international arbitrations.
The initiatives described in this Note are in effect on the date of this publication but they may be subject to frequent revision; therefore, we advise parties to consult the relevant centre’s website.


4 See the Precautionary Measures at HKIAC in Response to COVID-19, which can be accessed at: https://www.hkiac.org/our-services/Facilities.


7 See the COVID-19 Update dated 17 March 2020, which can be accessed at: https://go adr.org/covid19.html?_qa=2.266173005.351640490.1584719392-888347822.1584719391.