

Pitfalls of Virtual Hearings in Arbitration

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Arbitration hearings increasingly rely on virtual platforms. These “virtual” or “remote” hearings connect participants in real-time across multiple locations through the use of technology.

While convenient, virtual hearings present unique challenges that arbitrators, counsel, and parties must address through clear e-hearing protocols. This article provides an overview of key challenges and considerations when conducting virtual hearings.

Key Substantive Considerations

The tribunal’s authority to hold virtual hearings depends on the arbitration agreement, the institutional rules adopted, and the laws of the seat of arbitration and the location of testifying witnesses. Some jurisdictions may restrict remote testimony.

If the governing agreements and applicable arbitration rules do not explicitly address remote hearings, tribunals may exercise procedural discretion to proceed virtually. The decision to hold a virtual hearing should consider the comfort level of the tribunal, counsel, and witnesses with the virtual format; the adequacy of available technology; the likelihood of a settlement; and the financial implications of remote hearings.

To safeguard against due process concerns and potential enforcement challenges based on the hearing format, all parties must agree to participate in good faith and tribunals should proceed cautiously: compelling a virtual hearing over a party’s objection may lead to annulment claims, especially if the objecting party believes their right to be heard was compromised.

Practical Considerations

1. Type of Remote Hearing

The parties and the arbitrator must decide whether the hearing will be fully remote, with all participants in different locations, or semi-remote, where some participants are co-located while others join remotely.

2. Required Time for Examinations

Advocacy styles may need adjustment for direct and cross-examinations, which can take longer to conduct in a virtual setting. The use of less expansive questioning may be necessary due to potential delays and reduced immediacy.

3. Platform Selection

Platform selection should prioritize security, cost, and compatibility with the participants' systems. A secure platform with password protection and clear participant identification is essential.

4. Support Services

All participants must understand how to operate the platform, including camera and microphone controls.

Support services may be required to manage technical issues, enable breakout rooms, and assist with screen sharing. If no third-party provider is used, each party should designate a technical support representative.

Time zone differences and support service availability must be considered when scheduling the hearing.

5. Backup Plans

Backup plans, such as mobile hotspots, should be in place to address connectivity failures.

Counsel should copy all exhibits, outlines, notes, and other documents to be used during the hearing to a laptop or portable media device to avoid delays caused by connectivity issues.

6. Use of Cameras and Hearing Room Setup

The tribunal must determine camera usage and whether all individuals should be visible or only lead counsel and witnesses.

The tribunal should be able to observe witness and counsel demeanor and ensure clarity referenced documents. A gallery view helps monitor all participants during testimony.

7. Communications Throughout the Hearing

Communication between co-counsel and clients is more challenging virtually. Counsel should plan to use an alternative platform, such as email or messaging, to communicate with their team during the hearing.

Breakout rooms should be considered for private discussions between the tribunal and counsel.

8. Recording Protocol

The extent of hearing recording should be agreed upon in advance, with restrictions on distribution unless all parties consent and the tribunal approves.

9. Oaths

Oaths may be administered remotely if permitted by the law of the seat of the arbitration, unless otherwise agreed by the parties.

10. Interpreters

If interpretation is required, the tribunal should decide between consecutive or simultaneous methods.

11. Document Management

Counsel must ensure that witnesses, counsel, and the tribunal have full access to relevant exhibits during examination. Efficient exhibit handling is crucial.

For complex cases, hyperlinked e-bundles facilitate screen sharing. Additional electronic documents should be placed in separate bundles to preserve working versions. Dual screens are recommended for counsel to manage exhibits and view participants.

If document volume is low or costs are prohibitive, shared PDFs or physical exhibit books may suffice. Physical bundles should be shipped in advance, especially for witnesses in different countries.

12. Technical Testing

Pre-hearing equipment testing ensures stable connections and may prompt changes in the equipment placement or location to improve connectivity.

With thoughtful preparation, virtual hearings offer flexibility but require careful planning to avoid procedural pitfalls. By addressing legal, technical, and practical considerations, tribunals and parties can conduct effective and fair remote arbitration proceedings.

Additional sources:

- Chen, L., “Will Virtual Hearings Remain in Post-pandemic International Arbitration?” *Int J Semiot Law* **37**, 829–849 (2024), available at <https://doi.org/10.1007/s11196-023-10054-7>
- Hafez, Mohamed, “Remote hearings and the use of technology in arbitration,” *The Middle Eastern and African Arbitration Review* (2023), available at [GAR-remote-hearings-and-the-use-of-technology-in-arbitration \(1\).pdf](#)