

CLIENT ALERT

Amid Court Closures and COVID-Related Chaos, Arbitration Goes On

Apr.16.2020

While most courts are closed except for emergency matters, and parties in litigation are scrambling to determine how to amend their case schedules and respond to the uncertainties resulting from the COVID-19 outbreak, the arbitration world has emphatically responded: “The show must go on.” The flexibility of arbitration shines bright during this time of uncertainty and economic volatility, and allows for the conception of creative solutions for parties to resolve their disputes with minimal disruption.

On April 16, 2020, thirteen arbitral institutions published a [joint statement](#), emphasizing collaboration and an effort to “mitigate the effects of any impediments to the largest extent possible, while ensuring the fairness and efficiency of arbitral proceedings.” Indeed, many of the major arbitral institutions remain open for business and ready to assist parties, though their physical offices are, for the most part, closed and employees are working remotely.

Several of the major institutions have issued helpful guidance as to how arbitration may proceed efficiently despite the impacts of this health and economic crisis. For ease of reference, below is a compilation of such measures as of April 15, 2020:

- [ICC International Court of Arbitration](#)
- [American Arbitration Association/International Center for Dispute Resolution \(AAA/ICDR\)](#)
- [International Centre for Settlement of Investment Disputes \(ICSID\)](#)
- [JAMS Alternative Dispute Resolution](#)
- [International Institute for Conflict Prevention & Resolution \(CPR\)](#)
- [London Court of International Arbitration \(LCIA\)](#)
- [The German Arbitration Institute \(DIS\)](#)
- [Hong Kong International Arbitration Center \(HKIAC\)](#)
- [Arbitration Institute of the Stockholm Chamber of Commerce \(SCC\)](#)
- [Singapore International Arbitration Centre \(SIAC\)](#)

As the guidance illustrates, arbitral institutions generally remain open to new cases at this time. With respect to pending cases, parties can also proceed with minimal disruption, keeping in mind the following:

- *Electronic Document Management:* Parties should embrace filing and serving materials in electronic form, including signing key documents with electronic signatures or in counterparts. Note, however, the importance of first confirming whether this will create any risks to enforcement under the applicable law.
- *Cybersecurity Protocol:* As the arbitration shifts towards relying almost exclusively on electronic exchanges of sensitive information, the parties and tribunal should put in place a cybersecurity protocol that addresses data privacy and the protection of sensitive documents and communications. As cyber-attacks are on the rise, the parties, tribunal, witnesses,

and experts must all agree to strictly abide by the agreed-upon cybersecurity measures in order to protect the confidentiality and privacy of the proceeding.

- *Virtual Conferences and Hearings:* Unless there are significant technological impediments, the parties should consider proceeding with virtual conferences and hearings. This will first require putting in place a detailed procedural protocol to ensure that the hearing proceeds in a fair and expeditious manner, while also affording both parties an appropriate and equal opportunity to be heard. Preparation and a practice run using the technology are also imperative to a successful virtual meeting.
- *We're All In This Together:* Despite the adversarial nature of dispute resolution, the world as a whole has been impacted by this crisis and the parties will only benefit from cooperating to find equitable solutions to proceed with the pending arbitration. The enforcement of social distancing and other preventative measures may continue indefinitely, and reaching agreement on a reasonable path forward gives the parties a better chance of avoiding damaging delays and disruption that may only worsen over time.

Unfortunately, there is no one-size-fits-all approach to apply during this unprecedented time. The specific nature of the dispute, the applicable laws, and the unique circumstances of the parties and their preferences will certainly determine how this guidance is ultimately executed. Nonetheless, the flexibility of arbitration provides parties with the option to implement creative solutions to avoid prejudicial delay and resolve their disputes in an efficient and cost-effective manner. The parties and counsel prepared to be resilient and embrace this new world will be more likely to see timely resolutions to their disputes as opposed to potentially indefinite postponement.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Randa Adra

Counsel – New York

Phone: +1 212.895.4326

Email: radra@crowell.com

Ian A. Laird

Partner – Washington, D.C.

Phone: +1 202.624.2879

Email: ilaird@crowell.com

Laurence Winston

Partner – London

Phone: +44.20.7413.1333

Email: lwinston@crowell.com

Edward Norman

Counsel – London

Phone: +44.20.7413.1323

Email: enorman@crowell.com