

VIRTUAL HEARINGS AND ALTERNATIVE ARBITRAL PROCEDURES IN THE COVID-19 ERA: EFFICIENCY, DUE PROCESS, AND OTHER CONSIDERATIONS

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ABSTRACT

Since January 2020, many national governments have implemented stringent measures to counteract the spread of COVID-19. An unintended side effect of these measures is the disruption to international arbitration proceedings, causing not only administrative and logistical complications, but also, in some cases, having substantive effects on the outcome of the case. In the midst of the restrictions imposed due to the global pandemic, tribunals and parties have been looking for ways to mitigate the disruption so that proceedings may continue, and disputes could be resolved in an efficient manner. In many cases, these alternative procedures and methods may well be an acceptable second choice. However, if the solutions are not tailored to the challenges presented by each arbitration, they may in fact present more issues than the problems they are attempting to solve. At minimum, it may create more inefficiencies and leave a mess for parties and tribunals to clean up after the dust settles. In more extreme cases, there may be a danger that parties may be deprived of a sufficient opportunity to be heard such that minimum due process requirements are not met.

This article discusses the potential issues with respect to costs, efficiency, and due process arising from virtual or online hearings, documents-only proceedings and bifurcated proceedings.

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