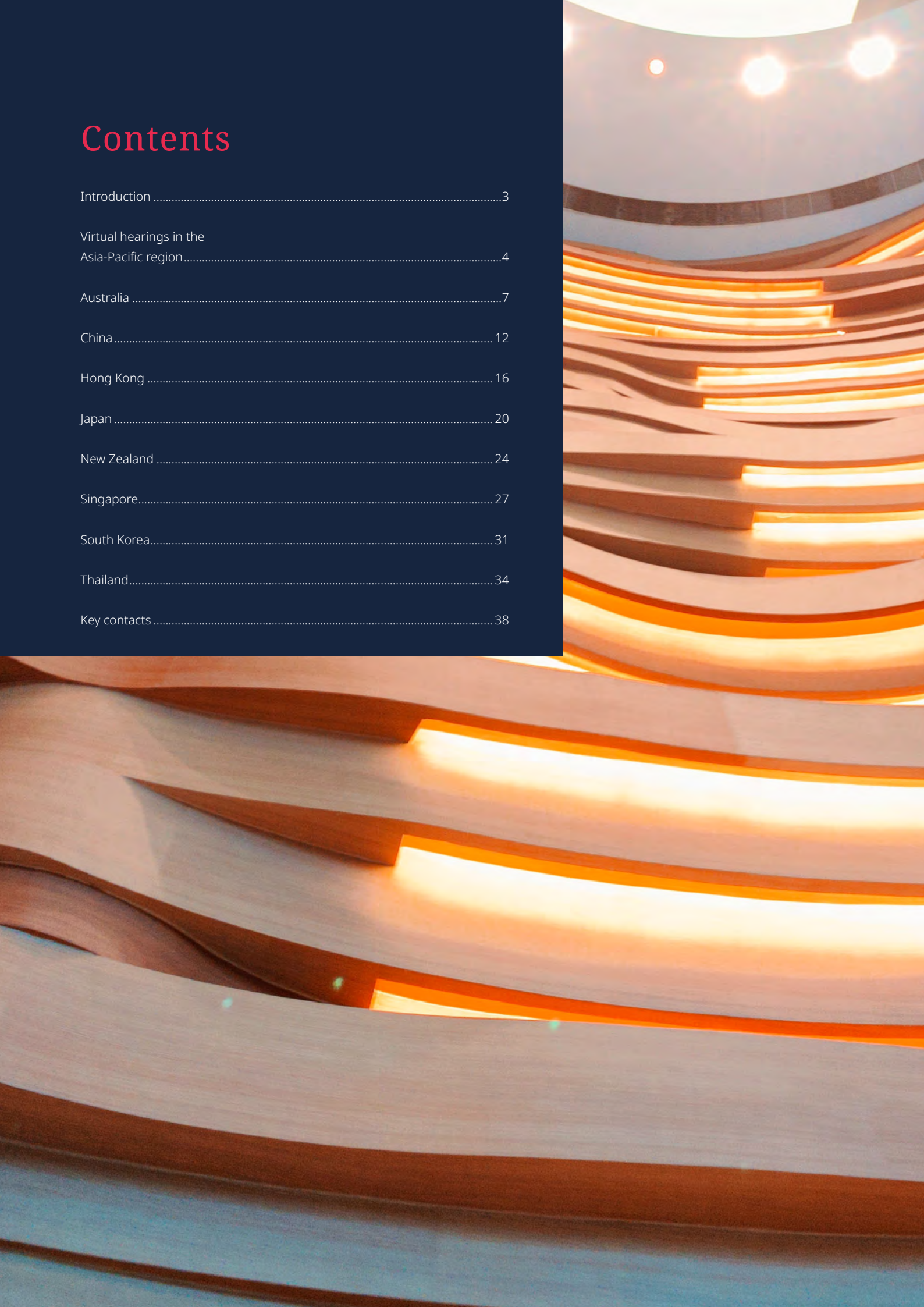




Asia Pacific Arbitration Virtual Hearings

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Introduction

Welcome to our second Asia-Pacific regional arbitration publication.

The COVID-19 pandemic has impacted and transformed dispute resolution and international arbitration on an unprecedented scale. Countries in the Asia-Pacific region were amongst the first to be affected by lockdown measures and travel restrictions imposed due to the pandemic. Initially, arbitrations in the region were either delayed or rescheduled but as these restrictions and social distancing measures continue to be in place, and are expected to be in place for at least some period of time, we have seen a shift in the way arbitration hearings are conducted with many arbitrations being conducted virtually/online or at least with some virtual components.

The major international arbitration centres in the Asia Pacific region have all also now released guidance on virtual/online hearings and become central proponents of the same.

Recently, DLA Piper published the first global, empirical study on the use of virtual hearings during the COVID-19 confinement and a second report reviewing key global developments in response to COVID-19 on Online Arbitration Hearings. [Click here](#) and [here](#) to access these reports.

In this edition, we take an in-depth look at the various procedural rules and guidance on virtual/online hearings published by major arbitration institutions within the Asia Pacific region and the practical aspects of virtual hearings being carried out in the region.

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Virtual hearings in the Asia-Pacific region

In April 2020, HKIAC, SIAC, KCAB and ICC joined other arbitration institutions around the world to issue a joint statement encouraging parties and arbitrators to discuss the impacts of the pandemic and potential ways to address the same in an open and constructive matter. The message emphasised the need for arbitral tribunals and parties to mitigate the effects of any impediments to the largest extent possible while ensuring fairness and efficiency of arbitral proceedings.

Prior to the pandemic, all of the major institutional procedural rules already conferred wide discretion to the arbitral tribunals to decide on the procedures and manner ways to conduct the arbitrations. The ACICA Rules and the HKIAC Rules both emphasise equality, reasonable opportunity for parties to present their cases and adopting suitable procedures to avoid unnecessary delay or expenses. The HKIAC Rules go further to provide that arbitral tribunals should consider the effective use of technology. The SIAC Rules mention the need to ensure the fair, expeditious, economical and final resolution of disputes, although there is no express reference to video conferencing in these rules. By contrast, the JCAA Commercial Arbitration Rules and Interactive Rules 2019 as well as the NZDRC rules make specific reference that the arbitral tribunal may hold hearings by video conferences.

Since the onset of pandemic, ACICA, CIETAC, HKIAC, SIAC, KCAB have all now supplemented the discretion in their rules by publishing their own guidelines on virtual hearings. These guidelines all have a common purpose – to allow for and ensure the integrity and smooth-running of arbitral proceedings being run conducted virtually/online.

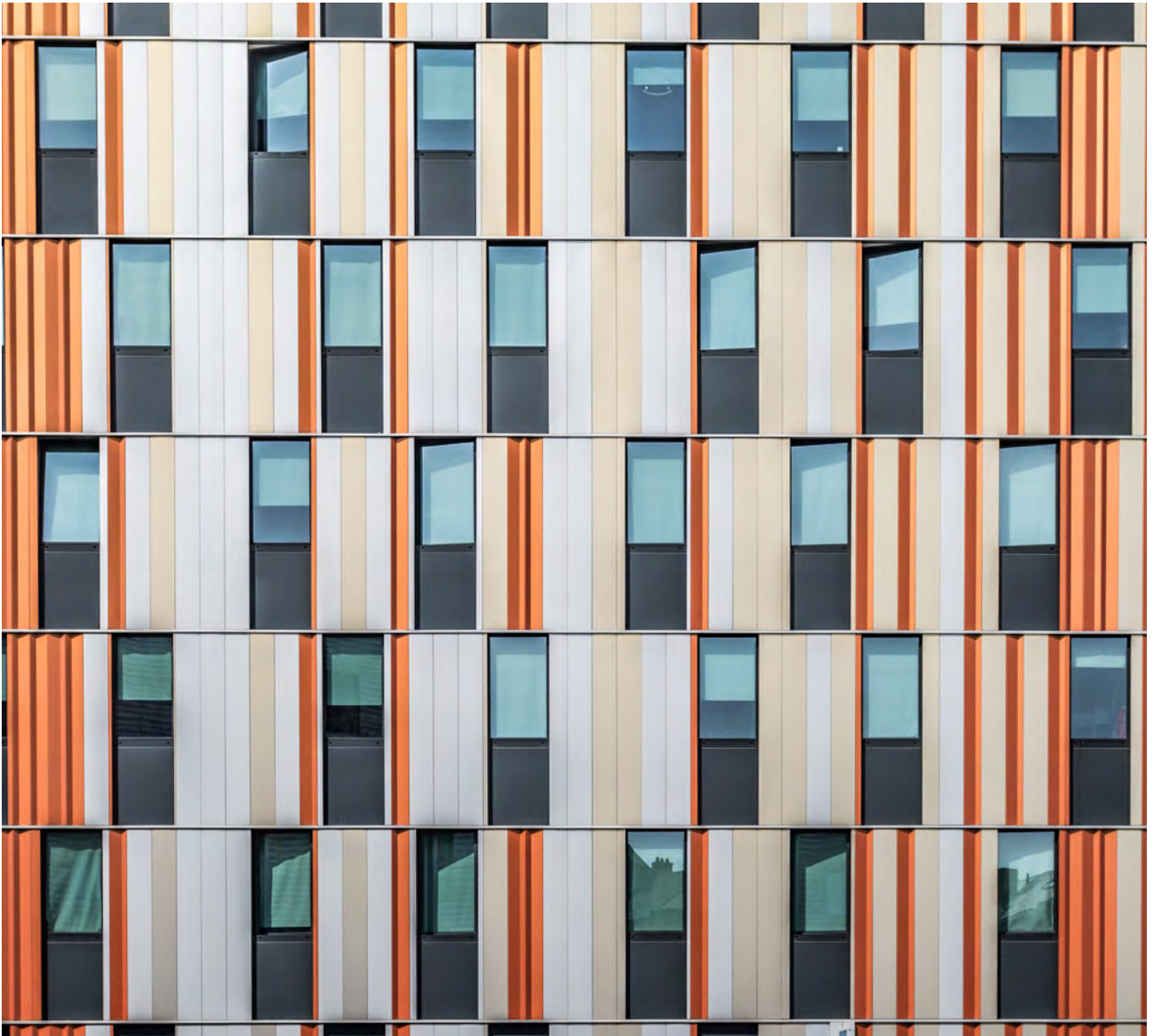
The ACICA Guidance Note, in particular provides a very useful and comprehensive checklist of the relevant considerations parties should take into account in preparing for virtual hearings. ACICA further

provides a draft procedural order for virtual hearings. The CIETAC Guidelines provide specific measures on case filing, service of documents, procedural orders, serving documents and hearings during the pandemic and contain mandatory provisions governing virtual hearings in an Annex which will cease to have effect once the pandemic is over. The HKIAC Guidelines were drawn up based on HKIAC's experience of administering multiple virtual hearings even prior to the pandemic and give various recommendations to ensure that virtual hearings proceed smoothly. The SIAC Guide is the most recent guidance published amongst all the Asia-Pacific guidelines and, similarly to the ACICA Guidance Note, features recommendations and a list of matters to consider when planning a virtual hearing as well as a list of considerations relevant to choosing the right hearing platform for the case. The Seoul Protocol on Video Conferencing which was first introduced pre-pandemic in November 2018 but republished by the KCAB on 18 March 2020 also provides useful guidance on issues including witness examination, video conferencing venues, documents, technical requirements, observers, test conferencing and audio conferencing backup, interpretation, recordings and preparatory arrangements.

The impact of the pandemic on the gaining popularity of virtual hearings is not in doubt and the guidance notes have been a welcome addition to the procedural rules of these institutions.

In Hong Kong, it was reported that approximately 85% of all hearings were conducted virtually in April and May 2020 and almost all hearings at the HKIAC contained some virtual components. Similarly in Singapore, most arbitration hearings in the past few months have either been hybrid or fully virtual. Virtual hearings are also now common place in Australia and South Korea has seen a significant rise in demand for virtual hearing services. The TAI and THAC in Thailand encourage virtual hearings and in Japan, the JIDRC has been actively promoting its virtual hearing facilities facilitated by agreements with HKIAC and SIAC to host and assist arbitrations and has plans to expand its virtual hearing capacity. Although the trajectory remains different in Mainland China, where many arbitration cases have been adjourned due to the lack of mutual agreements between parties.

The arbitration institutions in the Asia-Pacific region are amongst the most active institutions in leading and promoting the use of virtual/online hearing technologies in arbitrations. Some of these arbitration institutions have made significant investments to boost their virtual hearing capabilities. The move towards virtual hearings is often accompanied by similar developments in the domestic judiciaries which has, consequently, positively impacted the level of acceptance amongst litigants. We expect that virtual/online hearings will remain a common practice in the Asia-Pacific region even after the pandemic as an effective means for avoiding unnecessary costs and time-tabling delays.





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Major arbitration institutions	Australian Centre for International Commercial Arbitration (ACICA)
Procedural rules and guidance for virtual hearings	<p>As a result of COVID-19, ACICA has encouraged all arbitrators and parties to consider the use of video-conferencing and online facilities wherever possible.¹ The Tribunal is empowered to do so under the ACICA Arbitration Rules 2016 (ACICA Rules).</p> <p>ACICA Arbitration Rules 2016²</p> <p>Article 21.1 provides that <i>"Subject to these Rules, the Arbitral Tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated equally and that each party is given a reasonable opportunity of presenting its case."</i></p> <p>Article 21.2 provides that <i>"Subject to these Rules, the Arbitral Tribunal shall adopt suitable procedures for the conduct of the arbitration in order to avoid unnecessary delay or expense, having regard to the complexity of the issues and the amount in dispute, and provided that such procedures ensure equal treatment of the parties and afford the parties a reasonable opportunity to present their case."</i></p> <p>ACICA is currently undergoing a formal review process of its 2016 Rules, and it is expected that the revised rules are likely to expressly provide for virtual/online hearings.</p> <p>ACICA Online Arbitration Guidance Note³</p> <p>The ACICA Online Arbitration Guidance Note (ACICA Guidance Note), which was recently published in May 2020, provides a useful and comprehensive checklist of relevant considerations for the parties when preparing for an online arbitration. It is not mandatory for a party to comply with the Guidance Note.</p>

¹ Important Information for ACICA Users — COVID-19 Update – <https://acica.org.au/important-information-for-acica-users/>

² The ACICA Expedited Arbitration Rules 2016 contain similar general provisions at Articles 13.1 and 13.2.

³ ACICA Online Arbitration Guidance Note <https://acica.org.au/wp-content/uploads/2020/05/ACICA-Online-Arbitration-Guidance-Note.pdf>

As set out in the ACICA Guidance Note, some of the critical issues that will need to be agreed between the parties to an online arbitration include:

- choosing the most suitable videoconferencing platform for a party's needs, including visual display/feed and presentation options, security (including password and encryption), platform's legality in jurisdiction of the parties of enforcement. ACICA does not provide or recommend a particular platform, but it refers to available platforms such as Microsoft Teams, Modron, BlueJeans, Skype for Business, Cisco WebEx, Zoom, GoToMeeting and Adobe Connect;
- ensuring confidentiality of, and access to, the virtual proceedings including the circulation of a list of approved participants who will be in the physical room used to participate in an online hearing, and a requirement for the parties to advise the Tribunal if any non-approved participants are present;
- considering outsourcing online hearings to a third party provider, to allow parties to focus on legal rather than technical issues. ACICA mentions third party providers, such as ADC Virtual from the Australian Disputes Centre (ADC), which ACICA promotes on its website⁴ and regularly works with, Arbitration Place Virtual, EPIQ, OPUS 2 and Law in Order;
- establishing procedures for communications within a legal team. WhatsApp, Skype, Facetime, WeChat, group text or similar services should be considered. Protect against accidental communications by communicating within your legal team by using a separate device to the online hearing device;
- clarifying matters of etiquette (particularly within your own team) such as visual appearance, identification, refraining from interruption, muting microphones etc; and
- determining the method for exchanging documents, including storage and access of documents by all participants, including for cross-examination, counsel, Tribunal and translators, as well as production of a list of documents presented by each party in the online hearing.

Importantly, the ACICA Guidance Note recommends that the parties agree a procedural order to be issued by the Tribunal which covers the above issues as well as the usual matters that would be included.

ACICA has published a draft procedural order on its website⁵ which provides further guidance to practitioners when drafting a procedural order for a virtual arbitrations. While it was published in 2016, well before COVID-19, it covers many matters for the effective use of online dispute resolution technologies in arbitrations conducted under the ACICA Rules.

Other practical matters the ACICA Guidance Note suggests that the parties should consider agreeing, without necessarily recommending they form part of the procedural order, include:

⁴<https://acica.org.au/australian-disputes-centre/>

⁵<https://acica.org.au/wp-content/uploads/2016/08/ACICA-online-ADR-procedural-order.pdf>

	<ul style="list-style-type: none"> • the arrangement of a pre-hearing conference to ensure all participants can use the chosen online hearing platform; • transcription, including live transcription; • audio and/or video recording and what use can be made of it during the course of the online hearing; • a back-up plan if the internet connection fails, such as by establishing a telephone conference which parties can dial into; and • the manner in which the witnesses will participate, including the valid administration of oaths, witness coaching safeguards and how they should present themselves.
Virtual Hearings in practice	<p>The Australian Disputes Centre (ADC), which ACICA regularly works with in Sydney, remains open for in-person mediations, hearings and hybrid events (i.e. some parties joining by video link). However, the ADC is also offering all of its services online through its ADC Virtual platform. ADC Virtual allows parties to conduct their hearings using online 'rooms'.</p> <p>Although there are no official statistics on the number of virtual hearings conducted by ACICA or the ADC, our experience is that virtual hearings are being used frequently in Australia in both arbitrations and domestic litigation. Arbitration practitioners in Australia are already used to conducting procedural conferences over telephone or video link due to the fact that arbitrators and parties are often located overseas and there is a relatively high level of familiarity with video conferencing and e-hearing platforms, which has only increased since the beginning of COVID-19.</p>
Other Local Practice Notes/News	<p>ACICA requests that until staff return to the office, all new filings should be made through the ACICA E-Filing system (which allows payment directly by credit card) or by email to the ACICA Secretariat (secretariat@acica.org.au). However, hard copies will still need to be provided to ACICA once the office re-opens.</p> <p>The current operating procedure in Australian courts differs in each jurisdiction. The Federal Court (which regularly deals with international arbitration related issues) has modified its practices to minimise in-person attendance on Court premises, including limits on the number of people within the Court precinct. Other than in exceptional circumstances, all hearings before the Federal Court are currently proceeding using remote access technology including Microsoft Teams and telephone conferencing.</p> <p>In Victoria, physical attendance in court is not permitted except with the Court's permission and almost all hearings are being conducted remotely.</p>

In New South Wales, courts have put measures in place to conduct proceedings without the need for attendance in person wherever possible, however in-person hearings are still occurring in some circumstances.

Courts in Queensland are still open, but are encouraging practitioners to minimise the need for physical attendance in courtrooms by using telephone or video link to make applications and call witnesses wherever possible, to make applications on the papers, and to minimise the number of people attending court for any given matter.

The Western Australia Supreme and District Courts have now returned to the practice of requiring the personal attendance of parties at the hearing of applications, with the use of audio or video-link to make submissions being the departure from normal practice.





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Major arbitration institutions	China International Economic and Trade Arbitration Commission (CIETAC) Shanghai International Arbitration Centre (SHIAC)
Procedural rules and guidance for virtual hearings	<p>So far, only CIETAC has issued procedural rules and guidance for virtual hearings.</p> <p>CIETAC Arbitration Rules on the conduct of hearing: Article 35.1 provides that <i>"The arbitral tribunal shall examine the case in any way it deems appropriate unless otherwise agreed by the parties. Under all circumstances, the arbitral tribunal shall act impartially and fairly and shall afford a reasonable opportunity to both parties to present their case."</i></p> <p>CIETAC Guideline for conducting arbitrations during the pandemic: On 28 April 2020, CIETAC issued Guidelines on Proceeding with Arbitration Actively and Properly during the COVID-19 Pandemic (the Guidelines)⁶. The Guidelines contain specific measures on using the online case filing system, serving documents, and hearings. There is also an annex containing provisions on virtual hearings. The guidelines came into force on 1 May 2020 and, importantly, will cease to have effect when the pandemic is over.</p> <p>Article 2.6 of the Guidelines provide that <i>"Virtual hearing is considered as a specific way of oral hearing which is in accordance with the Arbitration Rules. During the pandemic, for cases to be examined with oral hearings, the arbitral tribunal is advised to first consider the possibility of holding virtual hearings."</i></p> <p><i>When deciding whether to hold a virtual hearing, the arbitral tribunal shall take into comprehensive consideration a variety of factors such as the parties' opinions, the complexity of the case, the volume of evidence, any witness to be present, the justification of the party's reasons against holding a virtual hearing, and the convenience and equality of the participants to access to the virtual hearing facilities. Where a virtual hearing is conducted, the arbitral tribunal shall fully protect the procedural rights of the parties, afford a reasonable opportunity to both parties to present their case, and treat both parties equally, so as to ensure the enforceability of the arbitral award under the applicable procedural law. The parties and their representatives as well as other participants of a virtual hearing shall follow CIETAC Provisions on Virtual Hearings (Trial) as attached and other relevant requirements."</i></p>

⁶ CIETAC Guidelines and Provisions for Virtual Hearings:
<http://www.cietac.org/index.php?m=Article&a=show&id=16919&l=en>

Pursuant to the Guidelines, there are four types of online hearing:

1. Through CIETAC smart oral hearing platform (<https://kt.cietac.org/portal/main/domain/index.htm>) – where all parties are located within Mainland China;
2. Through other video-conferencing platforms – where parties are located in different jurisdictions or the language of arbitration is not Chinese;
3. Using the video facilities in various CIETAC sub-commissions centres – where parties are located in cities where there are CIETAC submissions/centres; and
4. Through the joint platforms between CIETAC and other foreign arbitration institutions – CIETAC has cooperation agreements with major arbitration institutions in the world with arrangements for mutual assistance in oral hearings. If needed, please contact CIETAC case managers.

CIETAC Provisions on Virtual Hearings:

Annexed to the Guidelines is the CIETAC Provisions on Virtual Hearings (CIETAC Provisions). The CIETAC Provisions set out that:

1. Virtual hearings are strictly confidential. Arbitration participants shall use their own accounts and password to participate in the virtual hearing;
2. Arbitration participants shall ensure their heads and faces are fully shown on-screen at a confidential and private location with good illumination and network signals. CIETAC shall be informed the specific location in advance;
3. Unauthorized recording and dissemination of information of the hearing are forbidden;
4. In principle, witnesses, experts and appraisers are not allowed to participate in the hearing in the same room with arbitration participants. They shall withdraw from the hearing when the tribunal so requests; and
5. The transcript is signed by using the electronic signature function of the operating system of the virtual hearing.

CIETAC has not issued any specific guidance as to whether the arbitral tribunal may hold virtual hearings absent one party's consent. However, as stated above, Article 2.6 of the Guidelines states that an arbitral tribunal shall take into account the parties' opinion and the justification of the party's reasons against holding a virtual hearing when deciding whether or not to hold a virtual hearing.

<p>Virtual Hearings in practice</p>	<p>In practice, virtual hearings may only be conducted when all parties agree in writing. Due to the lack of mutual agreement, many arbitration cases in Mainland China have been adjourned.</p> <p>Mr Wang Chengjie, the Secretary General of CIETAC mentioned in his speech on 15 July 2020 that <i>“Since CIETAC launched its Smart Oral Hearing Platform this April, 54 cases have been heard virtually, and 20 more virtual hearings have been scheduled to be held before the end of July, with parties participating from 30 different cities from the United State, Canada, Australia, Sweden, Hong Kong and Mainland China. It can be predicted that the means of virtual hearing will be gradually accepted by the parties”</i>.</p> <p>It is noted that the 18th CIETAC Cup (an annual professional competition of arbitration) will be carried out on-line with virtual hearings in November 2020.</p>
<p>Other Local Practice Notes/News</p>	<p>Generally, the Guidelines and Provisions are specially designed to meet the need of arbitration cases during the pandemic. It is made clear that the Guidelines do not constitute part of the CIETAC rules and shall cease to have effect when the pandemic is over.</p> <p>To ensure the enforceability of the arbitration award, it is advisable that a written agreement of all parties to conduct a virtual hearing be secured.</p> <p>In the meantime, if any video conferencing platform is going to be used, parties are encouraged to test the platform before the hearing so that any potential technical hitches can be properly and quickly addressed, as well as ensuring that backup plans are in place.</p> <p>Whether the virtual hearing practice will continue to develop after the pandemic largely depends on the reliability of the arbitration centres’ own virtual hearing system and the possibility of engaging third-party e-hearing partners.</p>



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Major arbitration institutions	Hong Kong International Arbitration Centre (HKIAC)
Procedural rules and guidance for virtual hearings	<p>2018 HKIAC Administered Arbitration Rules:</p> <p>Article 13.1 provides that <i>"Subject to these Rules, the arbitral tribunal shall adopt suitable procedures for the conduct of the arbitration in order to avoid unnecessary delay or expense, having regard to the complexity of the issues, the amount in dispute and the effective use of technology and provided that such procedures ensure equal treatment of the parties and afford the parties a reasonable opportunity to present their case."</i></p> <p>Article 22.5 provides that <i>"The arbitral tribunal may determine the manner in which a witness or expert is examined."</i></p> <p>HKIAC Guidelines for Virtual Hearings⁷</p> <p>The HKIAC Guidelines released on 14 May 2020 provide guidance and recommendations to ensure that virtual hearings proceed as smoothly as possible and with minimal disruptions or issues. These recommendations include:</p> <ol style="list-style-type: none"> 1. Arrange to have an IT specialist (hearing manager) in attendance at all times; 2. Ensure the confidentiality and security of virtual hearing including using password protection for all cloud-based video conferencing, agreeing list of participants and allowing only the approved list of participants; 3. Participants of video conferences should ensure the camera is positioned at eye-level, avoid back-lighting, avoid speaking at the same time, use a headset with integrated microphone to protect privacy etc.; 4. Where a witness or expert is participating a video conferencing remotely: <ul style="list-style-type: none"> • a hearing invigilator should attend the same premise as the witness or expert to ensure the integrity of the premise where possible; • a 360-degree viewing of the room by video at the beginning of each session should be arranged to ensure integrity of the room; and • the tribunal should recall the witness' or expert's obligation of truthfulness including by presenting their evidence in the manner agreed and without proper influence (by administering an oath, declaration, affirmation or otherwise); and

⁷ HKIAC Guidelines for Virtual Hearings https://www.hkiac.org/sites/default/files/ck_filebrowser/HKIAC%20Guidelines%20for%20Virtual%20Hearings_3.pdf

	<p>5. Any audio recording is subject to parties' agreement of tribunal direction.</p> <p>The HKIAC has partnered with leading technology specialists to offer users a comprehensive range of integrated virtual hearing services including IP-based video conferencing, cloud-based video conferencing, electronic bundles, back-up system, electronic presentation of evidence, transcription and interpretation. Those interested in the online hearing services are asked to complete an online e-hearing enquiry form and HKIAC will contact them to discuss their specific needs.</p> <p>HKIAC has not issued any specific guidance as to whether the arbitral tribunal may hold virtual hearings absent one party's consent.</p>
Virtual Hearings in Practice	<p>Until July 2020, Hong Kong had a relatively low number of COVID-19 cases and the HKIAC therefore remained open for physical hearings subject to certain precautionary measures being adopted (including requiring completion of a health declaration form, temperature screening and refusing entry for persons who had travelled for the last 14 days or were in contact with persons diagnosed with COVID-19).</p> <p>The HKIAC has classified virtual hearings into three categories:</p> <ul style="list-style-type: none"> • Physical Hearing "plus" – where all parties are present in one location but additional measures needed to observe social distancing rules • Partial Remote Hearing – where one or more parties are participating remotely • Full Remote Hearing – where all participant and stakeholder participates remotely <p>In the past months, the majority of the arbitrations facilitated by HKIAC fall under the Partial Remote Hearings category.</p> <p>Despite being open for physical hearings for the first part of the year, HKIAC estimates that in April and May 2020, approximately 85% of all hearings were virtual and almost all hearings at HKIAC contained some virtual component. There have been around 5 or 6 fully remote hearings conducted (i.e. where no parties were present at the HKIAC except the HKIAC case manager) including a 40-day construction hearing that was conducted virtually. More than 100 hearings have been booked for the rest of 2020 and 57% of the bookings are virtual hearings.</p> <p>Although clients were initially unfamiliar with the technology, virtual hearings are beginning to gain wide acceptance as a necessary and safe way to proceed with arbitrations.</p>

**Other Local Practice
Notes/News**

All court proceedings in the Hong Kong Court were generally adjourned during a prolonged General Adjourned Period from January to May 2020 (except for urgent and essential court businesses). According to the statement by the Chief Justice of the Court of Final Appeal issued on 25 March 2020, almost 18% of the annual caseload of the courts at all levels has been affected from January to March 2020 due to the General Adjourned Period. Court proceedings continued to be affected and delayed due to enhanced precautionary measures implemented since July 2020 after Hong Kong saw the emergence of the third wave of coronavirus infections.

The Hong Kong Judiciary has therefore been actively considering a wider use of remote hearings during the General Adjourned Period. Since April 2020, video-conferencing facilities have been used for remote hearings for suitable and urgent civil cases trialled at the Hong Kong High Court. Guidance notes for the relevant practice and technical specifications are published on the judiciary website.⁸

However, virtual hearings are still only available in a limited number of court cases, whereas in contrast, the availability and widespread use of virtual hearings for arbitrations in Hong Kong since the pandemic has allowed parties to proceed with arbitration disputes more expeditiously than litigation.

In practice, to ensure smooth running of the virtual hearings, it is often necessary and common to conduct trial-runs and tests to ensure connectivity and have backup plans in place such as back-up computers and accessories, secondary connections and dial-in access etc.. It is also common that parties will agree on a virtual hearing protocol to avoid any challenge on due process.

⁸ "Remote Hearings for Civil Business in Civil Courts", the Hong Kong Judiciary https://www.judiciary.hk/en/court_services_facilities/gap_remote_hearing.html





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Major arbitration institutions	Japan Commercial Arbitration Association (JCAA) Japan International Dispute Resolution Centre (JIDRC)
Procedural rules and guidance for virtual hearings	Article 39 of the JCAA Commercial Arbitration Rules 2019 and Interactive Arbitration Rules 2019 provides that: <i>"1. Unless otherwise agreed by the Parties, the place of arbitration shall be the city of the office of the JCAA to which the claimant submitted the Request for Arbitration under Article 14.1.</i> <i>2. The arbitral tribunal may conduct the arbitral proceedings at any place it considers appropriate, unless otherwise agreed by the Parties."</i> Paragraph 3, Article 50 of the JCAA Commercial Arbitration Rules 2019 and Interactive Arbitration Rules 2019 also provides that: <i>"Where the hearings are to be held, the arbitral tribunal should select appropriate means for holding a hearing, including by video conference or other methods"</i> The JCAA has not published any guidance specific to virtual hearings. JCAA/JIDRC has not issued any specific guidance as to whether the arbitral tribunal may hold virtual hearings absent one party's consent.

Virtual Hearings in practice

There are no published statistics on the use of virtual hearings for arbitrations in Japan.

In line with the Japanese government's policy to increase its share in the international arbitration market, there has recently been a major upgrade of virtual hearing facilities in Japan.

The JIDRC-Tokyo and JIDRC-Osaka were opened on 30 March 2020 and 1 May 2018 respectively. Both centres are equipped with advanced virtual hearing facilities to host arbitrations, including:

1. Video-conference system supporting connections to major videoconference platforms (Zoom, Microsoft Teams, Google Meet, Cisco Webex, Skype);
2. High-speed wifi for stable transmission and receipt of images and sound. Camera is positioned near the projector of the hearing room and can show the whole hearing room; and
3. Simultaneous interpretation service with simultaneous interpretation room and equipment.

Real-time transcript service is also available at JIDRC-Tokyo although there may be issues with the quality of the transcription of Japanese as compared to English.

The JIDRC has also announced plans for further improvements of the equipment and settings for virtual hearings at its centres such as additional settings for remote tribunals to confirm the surroundings of the witnesses.

The JIDRC had also entered into various agreements with other arbitration institutions in the region in 2019 which had facilitated wider collaboration for hosting and assisting virtual hearings during the pandemic. For instance, JIDRC and HKIAC concluded a cooperation agreement in November 2019 to enable parties in HKIAC proceedings to have access to JIDRC's facilities. This allows HKIAC parties to use JIDRC's facilities to attend virtual hearings during the pandemic. The SIAC, JIDRC and the Japan Association of Arbitrators also signed a memorandum of understanding on 4 June 2019 to jointly promote international arbitration and to facilitate greater cooperation between these institutions to offer better support and assistance to parties attending virtual hearings in the two jurisdictions.

⁹ <https://www.kantei.go.jp/jp/singi/keizaisaisei/saiban/pdf/report.pdf>

**Other Local Practice
Notes/News**

The JIDRC-Tokyo and JIDRC-Osaka were temporarily closed from April to May 2020 due to the pandemic and were reopened from 1 June 2020.

In recent years, the Supreme Court of Japan had been leading the “digitalisation” of judicial proceedings. On 30 March 2018, a report was published to implement the “3-es” in judicial proceedings i.e. e-filing, e-case management and e-court.⁹ Following the report, Microsoft teams had been integrated into the evidentiary proceedings of civil court cases in key locations since February and May 2020.

In light of the digitalisation of the court proceedings, the upgrades and availability of virtual hearing facilities, collaborations between arbitration institutions and difficulties in holding physical hearings caused by the pandemic, virtual hearings are beginning to gain more acceptance amongst Japanese parties and we expect to see a wider use of virtual hearings for arbitration in Japan.

Integrity, equality and confidentiality of the proceedings will be of prime concern in the conduct of virtual hearings.





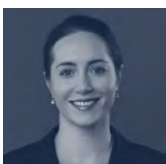
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<p>Major arbitration institutions</p>	<p>Arbitrators' and Mediators' Institute of New Zealand (AMINZ) New Zealand Dispute Resolution Centre Resolution Institute (NZDRC)</p>
<p>Procedural rules and guidance for virtual hearings</p>	<p>Both the NZDRC and the Resolution Institute rules provide the arbitral tribunal with discretion to allow some aspects of remote participation.</p> <p>NZDRC</p> <p>The NZDRC rules provide for the use of remote technology for both directions conferences and hearings, as follows:</p> <p><i>"14.1 The Arbitral Tribunal may call, and the Parties must attend, conferences for the purpose of discussing and determining procedural issues and timetabling matters (Directions Conferences). The Arbitral Tribunal may conduct Directions Conferences in any manner considered appropriate in the circumstances (whether in person, by telephone, video conference, or other electronic communication) at such times and on such dates (and at such venues in the case of meetings in person) as may be fixed by the Arbitral Tribunal.</i></p> <p><i>24.4 Unless otherwise agreed by the Parties, the Arbitral Tribunal may hear witnesses and conduct hearings by any means that it considers effective and expedient, and at any location that it considers appropriate in all the circumstances. A hearing may take place in person, by video or telephone conference, or by any combination of these methods."</i></p> <p>Resolution Institute</p> <p>The Resolution Institute rules provide that witnesses may be examined remotely, if the arbitrator so directs:</p> <p><i>"7. The arbitrator may direct that witnesses, including expert witnesses, be examined through means of telecommunication that do not require their physical presence at the hearing (such as videoconference)."</i></p> <p>AMINZ/ NZDRC have not issued any specific guidance as to whether the arbitral tribunal may hold virtual hearings absent one party's consent.</p>

Virtual Hearings in practice	<p>New Zealand entered a strict lockdown between 23 March 2020 and 13 May 2020, with Auckland returning to higher restrictions from August 2020. Currently, restrictions remain in place to varying degrees nationwide.</p> <p>During these periods of restrictions, all businesses have had to adapt and accommodate to new ways of working. New Zealand's courts and businesses have moved to remote working, wherever possible.</p> <p>Where the parties agree, and the arbitral tribunal so directs, we understand that hearings by remote participation are taking place using software solutions such as Microsoft Teams and Skype for business.</p>
Other Local Practice Notes/News	<p>As a result of the COVID-19 pandemic, the New Zealand government has acted to address the difficulties faced by many businesses in meeting their fixed costs during this period of uncertain or diminished revenues. Although some commercial leases contain rent relief clauses in such circumstances, this is not the case for all businesses.</p> <p>The government has responded by providing a subsidised arbitration and mediation service. This will be available for six months from late September 2020, to resolve commercial lease disputes arising due to COVID-19.</p> <p>The service was initiated as a policy response by the executive government, and is not reflected in any legislative change. Therefore, the legal obligations of the parties are only varied through the dispute resolution process, and not by law. In order to be eligible at least one party to the dispute must be a small to medium enterprise, and participation is voluntary.</p>





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Major arbitration institutions	Singapore International Arbitration Centre (SIAC)
Procedural rules and guidance for virtual hearings	<p>2016 SIAC Rules</p> <p>Rule 19.1 provides that <i>"The Tribunal shall conduct the arbitration in such manner as it considers appropriate, after consulting with the parties, to ensure the fair, expeditious, economical and final resolution of the dispute."</i></p> <p>There are no specific SIAC Rules on the use of video conferencing for the conduct of main arbitration hearings. The only reference to video conferencing in the Rules concerns Emergency Arbitrator proceedings (see Schedule 1 to the Rules).</p> <p>SIAC Guide: "Taking Your Arbitration Remote"¹⁰</p> <p>SIAC released a Guide on virtual hearings on 31 August 2020. The Guide features recommendations and lists of matters to consider when planning a virtual hearing. These include:</p> <ol style="list-style-type: none"> 1. Logistical and legal matters, such as whether a virtual hearing or a combination of virtual and in-person hearing is viable given the needs of the case and the locations of the parties, as well as any matters that may arise under the parties' contract or applicable law that may affect whether or how a virtual hearing can proceed; 2. Whether the parties have selected an appropriate virtual hearing platform for the hearing; 3. How evidence should be presented and how interactions between witnesses and counsel in different jurisdictions should be managed; 4. Whether there is any agreement on hearing etiquette, schedule and procedure; and 5. Technical preparations and tests to ensure the smooth running of the hearing. <p>The Guide also contains (at Appendix A) a list of considerations relevant to choosing the right hearing platform for the case. This includes factors such as:</p> <ol style="list-style-type: none"> 1. Whether the hearing platform should be self-managed or institutionally-managed; 2. File and screen sharing capabilities;

¹⁰ SIAC Guide, "Taking Your Arbitration Remote":

[https://www.siac.org.sg/images/stories/documents/siac_guides/SIAC%20Guides%20-%20Taking%20Your%20Arbitration%20Remote%20\(August%202020\).pdf](https://www.siac.org.sg/images/stories/documents/siac_guides/SIAC%20Guides%20-%20Taking%20Your%20Arbitration%20Remote%20(August%202020).pdf)

	<p>3. Recording functions and protocols;</p> <p>4. The availability of separate discussion rooms; and</p> <p>5. Minimum technical requirements for ensuring the smooth operation of the platform (e.g. connectivity and bandwidth considerations).</p> <p>Helpfully the Guide sets out (at Appendix B) a checklist that may be used by parties and arbitrators when drawing-up procedural orders to govern the conduct of virtual hearings. This proceeds to identify a number of considerations under the following headings:</p> <ol style="list-style-type: none"> 1. Platform. 2. Transcription and recording. 3. Remote hearing participants. 4. Technical failure protocol. 5. Suspension or termination of remote hearing (e.g. in the event of a breach of agreed procedures). 6. Trials and test runs. 7. Documents. 8. Confidentiality, data protection and security. 9. Access to the remote hearing. 10. Schedule of the remote hearing; and 11. Witness testimony. <p>Appendix C to the Guide then sets out a number of considerations relevant to remote hearing etiquette. This includes several recommendations as to how individual participants should conduct themselves to ensure a smooth and orderly virtual hearing.</p> <p>SIAC has not issued any specific guidance as to whether the arbitral tribunal may hold virtual hearing absent one party's consent.</p>
Virtual Hearings in practice	<p>Maxwell Chambers, Singapore's main arbitration venue, has invested extensively in virtual hearing technology and equipment since the onset of the COVID-19 pandemic. It now offers hybrid and virtual hearing arrangements as a matter of routine.¹¹ It also has collaborated with Arbitration Place and IDRC to establish the International Arbitration Centre Alliance, which focuses on collaboration to deliver physical and technical solutions to virtual hearings across borders and time zones.</p> <p>Most arbitration hearings that have taken place in Singapore in the past months have been either hybrid or fully virtual hearings. Hearing facilities at Maxwell Chambers continue to operate subject to mandatory health screening and social distancing requirements. Anecdotally most participants in virtual hearings have reported good experiences in both technical and substantive terms.</p>

¹¹ <https://www.maxwellchambers.com/2020/06/24/hybrid-and-virtual-hearings/>

**Other Local Practice
Notes/News**

Generally during the COVID-19 pandemic, court hearings in Singapore have been conducted through electronic means of communication, unless otherwise directed by the High Court. The court authorities have published a Guide on the Use of Video Conferencing and Telephone Conferencing & Video Conferencing for Hearings before the Duty Registrar to this effect.¹²

Physical access to the Supreme Court building continues to be limited due to social distancing requirements, and access is subject to health screening. The standard mode of hearings in the High Court remains for virtual hearings via video or telephone conferencing to be used. The Supreme Court has published a guide on the conduct of matters in the Phase 2 period of COVID-19 measures in Singapore.

SIAC's staff are continuing to work from home where possible, following local regulations, with a minimal on-site staff available to receive hardcopy documents on Mondays and Thursdays. Arbitral tribunals have been encouraged to require or permit parties to submit all documents electronically where possible.

¹² <https://www.supremecourt.gov.sg/docs/default-source/default-document-library/2020-03-27---guide-to-telephone-conferencing-and-video-conferencing.pdf>

¹³ [https://www.supremecourt.gov.sg/quick-links/visitors/covid-19/frequently-asked-questions-on-supreme-court-operations-in-the-immediate-post-circuit-breaker-period-\(from-2-june-2020\)](https://www.supremecourt.gov.sg/quick-links/visitors/covid-19/frequently-asked-questions-on-supreme-court-operations-in-the-immediate-post-circuit-breaker-period-(from-2-june-2020))





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Major arbitration institutions	Korea Commercial Arbitration Board (KCAB)
Procedural rules and guidance for virtual hearings	<p>KCAB International Arbitration Rules: Article 24(2) of the KCAB International Arbitration Rules 2016 expressly permits hearings and meetings to be heard at any physical location that the Tribunal deems appropriate. KCAB's 2016 International Arbitration Rules Commentary¹⁴ explains that this provision exists to enhance the efficiency and convenience of arbitrations, and videoconferencing would naturally be allowed by this reasoning.</p> <p>Seoul Protocol on Video Conferencing in International Arbitration: The Seoul Protocol represents an initiative in response to the advent of videoconferencing in arbitration. It was first introduced by a panel at the Seoul ADR Festival 2018¹⁵ and was republished by the KCAB on 18 March 2018. The panel had drafted the Seoul Protocol to enable users to easily identify potential issues with videoconferencing and to address them effectively. The protocol covers issues on witness examination, video-conferencing venue, documents, technical requirements, test conferencing and audio conferencing backup, interpretation, recordings, preparatory arrangements and recommended technical specifications.</p> <p>KCAB has not issued any specific guidance as to whether the arbitral tribunal may hold virtual hearings absent one party's consent.</p>
Virtual Hearings in practice	<p>The demand for virtual hearing services is rising significantly in South Korea. Compared to 2019 (where only 2 cases used virtual hearing), the number of cases and days of hearing by using Seoul IDRC virtual hearing services have increased to 17 cases (total 50 days) as of 15 July 2020.</p> <p>Video conferencing is supported in various ways as follows.</p> <ol style="list-style-type: none"> (1) Where persons involved in the arbitration can personally attend Seoul IDRC (seating based on social distancing standards) and some witnesses and hearing participants who find it difficult to attend in person can connect via video conference. (2) Connect with the parties using video conference while witnesses or some of the parties attend the Seoul IDRC conference room in person (seating based on social distancing standards) .

¹⁴ KCAB's 2016 International Arbitration Rules Commentary,

http://www.kcabinternational.or.kr/user/Board/comm_notice.do?BD_NO=172&CURRENT_MENU_CODE=MENU0015&TOP_MENU_CODE=MENU0014

¹⁵ <http://arbitrationblog.kluwerarbitration.com/2018/12/20/7th-asia-pacific-adr-conference-review-innovating-the-future-of-dispute-resolution/>

(3) Full remote is also possible (however, this has not been attempted yet).

(4) If both parties wish, both parties may personally visit Seoul IDRC, stay in separate rooms and conduct hearing via video conference (however, this has not been attempted yet).

Most of the virtual hearings were conducted either according to (1) or (2) above.

In addition, Seoul IDRC hearings are is conducted using cloud-based video-conferencing program (owned by Seoul IDRC itself), which guarantees stronger security than web-based programs, unless a party specifically requests connection via web-based program such as Zoom or BlueJeans.

Other Local Practice Notes

KCAB (and its hearing centre: Seoul IDRC) remains flexible in terms of virtual hearing arrangements.

Seoul IDRC checks identity of the attendees and their temperature when the person involved in the case visits the facility. If there are visitors from abroad, Seoul IDRC checks if such visitor appropriately quarantined him/herself for 14 days or if he/she obtained formal approval for quarantine exemption from government authorities.





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Major arbitration institutions	Thailand Arbitration Centre (THAC) Thailand Arbitration Institute (TAI)
Procedural rules and guidance for virtual hearings	<p>TAI</p> <p>Rule 4 of the TAI Arbitration Rules (No. 2) B.E. 2562 (A.D. 2019) reads as follows:</p> <p><i>"The following statement shall be added to be article 3/1 of the Arbitration Rules, the Thai Arbitration Institute, Office of the Judiciary:</i></p> <p><i>"Article 3/1 Any Electronic Arbitration which performs under these Rules, shall be considered to become effective under these Rules"</i></p> <p>As such, electronic arbitrations are permissible under the TAI's Arbitration Rules.</p> <p>Furthermore, the Rules of the Thai Arbitration Institute on Online Dispute Resolution B.E. 2563 (A.D. 2020) (TAI Online Rules 2020) which came into force on 1 August 2020 permit the resolution of disputes via online means using a system (e-System) established by the TAI. In summary, the Rules provide the following:</p> <ol style="list-style-type: none"> 1. The Online Dispute Resolution e-System of the TAI comprises of the following dispute resolution methods: Negotiation, Conciliation and Arbitration; 2. Submission of documents including correspondence between the parties must be done through the e-System established by the TAI; 3. Sending documents to an e-mail address specified by the parties or any other channel as specified in the e-System shall be deemed adequate service and the recipient shall be deemed duly served; 4. In conducting the arbitral proceedings, the arbitral tribunal shall only hear documentary evidence. If deemed necessary, the arbitral tribunal may hear witness(es), expert witness(es) or oral hearing(s). The arbitral tribunal may also hear any and all statements in writing, which relates to the issue of the case or the tribunal's jurisdiction, through the e-System; and 5. The arbitral proceedings shall only be conducted through the System unless there is a force majeure event or other circumstances as the tribunal deem appropriate.. 6. TAI has not issued any specific guidance as to whether the arbitral tribunal may hold virtual hearings absent one party's consent.

	<p>THAC</p> <p>Article 38 of the THAC Rules of Arbitration (THAC Rules) reads as follows:</p> <p><i>"The Arbitral Tribunal has the power to conduct the arbitral proceedings as appropriate by taking into consideration the principles of justice, expediency, and cost efficiency, and the equal opportunity for the parties to present their claim and defense as appropriate based on the circumstances of the dispute."</i></p> <p>The THAC Rules give the Arbitral Tribunal wide powers to convene the proceedings as they see fit. This is wide enough to include virtual hearings.</p> <p>Furthermore, THAC issued its Rules on Online Alternative Dispute Resolution Proceedings B.E. 2563 (A.D. 2020) (THAC ADR Rules) on 17 July 2020. In summary, the rules provide the following.</p> <ol style="list-style-type: none"> 1. Claims for Alternative Dispute Resolution, responses and supporting documents can be filed electronically. 2. The Arbitral Tribunal may examine evidence in an electronic format and has the discretion to examine witnesses or their statements online i.e. the Arbitral Tribunal may ask for an electronic hearing. <p>THAC has not issued any specific guidance as to whether the arbitral tribunal may hold virtual hearings absent one party's consent.</p>
<p>Other Local Practical Insights</p>	<p>Due to the recent enactment of these new rules, the TAI Online Rules 2020 and THAC ADR Rules were not yet in force during the government lockdown which was completely lifted on 1 July 2020. Their predecessors, the Rules of the Thai Arbitration Institute on Online Dispute Resolution B.E. 2558 (A.D. 2015) and THAC Rules on Electronic ADR Proceedings for Electronic Transactions B.E. 2558 (A.D. 2015) were in force, meaning that the TAI e-System was not yet available and there were no express rules under the THAC Rules allowing online hearings during the government lockdown period.</p> <p>With the Thai Government's success in tackling the outbreak of COVID-19, TAI and THAC did not have to shut down. Instead, the TAI and THAC adopted strict COVID-19 prevention measures on premises such as temperature screenings, social distancing, mask wearing and the frequent cleaning of premises. That said, TAI and THAC did also push for virtual hearings to take place on popular video conferencing platforms like Zoom, Microsoft Teams and Skype.</p>

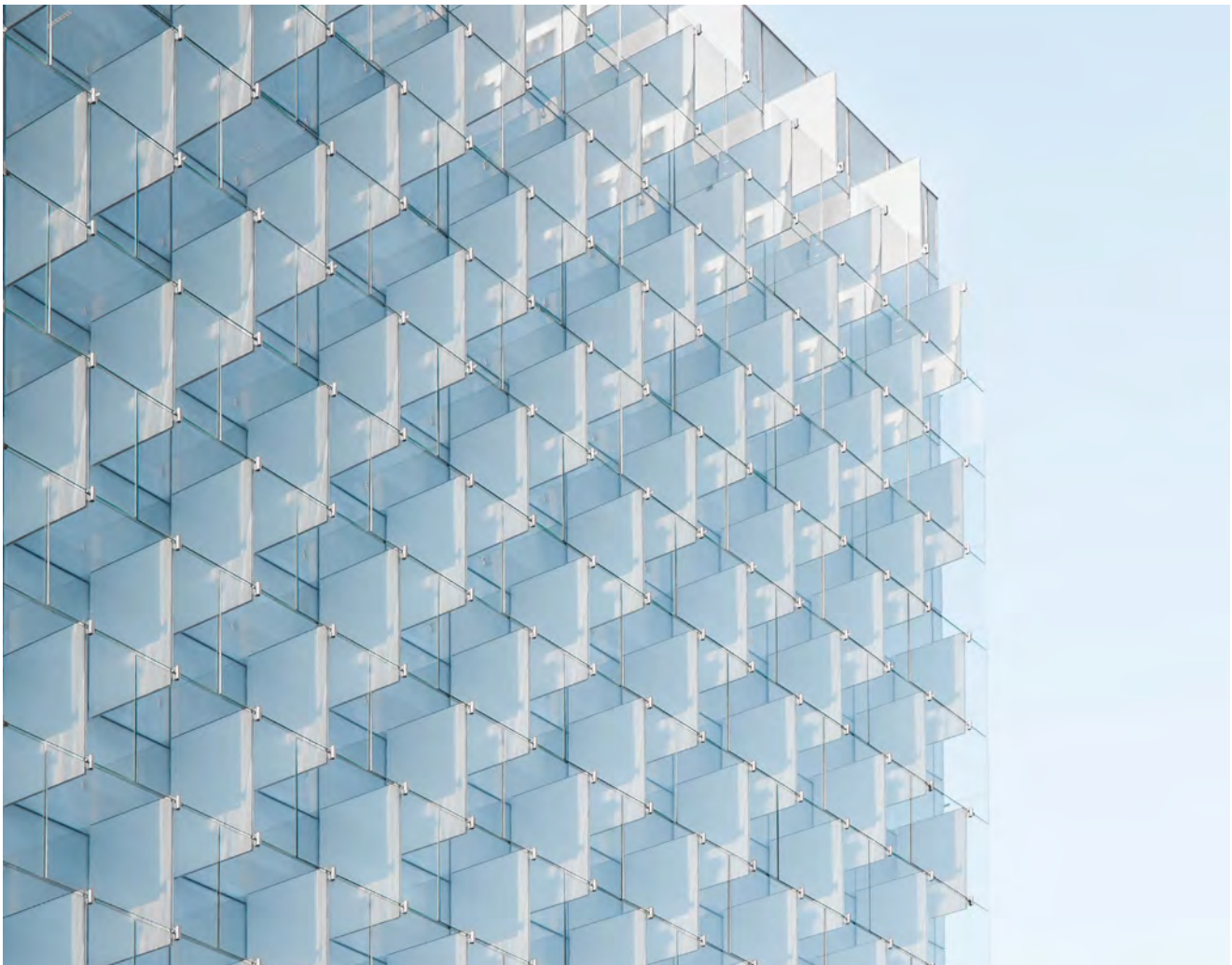
Other Local Practice Notes

Return to Normality

For the most part, access to justice in Thailand has returned to normal. Cases at the Thai court are no longer automatically postponed, and arbitrations can safely be done in person again. However, the ability and willingness of parties and arbitral institutions such as the TAI and THAC to conduct arbitrations in an electronic format has increased significantly. This is also true of the far more traditional Thai Courts which have also started to permit the use of hearings via platforms such as Skype and Zoom.

International Travel Ban

The Thai government's ban on international travel has also played a large part in the delay of Thai court and arbitration cases. While arbitral institutions and to a lesser degree, the courts, have permitted video hearings, the inability for witnesses based abroad to travel into the country has resulted in the indefinite delay in some proceedings. Despite this, it has also resulted in new and novel ways for the judicial system to manage witness trials. For example, using a Thai Embassy abroad to monitor the witness during a virtual trial to ensure that there is no coaching of witnesses.





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