

COVID-19: Arbitration – Where to?

The COVID-19 pandemic has shaken the globe and virtually all sectors have had to adapt to an increasingly contact-free environment. The world of arbitration is no exception, and in the past weeks we have seen a series of adjustments and solutions targeted at both safeguarding the health of participants and preserving the continuity of the process.

As a natural reaction, medium and large scale events were postponed (but importantly, not cancelled), such as the ICCA 2020 Congress in Edinburgh, the Fourteenth Annual Investment Treaty Arbitration Conference in Washington DC organised by Juris, or the LCIA Asia Pacific and European Users' Councils' Symposium in Istanbul, to name a few.

Arbitral institutions around Europe have remained operational, and have promptly transitioned to administering the arbitral proceedings remotely. The ICC, VIAC, SCC, as well as the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania (CICA-CCIR), are encouraging the parties, arbitral tribunals and other neutrals conduct all communications by email and to hold meetings online.

In these times, the institutions with digitalized case management systems are particularly well-placed to tackle the impending changes. The SCC has recently introduced its SCC Platform for communication and file sharing in September 2019, and was (at least until now) in the process of a „world tour” for promoting the digitalization within arbitration. The ICC was one of the pioneers of such a system, unveiling the NetCase platform as early as 2005. Unfortunately, due to insufficient interest from parties and arbitral tribunals, the system did not see much use.

However, times are changing and we expect to see a revival and modernisation of NetCase in due course, as well as a step up from other arbitral institutions in this direction.

The arbitration hearings scheduled for this period were probably the most affected by the COVID-19 pandemic. Many of them were re-scheduled, relocated or cancelled until further notice, in the advent of travel restrictions and the participants being unwilling or unable to physically engage in the process.

In reaction to these concerns, Delos Dispute Resolution has prepared a particularly useful Checklist on holding arbitration and mediation hearings in time of COVID-19. The parties and arbitral tribunals are encouraged to discuss the questions raised in the checklist in a pre-hearing conference call. More information and the content of the checklist may be found at the link below.

<https://delosdr.org/index.php/2020/03/12/checklist-on-holding-hearings-in-times-of-covid-19/>

It is now too early to predict how the COVID-19 situation will unfold, and to what extent it will affect the arbitration world. Nonetheless, we anticipate a surge of disputes from the ongoing projects which will be affected by the pandemic, as well as from the likely impending economic crisis, especially in sectors such as construction, energy, transportation and infrastructure. The arbitration practitioners around the world will adapt, the institutions will innovate, and the proceedings will be conducted. We trust that the present experience will end up being a great opportunity that will embolden the arbitration community to embrace a more modern way of doing arbitration, more efficiently and less costly.