

# International Arbitration Pre-Hearing Checklist

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A Checklist of key issues parties should consider when planning an arbitration hearing. This Checklist covers hearing format (remote or in-person), dates and locations, hearing sequence and time allocation, attendees, testimony, preparation of exhibits, technology use and other logistics.

This checklist has been updated in light of the extreme limits on in-person meetings during the 2019 novel coronavirus disease (COVID-19) crisis.

This checklist prepares counsel and arbitrators planning an international arbitration hearing, whether the hearing is in-person or conducted by remote video conference. For a form procedural order dealing with matters specific to remote hearings, see Standard Document, Procedural Order for Video Conference Arbitration Hearings ([W-025-0244](#)). A double asterisk (\*\*) in this checklist denotes items relevant only to in-person hearings.

## HEARING FORMAT (REMOTE OR IN-PERSON)

- Due process concerns, including:
  - the extent that a remote hearing would limit the tribunal's exposure to the evidence or the presentations from the parties, especially if the hearing involves witness or expert conferencing, protracted cross-examinations, large volumes of information, the physical inspection of a site or other evidence, or extended translations;
  - potential risk of injury to any party if the hearing is not conducted at the earliest available date, taking into account the difference in the dates on which the hearing could be conducted remotely and in person;

- the level of privacy and confidentiality afforded by available electronic platforms to conduct the hearing;
- the parties' equal access to and familiarity with the digital platform;
- the parties' opportunity to adequately prepare for the hearing where there are travel restrictions (including accessing their experts and witnesses); and
- mechanisms to ensure that no party gives improper assistance to a witness or expert testifying remotely during the hearing.
- Efficiency considerations such as:
  - the extent to which are participants in sufficiently close time zones so as to enable hearing sessions to be conducted for several hours each day;
  - the participants effectiveness with technology used in remote hearings;
  - the extent to which the remote hearing platform allows for adequate access to and presentation of the record in the course of the hearing;
  - the extent to which available technology provides a breakout virtual space for the arbitrators to deliberate on objections and disputes as they come up;
  - the extent to which available technology supports court reporting, interpretation, and access to evidence and demonstratives.

## HEARING DATES AND LOCATION

- When is the hearing scheduled to start?
- When is the hearing expected to end?
- Are there scheduled days off between the hearing's start and end?
- When will sessions start and end each day?
- When and for how long are breaks expected to take place during the hearing?
- Are hearing facilities booked with an appropriately sized hearing room? Does this include setup and breakdown time? \*\*
- Have arrangements been made so that the tribunal, each party and other hearing participants each have breakout space? \*\*

- If the hearing will be conducted remotely:
  - is there agreement on the platform to be used?
  - has there been a session for the tribunal and the parties to test the platform ahead of the hearing?

### HEARING SEQUENCE AND TIME ALLOCATION

- Is there a clearly defined hearing sequence? Specifically:
  - will the parties deliver opening statements, and if so, what is their expected duration?
  - is there a list of the witnesses to examine at the hearing?
  - is it clear in what order, approximately for how long and approximately when counsel will examine each witness?
  - will there be any direct examination of witnesses, and if so, how extensive can it be? Is there a different rule for expert witnesses?
  - will the parties deliver closing statements? If so, when and for how long?
- Are witness or expert conferences contemplated or possible? If so, on what terms?
- How is hearing time allocated? Specifically:
  - is there an agreement concerning the use of hearing time and how it will be divided between the parties?
  - if there is no agreement on use of hearing time, has the tribunal addressed the matter?
  - have the parties budgeted sufficient time into the expected hearing schedule to allow the tribunal to ask questions to counsel and witnesses?

### ATTENDEES

- Is the hearing open to the public? If so, what arrangements were made to that effect?
- Who is expected and allowed to attend the hearing for each party?
- Do any of the party's expected hearing attendees need visas or travel permissions to attend the hearing? Have those been obtained? \*\*
- If the hearing will be held remotely, who will be displayed on the screen? Do non-speakers have to mute their lines and close their cameras?
- Are there circumstances that may limit the time during which a witness can testify?
- Is a court reporter expected to be at the hearing, and if so:
  - has the court reporter already been identified and engaged?
  - how will the court reporting cost be allocated between the parties before definitive allocation of costs in the final award?
  - will the court reporter use LiveNote Stream or similar software, and if so, will the court reporter provide laptops or should the parties bring their own?
  - will rough transcript drafts be provided, and if so, when?
  - when is the final hearing transcript expected?
- Is an interpreter going to be at the hearing? If so:
  - has the interpreter already been identified and engaged?
  - how will the interpretation expenses be allocated between the parties before the definitive allocation of costs in the final award?

- will interpretation be simultaneous or consecutive? If simultaneous, is an interpretation booth available and has interpretation equipment been reserved and tested?

### WITNESS TESTIMONY

- Do the laws of the seat of the arbitration or any other applicable law require that fact or expert witnesses, court reporters or other personnel be sworn in? If so, are there any specific requirements that should be followed?
- Can fact or expert witnesses attend the hearing before they provide oral testimony or will they be sequestered? If the general rule is sequestration, will exceptions be allowed for fact witnesses who are also corporate representatives?
- Can witnesses or experts discuss the contents of the hearing or access the transcript before they provide oral testimony?
- Should the tribunal give directions on what and with whom a fact or expert witness can discuss during a break in his testimony? If so, is the rule the same on direct testimony and cross-examination?
- Is all testimony expected to be live or are witnesses expected to join by videoconference or telephone? Are any arrangements needed?
- What are the consequences if a fact or expert witness fails to appear?
- Should specific provisions be made regarding witness recall?

### DOCUMENTS

- Does the party have sufficient sets of exhibits ready for the hearing?
- Is there a party-agreed set of exhibits?
- How will exhibits be shown to witnesses and other hearing participants (hard copy, electronically or both)? Are arrangements made to display them? If the hearing is remote, have these arrangements been tested in advance?
- Does counsel need to make provisions regarding the introduction of impeachment evidence or any other new evidence during the hearing?

### HEARING SPACE SETUP AND TECHNOLOGY

- Have the parties agreed to the layout of the hearing room (for example, U shape or courtroom style)? \*\*
- Are information technology (IT) consultants or personnel expected to attend and assist a party during the hearing? If so, do any specific provisions need to be made in this regard?
- If screens are going to be used for the display of documents at the hearing, are the screens visible and conveniently placed? \*\*
- Does the party need any audiovisual equipment, for example projectors, and has it checked the compatibility with its computers?
- Is special hearing software going to be used at the hearing? If so, have appropriate arrangements been made?
- Will the parties need and have access to phone lines, printing, photocopying, wireless internet, scanning or other IT facilities during the hearing? If so, what arrangements will counsel make to that effect?

- Has all of the technology been tested before the commencement of the hearing?
- In the case of a remote hearing, is there a protocol in place if the connection is lost or there is some other kind of technology failure?

### LOGISTICS AND CATERING

- Do the hearing participants have expedited access to the building where the hearing is hosted, such as the use of access cards? \*\*
- Are special arrangements needed for delivery of hearing materials and setting up for the hearing, such as reserving the building's freight elevator? \*\*

- Have arrangements been made for the removal of documents and items at the conclusion of the hearing, such as the reservation of a freight elevator or provision of FedEx labels? \*\*
- Are the parties aware of their catering and food options, especially for lunch breaks? \*\*
- Are there hearing attendees with special building access needs, dietary restrictions or health conditions? \*\*

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