ADGM Arbitration Centre Introduces Protocol for Remote Hearings

June 14, 2021

The days of the COVID-19 pandemic are gradually becoming a thing of the past and it comes as a sign of glee for companies around the world; but if there is one positive that has been derived from the pandemic, it is the advancement of technology in the workplace to allow people to work/operate from anywhere with a suitable internet connection.

In staying up to date with the trends, the ADGM Arbitration Centre has introduced its new set of protocols for remote hearings, structuring the framework for what appears to be the new normal in arbitration hearings. The protocol is designed to ensure that the remote hearings are organized and conducted in a fair, efficient, reliable and cost-effective manner.

The protocols cover a range of topic including the sequence of proceedings, electronic bundles of documents, transcripts, and preparatory arrangements. In this article, we will take a look at aspects of the protocols that other arbitration centers should seek to duplicate.

Choice of Platforms

Right off the bat the protocols address the issue of the platform for the hearings – whether it be WebEx, Zoom, or Microsoft Teams – the parties must agree on which platform will be used for the hearings and failing to do so, the arbitral tribunal will select the platform.

Additionally, the parties must have a video-conferencing system, an electronic document management system, and real-time transcripts.

In all cases, the platform should be of sufficient quality to allow for clear video and audio transmission, documents to be shown to all speakers when required, and an accurate written transcript of the proceedings on a real time basis.

Participants, Speakers and Attendees

A benefit of the increase in video-conferencing is that anyone, anywhere in the world can attend; however, this same benefit is a drawback which the protocols seeks to address.

The protocols create a clear differentiation between the participants, speakers and attendees of the hearings.

Participant is defined as:

"Each person who is permitted to attend the Remote Hearing, being each of the Tribunal members or sole arbitrator, the Tribunal Secretary (if any), each Party's legal counsel, and each Party's representatives, witnesses, and experts."

Speakers are participants who can be both seen and heard by all other participants; and attendees are participants who are only able to see and hear the speakers but cannot themselves be seen or heard.

The speakers are considered:

1. Members of the arbitral tribunal
2. Members of the parties' legal counsel who will be advocating for the parties
3. Any fact witness or expert witness who is testifying on that day
4. Any simultaneous interpreter who is needed on that day

All other individuals (e.g., other members of the parties'

legal team, any party representatives or personnel, and any other permitted participant such as a secretary to the arbitral tribunal,) will join as attendees.

The protocols call for the parties to exchange and provide their respective list of participants to the arbitral tribunal by a set number of days before the commencement of the remote hearings.

Semi-Remote Hearing Arrangements

The protocols define semi-remote hearing arrangements as a situation in which several participants attend the remote hearing from the same physical room.

To ensure that the parties are treated equally, *inter alia*, with respect to the appearance of the parties and their lawyers before the arbitral tribunal, the protocols dictate that the following arrangements should be avoided where possible:

1. The arbitral tribunal and the legal team of only one of the parties appearing in person, while the legal team of the other party appears remotely; and/ or
2. The legal team of one of the parties examining an opposing party's witness or expert in person, without the opposing party and/ or its legal team also present in person

In the context of a semi-remote hearing, expert and fact witnesses shall remain sequestered for the duration of their testimony.

Recognition and Enforcement

At the conclusion of the proceedings when an award has been rendered, the parties will seek to recognize and enforce said award. Given that the hearings may be held remotely, the protocols suggest for the following to be implemented and

signed by both parties to ensure a smooth post-arbitration stage:

"The parties have agreed that:

1. *The arbitral tribunal may use remote video-conferencing as the means for conducting the arbitral hearing in this matter;*
2. *Remote video-conferencing constitutes a fair and acceptable means of holding hearings and taking of evidence by the arbitral tribunal pursuant to the parties' arbitration agreement and the rules and legal requirements applicable in this matter, including those at the seat of the arbitration;*
3. *The conduct of the hearing is consistent and compliant with the [law of the seat] and is substantially in accordance with this Protocol; and*
4. *No party will seek to set aside or oppose the recognition or enforcement of any resultant arbitral award on the basis that the arbitral hearing was conducted by remote video-conferencing, and hereby waives any right to seek any such set-aside.*

[Signed: Claimant's authorised representative]

[Signed: Respondent's authorised representative]"

Conclusion

Remote hearings have been successfully implemented by courts and arbitral institutes across the globe over the past year. The ICC introduced remote hearings in the ICC's Guidance Note on Possible Measures Aimed at Mitigating the Effects of the COVID-19 Pandemic, dated 9 April 2020 – this guidance note contained an annex specifically dedicated to the ICC's checklist for a protocol on virtual hearings.

As one of the youngest arbitration centers in the world, the ADGM Arbitration Centre has already taken steps to ensure its

spot among the elite.

Author: Abdulla Abuwasel

Author: Mahmoud Abuwasel
Title: Partner – Disputes
Email: mabuwasel@waselandwasel.com
Profile:
https://waselandwasel.com/about/mahmoud-abuwasel/

Lawyers and consultants.
Tier-1 services since 1799.
www.waselandwasel.com
business@waselandwasel.com