

GUIDANCE NOTE ON REMOTE DISPUTE RESOLUTION PROCEEDINGS

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ALTERNATIVE METHODS OF DISPUTE
RESOLUTION “AMDR CENTRE ETEK”

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**PART ONE:
TECHNOLOGY AND
LOGISTICAL
MATTERS:**

**1. Preliminary
considerations:**

- 1.1. Procedures to be followed, schedules and deadlines, as well as participants to be involved in the remote proceeding should be planned and agreed in advance. All important information with regard to the proceedings should be circulated in a timely manner between such participants via email.
- 1.2. Technology, software, equipment and type of connection to be used in a remote proceeding should be agreed upon by the parties and tested with all participants in advance of any meetings or hearings.
- 1.3. Sufficient time frames should be allocated to eliminate possible connection or other technical failures once a meeting or hearing has begun. Technical assistance and monitoring of the status of connection at all stages of remote proceedings should be provided for wherever possible and arranged in advance.
- 1.4. The highest possible quality of audio and/or video connection available to parties should be used. Connections should be capable of showing a full image of the persons involved and clear audio of their pleadings and interventions. This will not only ensure more dynamic proceedings, but also eliminate potential delays in carrying out the proceedings.
- 1.5. The level of cybersecurity and security technology required to cover remote proceedings should be taken into consideration and agreed by the parties in advance of any remote meeting, conference, or hearing.
- 1.6. In the case of a semi-remote hearing, parties should discuss and agree in advance whether a party and a neutral may be physically in the same room. In this Guidance Note a neutral party is considered to be the Arbitrator, the Adjudicator, the Mediator etc., depending on the procedure. In the interests of equality, it is preferable that if one party must appear to the tribunal remotely, both parties should do so, unless the parties agree otherwise. In Arbitration proceedings both parties should participate in the same manner.

**2. Teleconferencing
centre:**

- 2.1. The teleconferencing centre should have technological and connection services of a high level and be able to provide necessary equipment, software, high-quality internet connection and minimal chance of signal interruptions.
- 2.2. ETEK can offer its facilities as a centre for the organisation of teleconferences, if the parties so wish, subject to that being agreed in advance with the Secretariat of the Chamber.

**3. Virtual
proceedings:**

- 3.1. Virtual hearing rooms are the preferred way to conduct hearings remotely. These are organised via the use of commercial digital platforms and can be equipped to create an atmosphere approximating face-to-face proceedings. All participants should be visible and audible in the chosen virtual hearing room. Simultaneous access to shared documentation through means such as screen sharing should also be provided.
- 3.2. A breakout room, or a separate meeting from the main virtual hearing room, can be used by a party for caucus proceedings. The other party should not have the ability to hear or view muted caucus proceedings as body language of participants, as well as their reaction might negate the whole idea of confidentiality of caucus meetings. This is particularly important in mediation proceedings.
- 3.3. In arbitration proceedings, separate virtual breakout rooms for tribunal deliberations and caucusing by parties are recommended. Relevant explanation of the process shall be provided in a timely manner by the organizer. However, party breakout rooms should never be visible or audible to neutrals to prevent the possibility of inadvertent ex parte communication. Likewise, tribunal deliberations should never be visible or audible to parties. Should a neutral or party find that they are able to hear a separate caucus within a breakout room, they should report this to all participants immediately and sever the connection so that the problem can be resolved.
- 3.4. In mediation proceedings, parties should allow Mediators to participate in their caucuses as necessary. However, Mediators should follow 3.3 above in the event they find they have been given access to a caucus untimely or unwittingly.

4. Interpreters, witnesses and experts:

- 4.1. While remote proceedings can provide an opportunity to increase the time efficiency of proceedings, witnesses and experts in some cases may require more time to present their information. Adjusted time frames may also be necessary for interpreters in remote proceedings, as consecutive interpretation is commonly used. Parties are encouraged to consider and agree the time and duration needed to present information and make oral pleadings before commencing remote hearings.
- 4.2. For further efficiency, parties should utilise electronic bundles for cross examination of witnesses and experts. Electronic bundles may be shared immediately before the commencement of the cross examination.

5. Documents:

- 5.1. In a remote proceeding, a list of documents to be presented in the remote hearing, including, but not limited to, memorials, affidavits, exhibits, slides, and graphics, should be available to all parties in digital form.
- 5.2. A procedure and a digital platform for transmission and storage of documentation for a remote proceeding should be agreed by parties before commencing the proceeding. This is to prevent duplicate communication of documents and to ensure the accessibility of all documentation that has been made available to third parties.
- 5.3. Parties should agree and state which documents can be shared with all or with only certain participants during the proceedings and to create secure digital platforms to this end. It is recommended to choose platforms which allow files to have permissions set to allow or restrict the ability to download and/or print the documents shared.
- 5.4. The use of electronic bundles is encouraged to allow participants to share content concurrently (for instance, in a “share screen” mode).

6. Confidentiality and privacy concerns:

- 6.1. It is imperative to ensure that the technology used allows all participants to feel secure about the confidentiality of the information they disclose in a remote hearing. Access to all virtual hearing rooms and breakout rooms should be strictly limited to their allocated participants.
- 6.2. Full names and roles of all participants to a remote proceeding including, but not limited to, council, parties, witnesses, interpreters, tribunal secretaries and computer technicians as well as their allocated virtual hearing and breakout rooms should be circulated between parties and neutrals in advance and strictly adhered to.
- 6.3. Physical rooms occupied by participants in a remote proceeding, either at their homes, offices, or in special hearing venues, should be completely separate from non-participants to the remote proceeding, soundproofed where possible, and have sufficient visibility to eliminate the possibility of the presence of undisclosed non-participating individuals in the room and/or any audio/video recording equipment that has not been agreed to. The use of headsets is recommended to increase both privacy and audibility of participants.
- 6.4. Parties may request an affirmation of privacy from all participants at the commencement of proceedings.

**PART TWO:
LEGAL MATTERS AND
PROCEDURAL
ARRANGEMENTS:**
7. Dispute resolution
clauses:

- 7.1. In the context of the proceedings, it is important to demonstrate parties' affirmative agreement to the use of a particular type of remote proceeding.
- 7.2. It is each party's responsibility to ensure compliance of their procedures with relevant and applicable domestic legislation. The Guidance Note should be used only where it is not in conflict with applicable laws and regulations.
- 7.3. Due to differences in legal opinions and interpretations across jurisdictions, remote means of reaching a resolution to a dispute might be questioned by some enforcing domestic courts or may be used a ground for challenge by parties. Parties should be aware of this possibility and adjust where necessary to ensure enforceable resolutions to disputes.
- 7.4. Even though digital technology is rapidly becoming a widely accepted business and legal tool, it is advisable to keep key procedural documents in both soft and hard copies, containing signatures of participants where necessary. The same applies to arbitral awards, mediated settlements or any other outcomes of remote dispute resolution proceedings, as some national courts may reject enforcement if such documents were produced solely via digital means.
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8. Choice of neutrals
(Arbitrators,
Mediators,
Adjudicators, etc.):

- 8.1. In order to assure efficiency in remote dispute resolution proceedings, consideration of a potential neutral's practical acquaintance with and a positive attitude towards remote proceedings is strongly recommended.
- 8.2. Remote proceedings inherently limit personal connections between all participants to a dispute. Therefore, active listening and verbal engagement, expressive body language and clear speech, as well as any other step necessary to create a comfortable professional environment should be used. This is particularly important for neutrals who should take every opportunity to assure parties of their full attention to proceedings.
- 8.3. Arbitrators in remote arbitration proceedings should make themselves visible and audible to all the parties in the proceeding at all times, save in cases of deliberations and/or discussions between members of the arbitral tribunal.
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**PART THREE:
INSTITUTIONAL AND
AD HOC PROCEEDINGS:**

9. Institutional Proceedings:

- 9.1. Where parties have agreed to use institutionally administered procedures, parties should consult directly with the applicable institution and follow any guidelines on remote proceedings the relevant institution has issued (Arbitral Centre).
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10. Ad hoc
proceedings:

- 10.1. ETEK recognises that institutional proceedings may be more efficient for some disputes. However, for the purposes of the present Guidance Note, ETEK emphasises that flexibility is one of the greatest advantages of ad hoc proceedings, as they allow parties to orchestrate resolution of their disputes, both physically and remotely, in accordance with the financial and logistical expectations, preferred time frames, and technical abilities of parties.
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**APPENDIX:
CHECKLIST PRIOR
TO CONDUCTING
REMOTE
DISPUTE
RESOLUTION
PROCEEDINGS:**

No.	Description	Yes/No
1.	Relevant institutional guidelines on remote proceedings have been consulted where applicable.	
2.	Domestic laws and regulations regarding the validity and enforceability of remote dispute resolution outcomes have been considered.	
3.	A record of parties' affirmative agreement to use remote proceedings has been made.	
4.	Relevant scheduling amendments or extensions to facilitate remote proceedings have been agreed to by both parties and a record made.	
5.	A neutral(s) has been selected that has practical familiarity with remote proceedings and the required technology.	
6.	An online video/audio conferencing platform has been agreed by parties and a record made.	
7.	Cybersecurity requirements have been considered, agreed by parties and a record made.	
8.	Technical support for all participants to the remote proceeding has been arranged.	
9.	A platform and procedure for transfer and storage of documentation has been agreed by parties and arranged.	
10.	A list of attendees to the remote proceeding has been circulated and agreed by parties.	
11.	An order of appearance and timeline making consideration for specific needs of witnesses and for translation where necessary has been circulated and agreed by parties.	
12.	A list of documents to be presented by each party in the remote proceeding has been distributed.	
13.	Electronic bundles for use in examination and in cross examination have been prepared and timely distributed.	
14.	Attendees have chosen physical rooms that are fully enclosed and separated from non-attendees, those rooms have been soundproofed where possible, and headsets are in use where possible.	
15.	Attendees' physical rooms can be made visible to all participants to the extent to show that no individual or recording device is present that was not agreed to.	
16.	A procedure for virtual breakout rooms and for deliberations and private caucusing has been agreed by parties and arranged.	
17.	All software as well as telephone and internet connections have been tested beforehand and are of sufficient audio-visual quality.	
18.	Screen sharing is available to participants and has been tested beforehand.	



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