

Dispute Resolution before State Courts and Arbitral Tribunals in the Times of Pandemic

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Moscow, 10. December 2020

1 – Has COVID-19 been disruptive?

- ◆ Reduced production and reduced workforce
- ◆ Disruption with long-lasting effects on businesses
- ◆ Delay

- ◆ Various Extremes in Dispute Resolution processes:
 - general courts closure, hearings postponed, delays in hearings
 - increased use of remote hearings with the adapted platforms and holding hearings using WhatsApp and other simplified tools
 - extremely strict anti-pandemic measures and silence on how to proceed under such circumstances
 - recommendations, instructions, protocols of institutions
 - analysis of platforms, their technical and functional capabilities, testing, training, evaluation of legislative environment

2 (1) - Courts turn to technology for pandemic response

Draft law "On Amendments to the Arbitration Procedure Code of the Russian Federation, the Civil Procedure Code of the Russian Federation, the Code of Administrative Procedure of the Russian Federation and other legislative acts of the Russian Federation" (ID 01/05 / 10-20 / 00109498, 19.10.2020).

The amendments will affect:

- APC RF
- CPC RF
- CAP RF

Use of a video-conference system:

- Article 153.1 of APC RF
- Article 155.1 of CPC RF
- Article 142 of the CAP RF

Resolution of the Presidium of the Supreme Court of the Russian Federation and the Council of Judges of the Presidium of the Supreme Court of the Russian Federation dated 08.04.2020 (as amended on 29.04.2020)

2 (2) - Courts turn to technology for pandemic response

Draft law "On Amendments ..."

The law should address also the following issues:

- how to apply for remote hearings (should both parties agree on that, has the court the power to rule on that without parties consent)?
- the rules of signing the applications and other procedural documents (with simplified or qualified electronic signature, when and on which platform)?
- how to notify the parties (what is the due standard for that)?
- by what means the parties should interact with each other and with the court?
- would be sending the court decisions by electronic means possible?

etc.

3 (1) – Responses of the Arbitral Institutions to the Pandemic Challenges

◆ General measures:

- cancelled or postponed hearings
- no travel or business trips
- working from home
- meetings conducted using video conferencing systems
- anti-pandemic protective measures

ICC COVID 19 Response Group

◆ Specific measures:

- switching to electronic communication with the parties (sending requests for arbitration, requests for appointment emergency arbitrator, etc.) by e-mail (ICC, SCAI, HKIAC, LCIA, VIAC, ect.)
- switching to semi-remote working mode and conducting all communication with the parties by e-mail (SIAC for ex.)
- using video conferencing systems
- instructions and guidelines published on how to behave in a pandemic of the coronavirus (ICC, SCC, HKIAC, SIAC, VIAC, AAA/ICDR, CIArb etc.)

3 (2) – Role of the Arbitration Institutions

◆ Digitally advanced institutions:

- online platforms for dispute management
- portals with a modern interface
- possibility to digitally present procedural documents, make necessary payments, have convenient access to all submissions made during the arbitration procedure
- online hearings platform and assistance
- additional services as need (for ex., translation services, trial secretaries, etc.)

◆ Modern Rules:

- holding hearings remotely (in part or completely) (for ex., VIAC Rules, LCIA Rules 2020, ICC Rules new edition that will enter into force in 2021)
- special mechanisms such as emergency arbitrator, expedited proceedings, arb-med-arb

◆ Timely and Suitable Guidelines:

- how to manage things before, during and after virtual hearing (ICC, AAA, SCAI, CPA, etc.)

4 – The Future of Dispute Resolution following the Pandemic

◆ Profile of Disputes:

- in short term: Force Majeure / Frustration / Impossibility; Insurance Disputes;
- in medium term: Insolvency litigation; Merger and Acquisitions; Consumer Claims; Employment

◆ Moving from Litigation to Arbitration

◆ The Hybrid Hearing

◆ Management of the legal risks

◆ Prevention and Mitigation Disputes