

PICCR GUIDANCE NOTE ON VIRTUAL HEARINGS

A. Introduction

1. This Guidance Note on Virtual Hearings (**Note**) is intended as a guide for use in virtual hearings for the taking of evidence in arbitrations conducted under the arbitration rules of the Philippine International Center for Conflict Resolution (**PICCR**) (**PICCR Rules**).
2. While this Note was prepared to assist arbitral tribunals and parties during a health emergency, it may be used in virtual hearings under PICCR Rules as necessary regardless of the existence of a health or other similar emergency. The AT and the Parties may agree to modify or add to these Note as they may deem appropriate.
3. This Note seeks to balance the need to ensure the fair and efficient resolution of disputes and the various reasons, as determined by the Parties or the arbitral tribunal, warranting the conduct of virtual hearings (e.g., the health and safety of the individuals involved in the arbitration, management of cost of arbitration, or inability of a witness, arbitrator, party representative, or any person required to participate in a hearing from attending a physical face-to-face hearing).

B. Definition of Terms

1. Virtual Hearing - means any type of hearing where any participant is joining by electronic means
2. Arbitral Tribunal or AT - means the sole arbitrator or the arbitrators appointed pursuant to the applicable arbitration rules
3. PICCR or Center - means the Philippine International Center for Conflict Resolution
4. Secretariat - means the PICCR Secretariat
5. Parties - means the claimant(s) and respondent(s) in the arbitration
6. Participants - means all persons allowed by the Arbitral Tribunal to join a Virtual Hearing

C. Pre-conditions for the holding of a Virtual Hearing

The Arbitral Tribunal (**AT**) may allow the holding of a Virtual Hearing if the following pre-conditions are met:

1. (a) the Parties agree in writing to the holding of a Virtual Hearing; or (b) the AT determines that there are circumstances that warrant the holding of a Virtual Hearing;
2. in case of pre-condition C(1)(b) above, the AT, after consulting the Parties, issues a procedural order (a) in accordance with the applicable law, arbitration rules, and the best interest of the arbitration; and (b) stating a determination that the holding of a Virtual Hearing does not unduly cause a disadvantage to any party to the arbitration. In this situation, the AT should ensure that the proceedings are conducted in a fundamentally fair manner and in accordance with both parties' due process rights.
3. the applicable arbitration law and arbitration rules do not disallow the holding of Virtual Hearings; and

4. the minimum logistical, technological and security requirements described in Part D.4 below, or their substantive equivalent, are met.

D. Preparations for the Virtual Hearing

1. Except for compelling reasons, the AT and the Parties shall use the platform provided or recommended by the PICCR. The Parties shall be given an opportunity to familiarize themselves with said platform. If needed, a member of the Secretariat may orient the Parties and the AT as to the basic functionalities of the recommended platforms.
2. After consultation with the Parties, the AT shall determine the Participants to the Virtual Hearing, which may include the tribunal secretary, the Parties' representatives, the Parties counsels, the Parties' witnesses and any other person, as may be determined by the AT or the Center's Case Administration Committee as necessary for purposes of ensuring a fair and efficient Virtual Hearing. The AT shall consider the role of each Participant in the Virtual Hearing when granting rights and access to controls during the Virtual Hearing.
3. The AT, or if needed, with the assistance of the Center, shall ask the Parties to provide information regarding (a) their and the other Participants' logistical, technological and security capabilities to participate in a Virtual Hearing, and (b) the availability of secure and suitable rooms for the Participants. For the avoidance of doubt, the AT and the Parties shall ensure the availability of the following:
 - a. Logistical requirements
 - Enclosed room with only one entrance and minimal ambient noise
 - Desk and chair for the Participant
 - Separate desk and chair for laptop
 - b. Technical requirements
 - Laptop with system compatible with applicable videoconferencing applications
 - Camera, whether or not integrated in the laptop
 - Microphone, whether or not integrated in the laptop
 - Headphones or earphones (preferably bluetooth capable)
 - Stable internet connection with speed of at least 10 mbps
 - c. Security requirements
 - Room, preferably located within the home or residence of the Participant, capable of being set up to ensure privacy of communication
 - Personal or home internet connection, as opposed to internet connection via public wifi
 - d. Minimum room layout requirements
4. The Center or AT shall consider the Parties' capabilities in determining the requirements to be adopted for the Virtual Hearing. In determining the said reasonable requirements and specifications, the AT may be assisted by information technology (IT) experts either nominated by the parties or appointed by the AT.

5. Parties shall submit hearing bundles in advance of the Virtual Hearing as well as any other audio-visual materials to the relevant Participants of the Virtual Hearing. Hearing bundles should be properly marked, paginated, indexed for easy reference, and must not contain any unwarranted markings, notes, or annotations. The Parties may agree on utilizing a shared virtual document repository to be made available to the AT and the witnesses for ease of reference, *provided*, the parties shall use their best efforts to ensure the security of the documents.
6. If the examination will include the use of demonstrative exhibits and presentation of certain records, the Party using such should ensure that such documents will be clear and visible on a screen to the AT, the other Parties, and the witnesses.
7. After consulting the Parties, the AT shall determine whether there is a need to require the participation of an interpreter and a stenographer in the Virtual Hearing. The AT shall also determine whether there is a need to require the participation of "on call" remote IT support personnel to assist the parties in case of a technical problem.
8. The AT and the Parties shall agree on whether they will require private virtual or breakout rooms for the arbitrators and for each Party to confer amongst themselves. These rooms shall be password protected to the extent possible. Separate lists of participants to these rooms shall be provided to the Secretariat in coordination with the Center's Case Administration Committee, who shall create the rooms. The Secretariat shall strictly adhere to the lists.
9. The AT and the Parties may agree on contingency plans in case of disruptions to the Virtual Hearing, such as but not limited to sudden technical failure, internet disconnection and power outages. These plans may include the use of alternative means of communication and postponement of the Virtual Hearing if one of the Parties or witnesses cannot reconnect to the videoconferencing platform.

E. Pre-hearing Test Run

1. The AT shall schedule a pre-hearing test run at least forty-eight (48) hours before the start of the first hearing or such time as the tribunal deems appropriate based on the circumstances. This is to ensure that all Participants are able to participate in an adequate manner. All Participants shall be required to attend the pre-hearing test run.
2. The AT shall assess the Participants' ability to properly participate in the proceedings. It shall determine, among others, the following:
 - a. The devices the Participants are using;
 - b. Whether those devices have suitable video and audio capability;
 - c. Whether each Participant has an adequate internet connection, taking into account internet speed and stability;
 - d. Whether the Participants are familiar with the video conferencing platform to be used; and
 - e. Whether the layout of the rooms to be used by the Participants are suitable to ensure privacy and confidentiality.

3. The AT shall test and assess each Participant's ability to (a) share screen content to the other Participants; (b) see all shared content from the other Participants; (c) share audio and video to the other Participants; and (d) receive audio and video from the other Participants. If the AT is not satisfied with the quality of any of the foregoing to effect that a party's ability to reasonably present its case during the Virtual Hearing cannot be met, it may reschedule another pre-hearing test or decide not to proceed with the Virtual Hearing. The AT may schedule as many pre-hearing test runs as necessary until it is satisfied with the quality of all the foregoing.
4. The AT shall ensure that all relevant documents to be used during the Virtual Hearing, e.g. hearing bundles, are in the possession of the appropriate Participants.
5. The AT shall provide instructions as to how questions would be presented to each witness. The AT shall ensure that witnesses are in a position to sufficiently hear and understand, as well as respond to, questions asked by the AT and party representatives. The Counsel of the Party calling the witness shall commit to conduct a test session with the witness in advance of the Virtual Hearing, in which the witness practices use of both the platform and the process of viewing the documents.
6. The AT shall consider preliminary matters, including whether there is a need to administer an oath or affirmation, and ensure that they are shall be appropriately addressed during the Virtual Hearing.
7. The AT and the Participants shall determine whether to record the Virtual Hearing and, if so, the manner of the recording. The AT shall not allow the recording of the Virtual Hearing without the consent of all the Participants.
8. Each Party shall designate one representative whose role is to monitor the persons present during the Virtual Hearing and to inform the AT if any issues arise, e.g. when a party representative is disconnected from the Virtual Hearing.
9. The AT may consider assigning the role of monitoring the Virtual Hearing, as well as admitting or removing Participants, to a tribunal secretary or to a person to be assigned by the Secretariat.
10. Upon the conclusion of the pre-hearing test run and after the AT's subsequent evaluation based on how the pre-hearing test run went, the AT shall finalize a list of Participants and inform the Parties that persons not listed shall not be allowed to join the Virtual Hearing. Any person who is not in the list of Participants shall be required to obtain prior approval from the AT before joining the Virtual Hearing.

F. Hearing

1. A final pre-hearing test run shall be conducted one hour before the scheduled hearing. All Participants are required to be present in such final pre-hearing test run.
2. The AT shall ensure that only the Participants are present at the Virtual Hearing. To this end, the AT shall take reasonable measures to verify the identity of the Participants. Any person not allowed by the AT to be present shall be removed from the Virtual Hearing.

3. Subject to Part G.4, all Participants must be present by audio and video at all times.
4. The top of the desks of all Participants must be visible to the AT at all times. All mobile phones and communication devices of all witnesses shall be muted and placed on the table and shall at all times remain visible to the AT and the Parties.
5. Devices used to participate in the Virtual Hearing shall be used strictly for appearing and speaking in the hearing. Participants are strongly encouraged to avoid multi-tasking, including checking emails or viewing documents.
6. All Participants shall disable any pop-up notifications on Outlook, Skype, or other applications to prevent these from appearing on the screen while the Participant is presenting or testifying.
7. All witnesses must be seated in such a way that the door should be seen in the camera frame all throughout the proceedings. This is to ensure that no other person may enter the room.
8. All Participants shall (a) guarantee that he or she is alone in the room, or that there are no non-Participants in the room and (b) disclose all the documents, gadgets, furniture, and appliances in the room. The AT may request the rotation of a Participant's camera at any time to ensure the veracity of such guarantee and disclosure throughout the course of the Virtual Hearing. The AT may examine any document, gadget, furniture, or appliance to ensure that no witness is being coached or has access to any unwarranted document or information.
9. The AT may allow the taking of breaks during the Virtual Hearing. Upon the resumption of the Virtual Hearing, the AT may require the Participants to redo the preceding item.
10. Subject to Part G.4, all Participants shall turn on their cameras at all times, but may be required to mute their microphones by the AT.
11. Unless allowed by the AT, no Participant shall be allowed to (a) produce a screenshot of his or her screen, (b) record or photograph the content of his or her screen or otherwise produce any record of the Virtual Hearing, and (c) publish any such screenshot, recording, or photograph.
12. Unless for reasons that are technical in nature and beyond the control of the Participant, no Participant shall leave the Virtual Hearing (a) until the end of the Virtual Hearing or (b) without seeking the AT's permission. If allowed by the AT to leave prior to the end of the Virtual Hearing, a Participant shall not communicate with any witness who has not yet testified until the end of the Virtual Hearing.
13. If a Party becomes unable to participate due to technical issues, the Party shall immediately notify the AT by any telecommunications medium the parties have previously agreed on and approved by the AT, of the technical issue and identify the last piece of information that was transmitted to the Party. The AT shall immediately stop the proceedings, and give the Party concerned a short description of any information that might have been exchanged after the Party became unavailable and before the notification. If the party concerned has no other comments or objections to the proceedings that have transpired while he/she lost connection, the AT will

proceed with the hearing of the case where it has stopped. If the party concerned has comments or objects, the AT would have to resolve the same and determine in its discretion how to proceed with the hearing.

If the Parties agreed upon contingency measures in case of technical issues, they may be employed to continue the proceedings if no party shall be unduly disadvantaged by the same.

14. The AT shall conduct the proceedings during the course of the Virtual Hearing at all times pursuant to the applicable arbitration rules.
15. The AT, after consulting the Parties, shall have the sole discretion, whether *motu proprio* or at a party's request, to terminate or reschedule the Virtual Hearing.

G. Examination Proper

1. The examination proper shall proceed in the same manner as an in-person examination to the extent allowed by the platform chosen by the Parties and the AT.
2. Sending any form of private messages to a witness during his or her examination is prohibited. The AT shall impose measures to ensure this, e.g., requiring the witness who is being examined to share his or her screen to the AT or the tribunal secretary. To this effect, private chat features shall be disabled on the videoconferencing platform.
3. During his or her examination, the witness shall not communicate with any of the Participants through any means, electronically or otherwise, except to respond to questions propounded by the counsels and the AT or to ask clarificatory questions relevant to his or her examination.
4. Witnesses may be excluded from the hearing or placed in virtual holding rooms while another witness is testifying. The AT shall have the sole discretion to exclude any other Participant.