

GUIDELINES

for the conduct of the arbitration in virtual format

Cap.I. Introduction

1. Purpose

(1) These Guidelines (the "Guidelines") are intended to provide guidance to arbitrators, arbitral assistants, parties, as well as to any other participants to the arbitration proceedings, on the effective conduct of hearings by audioconferencing, videoconferencing or other similar means of remote communication ("virtual hearings") under the Arbitration Rules ("Rules") of the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania ("Court of Arbitration").

(2) The Guidelines provide for recommendations which are accepted as good practice at domestic and international level in the organisation and conduct of virtual hearings.

2. Regulation of virtual hearings through the Rules

(1) Virtual hearings are expressly regulated by Article 3 (4), Article 31 (3) ("*Case Management Conference*"), Article 45 (1) ("*Making of the Award*"), Annex 4 g ("*Case Management Techniques*"), as well as Article 3 (4) (the "*Arbitration Procedure*") of Annex 5 ("*Special Rules for Expedited Arbitration*").

(2) Furthermore, the organization of virtual hearings is permitted by virtue of the right of the arbitral tribunal to make decisions on the conduct of the arbitration proceedings pursuant to Article 26 (2) of the Rules.

(3) In organizing virtual hearings, the arbitral tribunal shall ensure the observance of the principles of the arbitration procedure provided by Article 3 (1) of the Rules ("*Principles of the Arbitration*").

(4) The arbitral tribunal retains ultimate powers to decide in taking any steps for the proper conduct of virtual hearings, subject to the provisions of the Rules.

(5) If the arbitral tribunal finds that the integrity of the arbitral proceedings cannot be safeguarded, it shall have the power to terminate the conduct of the virtual hearing at any time and to reschedule the hearing.

Cap.II. Preparatory measures for the conduct of virtual hearings

3. Decision on the conduct of virtual hearings

- (1) The arbitral tribunal decides on the conduct of virtual hearings in relation to the application of the following main criteria:
 - a) the position of the parties;
 - b) the matters to be discussed;
 - c) lowering of expenses related to the conduct of arbitration;
 - d) the number of potential participants in the hearing;
 - e) compliance with the rules of sanitary protection or precaution;
 - f) other circumstances contemplated by the Tribunal.
- (2) Prior to the first arbitration hearing, the arbitral assistant shall invite the participants in the virtual hearing to review these Guidelines, to familiarize themselves with the protocol for the unfolding of virtual hearings.
- (3) The members of the arbitral tribunal have the right to participate in the virtual hearing either from the seat of the Court of Arbitration or from their own professional offices, with a duty to protect the confidentiality of the arbitral proceedings.

4. Mixed hearings

- (1) If one of the parties wishes to participate in the hearing at the seat of the Court of Arbitration, it must communicate such intention to the arbitral tribunal and the arbitral assistant, as well as to the other parties, with at least five business days in advance of the day scheduled for the hearing.
- (2) In such circumstances, the other parties shall be also permitted to attend the hearing at the seat of the Court of Arbitration.

5. Organisational measures

- (1) Participants in the virtual hearing shall use an appropriate space to connect to the meeting. In this regard, the participant shall ensure that the space allows the protection of the confidentiality of the arbitration and that it shall not be interrupted during the hearing.
- (2) Participation in the hearing from public spaces or means of transport is not recommended.
- (3) The arbitral tribunal has the discretion to order any organizational measures it deems appropriate for the proper conduct of the hearing.

6. Measures specific to hearings organised by videoconference

- (1) In the case of a hearing organized by videoconference, the participants shall permanently keep their camera connected, except for situations where, for technical reasons, this is not possible or in circumstances authorized by the arbitral tribunal.

- (2) Participants shall ensure that the space has adequate lighting so as to ensure good visibility of the participant, as well as that the space allows the participant to display an appropriate background that will not distract the other participants in the hearing.
- (3) Participants in the virtual hearing shall acquaint themselves prior to the hearing with the means for remote communication that shall be used.
- (4) Participants must test the technical equipment they will use during the virtual hearing, with the objective to ensure their complete functionality. In this respect, participants shall have to ensure, for example, that there is an adequate internet connection of sufficient quality to ensure that all participants will be heard and visible at all times, the compatibility of their technical equipment and of their software with the platform to be used for conducting the virtual hearing, the existence of the necessary equipment to establish a video and audio connection for hearings conducted by videoconferencing, etc.
- (5) In order to participate in the virtual hearings, participants shall use:
 - a) devices with display of an appropriate size so as to ensure a good visibility of all participants, to facilitate the review of the presentations and documents indicated by the parties or their representatives. The use of mobile phones to participate in hearings conducted by videoconference is not recommended;
 - b) webcams that display a good quality image and are positioned at eye level to ensure good visibility of the participant;
 - c) headphones, if they are necessary to protect the confidentiality of the arbitral proceedings and ensure better sound by minimizing background noises.
- (6) Prior to logging in to the virtual hearing, participants shall disable audible or pop-up notifications of the other equipment they use.

Cap.III. Protocol on the conduct of virtual hearings

7. Logging in to the hearing

- (1) Participants shall log in 10 minutes prior to the time scheduled for the virtual hearing.
- (2) At the time of log in, participants shall turn off their microphone. Participants shall keep the microphone disabled for the duration of the virtual hearing, except at times when their intervention in the conduct of the hearing is necessary.
- (3) Immediately after log in, participants shall ensure that they display a full screen name, consisting of the participant's first and last name. If two or more persons present at the hearing use the same equipment, the person whose name is displayed on the screen shall also present the other persons present.

8. Rules during the hearing

- (1) At the beginning of each virtual hearing, the arbitral assistant shall verify that:

- a) only persons whose participation is permitted, in accordance with the provisions of Article 35 (3) of the Rules are logged in;
 - b) participants display a full screen name, failing which he shall invite them to perform the necessary operations to modify it;
 - c) the connection of each participant is adequate and that they can hear or watch all the other participants, i.e. they can be heard or watched by the other participants;
 - d) there are no multiple connections from the same participant, *i.e.* the same participant is connected simultaneously to the hearing through two or more devices, and shall proceed to the removal of such additional connections if they exist.
- (2) During the virtual hearing, participants shall:
- a) report promptly to the arbitral tribunal any issues of technical nature in relation with the unfolding of the virtual hearing;
 - b) avoid, as far as possible, interruption of speakers;
 - c) avoid the use of equipment or technologies that interfere with the connection to the virtual hearing;
 - d) shall not participate in other audio or video conferences;
 - e) they shall not engage during the hearing in any activities that could disrupt the proper conduct of the hearing.
- (3) In so far as witnesses or experts participate in the virtual hearing in order to guarantee the integrity of their statements, they shall, in so far as they are not instructed to the contrary by the arbitral tribunal:
- a) keep the camera and microphone turned on for the duration of their hearing;
 - b) shall not turn on the background blur option;
 - c) shall attend the hearing from a space where they are alone or, otherwise, they shall disclose to the arbitral tribunal the identity of all persons present with them.
- (4) The recommendations provided under the previous paragraph shall be also applicable to the parties who are natural persons during their cross-examination.
- (5) With the exception of the arbitral assistant, their participants in the virtual hearing are not allowed to record by any means, partially or totally, the virtual hearing without the express prior permission of the arbitral tribunal.