

# E-Measures

## International Arbitral Institutions' Responses to COVID-19\*

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### Abstract

*This article will briefly and non-exhaustively examine the emergency measures taken by some international arbitral institutions in response to the COVID-19 pandemic. Such emergency measures, as will be seen, were primarily and due to necessity geared towards moving arbitrations online. Section 1 briefly describes some reasons why the status quo prior to COVID-19 for certain arbitral institutions likely made it necessary to implement e-measures: in other words, it will provide examples of the types of constraints that may have previously prevented arbitral institutions from being more electronic/online. Section 2 broadly identifies the e-measures taken by arbitral institutions, and extracts some general trends therefrom. Finally, Section 3 will offer some brief conclusions and thoughts concerning the future of such e-measures.*

**Keywords:** international arbitration institutions, COVID-19, availability of e-filing, e-measures.

The COVID-19 pandemic that began sweeping the globe in December 2019 has had a profound impact on nearly all industries and markets in the world and has disrupted business-as-usual across the board, including international arbitration and dispute settlement. International arbitral institutions have responded in a variety of ways to the challenges posed by COVID-19; such challenges may include *inter alia* domestic mandatory quarantine/stay-home-orders and border closures. Such governmental regulations, of course, may affect not only the ability of parties and tribunals to convene to hold hearings, but also other more basic but extremely fundamental aspects of international dispute settlement and arbitration, such as the ability to staff an international dispute settlement institution's secretariat or transmitting hard copies by post of submissions, requests to file a new case and the notification of originals of awards.

However, the very characteristics of international arbitration – arbitrations often involve parties and arbitrators based in different geographic locations in disputes administered by secretariats that market themselves as designed to manage international and flexible disputes – has for the most part enabled arbi-

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tral institutions to quickly respond to the new demands and challenges posed by the COVID-19 pandemic.

This article will briefly and non-exhaustively examine the emergency measures taken by some international arbitral institutions in response to the COVID-19 pandemic. Such emergency measures, as will be seen, were primarily and due to necessity geared towards moving arbitrations online. In this respect, such emergency measures were by and large electronic measures, which is encapsulated rather cleanly by the term ‘e-measures’. These e-measures, in turn, have shifted traditional international dispute settlement more in the direction of online dispute resolution (ODR),<sup>1</sup> even if only temporarily (although it remains to be seen whether some of the e-measures will be a catalyst for future rule revisions and permanent change in procedural operations, which may already be occurring, as will be touched upon later in this article). In general, the measures taken by arbitral institutions are an extension of the pre-existing shift towards electronic dispute resolution.<sup>2</sup> Nonetheless, for some institutions, the e-measures they implemented may have represented a tectonic jolt towards the utilization of e-technology in disputes.

The examination of such e-measures herein does not purport to be exhaustive, nor is it likely that it will be entirely current once published given the rapidly evolving nature of the situation and the ad hoc nature of approaches, but it aims to provide both a sample of the e-measures adopted by international arbitral institutions while also attempting to identify some trends from this admittedly non-exhaustive sample.

This article is structured as follows: Section 1 briefly describes some reasons why the status quo prior to COVID-19 for certain arbitral institutions likely made it necessary to implement e-measures: in other words, it will provide examples of the types of constraints that may have previously prevented arbitral institutions from being more electronic/online. Section 2 broadly identifies the e-measures taken by arbitral institutions, and extracts some general trends therefrom. Finally, Section 3 will offer some brief conclusions and thoughts concerning the future of such e-measures.

## 1 Status quo in International Arbitration Pre-COVID-19

As mentioned above, the trend in international arbitration pre-COVID was already moving in the direction of making arbitral proceedings more electronic, due in part to advancements and access to technology, as well as user demand and

1 See, e.g., M. Philippe, ‘Offline or Online? Virtual Hearings or ODR?’, *Kluwer Arbitration Blog*, 26 April 2020, available at: <http://arbitrationblog.kluwerarbitration.com/2020/04/26/offline-or-online-virtual-hearings-or-odr/>.

2 For a comparison on the progression of this trend within the last 20 years, see ‘Operating Standards for Using IT in International Arbitration’, *Using Technology to Resolve Business Disputes*, ICC IC Arb. Bull. Special Supplement (ICC Publishing, 2004) 75 and ‘Information Technology in International Arbitration’, *ICC Commission Report* (ICC Publishing, 2017), available at: <https://iccwbo.org/content/uploads/sites/3/2017/03/icc-information-technology-in-international-arbitration-icc-arbitration-adr-commission.pdf>.

competitive considerations.<sup>3</sup> As one basic example, email has largely replaced facsimile and letters sent in hard copy by post in most arbitral institutions due to considerations such as efficiency, accessibility and cost. Indeed, some arbitral institutions' e-measures emphasized that many of the available tools in response to the COVID-19 pandemic had already been in existence for years, such as the possibility to hear witnesses or hold hearings virtually (*i.e.* by video or teleconference).<sup>4</sup>

However, the normal arbitration rules of some institutions or restrictions that are imposed by the seat of the arbitral institution may act as barriers preventing arbitral institutions from going fully electronic or making the shift to ODR. For example, the International Centre for Settlement of Investment Disputes (ICSID) is obligated to receive original copies of all submissions from the parties, as well as to retain the originals of the awards, and archive them in perpetuity; that is, ICSID acts as a depository.<sup>5</sup> Thus, only a modification of the rules (a process which has in fact been underway at ICSID since 2016) will formally remove such a barrier. Similarly, the default procedural rules of some arbitral institutions may only permit parties to file submissions via hard copy, requiring the agreement of all the parties to a dispute for e-filing to be permitted.<sup>6</sup>

In addition, requirements linked to the enforceability of an award can pose major limitations on the ability of arbitral institutions to go fully electronic. In order for an award to be enforceable under the New York Convention, it is necessary for the parties to have *inter alia* the original of an award (often necessitating the physical signature of the arbitrator(s) or a certified copy).<sup>7</sup> Likewise, in order to be enforceable, awards rendered by ICSID – which operates outside of the ambit of the New York Convention by its terms<sup>8</sup> – must be 'signed' and 'certified'.<sup>9</sup> None of the relevant, in-force ICSID regulations specify whether such signatures or certification can be electronic. (However, this is likely to change, as the 2006 ICSID Arbitration Rules – the rules currently in force – are in the process of being revised, and the proposed new rules would explicitly enable tribunals to

- 3 K. Chen Nobles, 'Emerging Issues and Trends in International Arbitration', *California Western International Law Journal*, Vol. 43, No. 1, 2012, p. 77, at 85-86.
- 4 See International Chamber of Commerce, 'ICC Guidance Note on Possible Measures Aimed at Mitigating the Effects of the COVID-19 Pandemic', 9 April 2020, available at: <https://iccwbo.org/content/uploads/sites/3/2020/04/guidance-note-possible-measures-mitigating-effects-covid-19-english.pdf> (ICC Guidance COVID-19).
- 5 ICSID Administrative and Financial Regulations, Art. 28; ICSID Arbitration Rules (2006), Art. 48.
- 6 See, e.g., Art. R31 of the Code of Sports-related Arbitration (2019 edition).
- 7 Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 330 UNTS 38; 21 UST 2517; 7 ILM 1046 (1968), Art. IV (New York Convention).
- 8 See, Art. 54(1) of the Convention on the Settlement of Investment Disputes between States, and Nationals of Other States (opened for signature 18 March 1965, entered into force 14 October 1966) (ICSID Convention).
- 9 Arts. 49 and 54(2) of the ICSID Convention; ICSID Arbitration Rules 47 and 48; and ICSID Additional Facility Rule 53.

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electronically sign awards,<sup>10</sup> in addition to other revisions specifically geared towards making proceedings more electronic.) Some arbitral institutions may face similar constraints if challenge of awards or decisions before the domestic courts of the seat is a possibility.<sup>11</sup>

Therefore, even this small sample illustrates the type of rules or considerations that arbitral institutions are faced with that may have traditionally prevented them from going fully electronic. However, as the wave of COVID-19 swept across the world and governments quickly enacted regulations in attempts to curb the spread of the virus among the population, arbitral institutions were faced with hurdles to their normal operations, such as the inability of parties to mail submissions or correspondence, or even the ability to have staff physically working at the institutions' premises, making requirements of physical copies or non-electronic communication a hindrance to the progression and functionality of arbitral disputes.

## 2 Trends in Arbitral Institutions' E-Measures

Faced with challenges to normal arbitral procedural operations, several arbitral institutions responded by issuing e-measures designed to ensure that new cases could be registered and initiated, and that existing cases could proceed without undue delay. The bulk of the e-measures examined herein began to be published in March 2020. While it is not possible due to spatial constraints to examine all of the e-measures enacted by every arbitral institution, this article attempts to examine some of the e-measures that have been published by certain major international arbitration secretariats, namely, the American Arbitration Association (AAA)/International Centre for Dispute Resolution (ICDR), the Court of Arbitration for Sport (CAS), the International Court of Arbitration of the International Chamber of Commerce (ICC), ICSID, the Hong Kong International Arbitration Centre (HKIAC), the London Court of International Arbitration (LCIA), the Stockholm Chamber of Commerce (SCC) and the Swiss Chambers' Arbitration Institution (SCAI). On the other hand, at least one major player has not published any measures on its website at the time of writing, notably the Permanent Court of Arbitration (PCA).

The range of the e-measures taken by the above arbitral institutions is striking: for example, some institutions issued brief statements while others published extensive guidance notes.<sup>12</sup> Some institutions temporarily modified their

10 See International Centre for Settlement of Investment Disputes, 'Proposed Revised Arbitration Rule 59(2)', Working Paper No 4, Vol. 1, p. 329, February 2020, available at: [https://icsid.worldbank.org/en/Documents/WP\\_4\\_Vol\\_1\\_En.pdf](https://icsid.worldbank.org/en/Documents/WP_4_Vol_1_En.pdf); also see, e.g., *Proposed Revised Institution Rule 4 and Proposed Revised Arbitration Rule 4*, requiring that requests for arbitration and all other documentation be only filed electronically, *ibid.*, pp. 278 and 286.

11 See, e.g., Arts. R46 and R57 of the Code of Sports-related Arbitration (2019 edition) (providing that CAS awards can be challenged before Swiss courts "within 30 days from the notification of the award by mail or courier").

12 See, e.g., ICC Guidance COVID-19, *supra* note 4.

rules in order to become more electronic,<sup>13</sup> while others simply issued directives not explicitly based in any existing regulation of that institution<sup>14</sup> (although they might certainly derive from features already built into the arbitral rules or practice).<sup>15</sup> The duration of respective e-measures is also not uniform, with some being of a limited, temporary nature,<sup>16</sup> while others are indefinite.<sup>17</sup> Several arbitral institutions provided information concerning the functioning of the secretariats' facilities, that is, explicit assurances that secretariats were functioning either with remote work or in shifts at the institutions' facilities.<sup>18</sup>

While striking, the range of arbitral institutions' e-measures is not entirely surprising considering the differences in, for example, the nature and complexity of the disputes typically handled by the different institutions identified above, not to mention the differences in their procedural rules. For example, CAS, which could be considered a 'boutique' arbitral institution as its mandate is for sports-related disputes, has default expedited timelines for its appeal arbitration proceedings laid out in its procedural rules, some of which cannot be derogated from if applicable (e.g. 21 days from the date of notification of an appealed decision to file a statement of appeal, and 10 more days to file the appeal brief<sup>19</sup>), and accordingly one of CAS' e-measures extended the period of a first-time, automatic extension available under the rules from 5 days to 14 days upon request from a party.<sup>20</sup> In contrast, at other arbitral institutions, the first deadline for a substantive submission might not occur until up to a year or more after the dispute is

- 13 See, e.g., Court of Arbitration for Sport, 'CAS Emergency Guidelines of 16 March 2020' (modified 24 April 2020) (on file with author) and Court of Arbitration for Sport, 'CAS Emergency Measures of 16 March 2020' (modified 15 May 2020), available at: [www.tas-cas.org/fileadmin/user\\_upload/CAS\\_Guidelines\\_COVID-19\\_15.05.20.pdf](http://www.tas-cas.org/fileadmin/user_upload/CAS_Guidelines_COVID-19_15.05.20.pdf) (together, CAS Emergency Measures).
- 14 See Hong Kong International Arbitration Centre, 'HKIAC Service Continuity During COVID-19', 27 March 2020, available at: [www.hkiac.org/news/hkiac-service-continuity-during-covid-19](http://www.hkiac.org/news/hkiac-service-continuity-during-covid-19) (HKIAC Continuity Service).
- 15 See ICC Guidance COVID-19, *supra* note 4, Para. 7 (noting that "many of these techniques are not new").
- 16 See, e.g., CAS Emergency Measures, *supra* note 13; American Arbitration Center International Center for Dispute Resolution, 'COVID 19 Resource Center', available at: [https://go.adr.org/covid19.html?\\_ga=2.266173005.351640490.1584719392-888347822.1584719391](https://go.adr.org/covid19.html?_ga=2.266173005.351640490.1584719392-888347822.1584719391) (AAA/ICDR COVID-19 Resource Center).
- 17 See, e.g., International Centre for Settlement of Investment Disputes News Release, 'Message Regarding COVID-19', 11 March 2020, available at: <https://icsid.worldbank.org/en/Pages/News.aspx?CID=358> (ICSID Emergency Measures); International Centre for Settlement of Investment Disputes, ICSID News Release, 'Message Regarding COVID-19 (Update)', 19 March 2020, available at: <https://icsid.worldbank.org/en/Pages/News.aspx?CID=361> (ICSID Emergency Measures Update); HKIAC Continuity Service, *supra* note 14.
- 18 See, e.g., Stockholm Chamber of Commerce, 'COVID-19: How the SCC is Responding', 18 March 2020, available at: <https://sccinstitute.com/about-the-scc/news/2020/covid-19-how-the-scc-is-responding/> (SCC Response COVID-19) (noting that the case management team is fully operational and working in shifts at the office and remotely); ICSID Emergency Measures Update, *supra* note 17 (noting that "the ICSID Secretariat is fully-operational from remote work-stations and coordinating with Tribunals and parties to minimize disruptions to cases").
- 19 Arts. R49 and R51 of the Code of Sports-related Arbitration (2019 edition).
- 20 See Art. R32 of the Code of Sports-related Arbitration (2019 edition), CAS Emergency Guidelines, *supra* note 13.

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initiated, and pleading deadlines are not codified in the arbitral rules, making an e-measure like the one described above less necessary; for example, in ICSID proceedings, the procedural timetable of the parties' submissions is typically set in the first procedural order.<sup>21</sup> Geopolitical realities also seem to have been a factor in certain substantive differences in e-measures: for example, the HKIAC's e-measures included health precautions, such as mandated temperature checks for persons entering the HKIAC's facilities, with differences in the measures depending on the country of origin of travel for the person in question,<sup>22</sup> which seems to reflect regional requirements,<sup>23</sup> and which none of the other reviewed arbitral institutions' e-measures addressed.

Yet, despite the differences in institutions and the exigencies demanded by type of dispute, it is clear that the overarching trend is that such e-measures are geared towards making arbitrations as electronic as possible while minimizing delays/disruptions, such as by permitting e-filing (in lieu of sending submissions by courier)<sup>24</sup> or mandating that all communication with the institution be done via email (in lieu of letter or facsimile)<sup>25</sup> (the LCIA's e-measures even discourage telephone contact with the secretariat).<sup>26</sup> To this end, the SCC has made its online e-filing platform available for free for ad hoc arbitrations commenced during the COVID-19 pandemic.<sup>27</sup>

In order to provide an overview of the various e-measures published by the arbitral institutions identified above, a table is annexed to this article, and visuals are contained in the text below. In addition to being non-exhaustive, the table only lists published measures; therefore, it cannot be ruled out that institutions may have also developed non-published, non-official institutional practices in response to the COVID-19 pandemic.

Within the overarching objective of making arbitrations as online as possible, an analysis of arbitral institutions' e-measures reveals several commonalities, both with respect to (a) which procedural stages were most frequently the subject of e-measures, and (b) which methods were introduced to try to mitigate disruption from the pandemic, as well as to ensure the proceedings could continue both

21 See, e.g., *Mobil Investments Canada Inc. v. Canada*, ICSID Case No ARB/15/6, Procedural Order No 1, Ann. A, 24 November 2015.

22 See HKIAC Continuity Service, *supra* note 14.

23 See, e.g., Maxwell Chambers, 'Precautionary Measures in Response to Novel Coronavirus (COVID-19) Outbreak', available at: [www.maxwellchambers.com/2020/02/13/precautionary-measures-in-response-to-novel-coronavirus-outbreak/](http://www.maxwellchambers.com/2020/02/13/precautionary-measures-in-response-to-novel-coronavirus-outbreak/).

24 See, e.g., ICSID Emergency Measures Update, *supra* note 17 (encouraging the parties to file submissions only electronically, and to inform ICSID if they send something by mail); AAA/ICDR COVID-19 Resource Center, *supra* note 16.

25 See International Chamber of Commerce, 'Urgent Communication to DRS Community', 17 March 2020, available at: <https://iccwbo.org/media-wall/news-speeches/covid-19-urgent-communication-to-drs-users-arbitrators-and-other-neutrals/> (ICC Urgent Communication) (encouraging all communication to the ICC to be made via email).

26 London Court of International Arbitration, 'LCIA Services Update: COVID-19', 18 March 2020, available at: [www.lcia.org/lcia-services-update-covid-19.aspx](http://www.lcia.org/lcia-services-update-covid-19.aspx) (LCIA Update COVID-19).

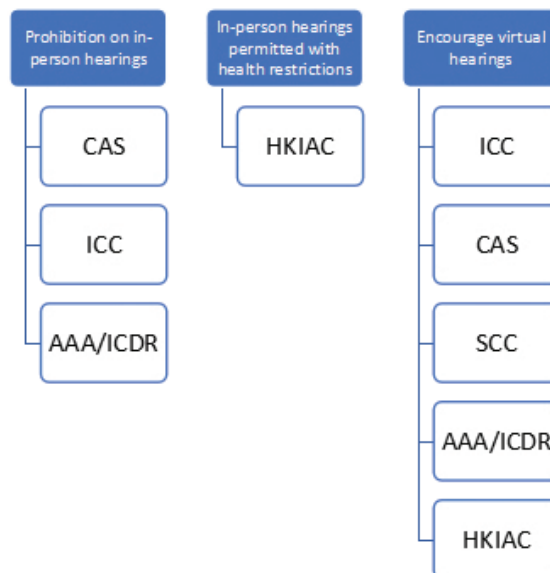
27 See SCC Response COVID-19, *supra* note 18.

from the perspective of the functioning of the arbitral tribunal and of the administering secretariat itself.

With respect to point (a) above, the stages of the proceeding that are most commonly addressed in arbitral institutions' e-measures are: (i) the initiation of new cases; (ii) the filing of pleadings; and (iii) hearings. As mentioned above, typically stages (i) and (ii) of the proceeding require the parties to file pleadings by mail, while the latter (iii) usually involves (international) travel and gatherings of people. Several institutions have put out virtual hearing checklists or have other resources available to assist parties and tribunal with respect to e-measures.<sup>28</sup> Arbitral institutions that provide such information indicate that secretariats are using a variety of different providers for video hearings (examples include Blue-Jeans, Webex and Zoom), without any indications as to actual usage and without offering endorsements of any provider over another. Several institutions prohibited in-person hearings on their premises for a limited duration of time.<sup>29</sup>

Figure 1 provides an indicative range of e-measures taken with respect to hearings:

**Figure 1** *Hearing e-Measures*



With respect to point (b), common e-measures include, with no order of prevalence: (i) the availability of e-filing in lieu of sending submissions by courier; (ii)

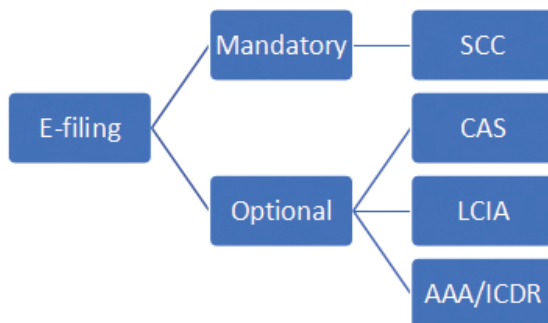
28 See, e.g. ICC Guidance COVID-19 Ann. I, *supra* note 4; Hong Kong International Arbitration Centre, 'Convenient and Efficient: HKIAC E-Hearings', available at: [www.hkiac.org/content/virtual-hearings](http://www.hkiac.org/content/virtual-hearings).

29 See CAS Emergency Guidelines, *supra* note 13 (prohibiting in-person hearings until 17 May 2020); AAA/ICDR COVID-19 Resource Center, *supra* note 16 (prohibiting in-person hearings until at least 1 September 2020).

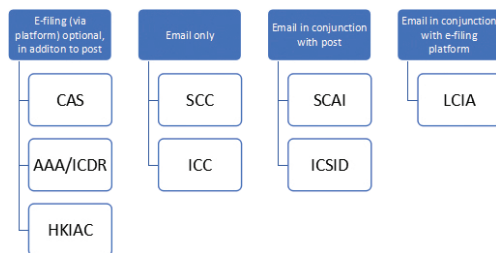
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the ability to hold hearings virtually, *i.e.* by videoconference (less common was specific mention of the possibility to hold meetings by telephone) – the ICC defines ‘virtual hearings’ broadly as “hearings by audioconference, videoconference or other similar means of communication;”<sup>30</sup> and (iii) obligatory or strongly encouraged electronic communication to and from the arbitral institution.<sup>31</sup> Figures 2 and 3 provide some indicative information about e-measures related to e-filing:

**Figure 2** Availability of e-Filing in General



**Figure 3** Modes of Filing for New Cases



Major regional players (such as the German Arbitration Institute (DIS)<sup>32</sup> and the Cairo Regional Centre for International Commercial Arbitration (CRCICA))<sup>33</sup> have also put forward e-measures that show similar trends to those illustrated above,

30 See ICC Guidance COVID-19, *supra* note 4, para. 2.

31 See, e.g., ICSID Emergency Measures Update, *supra* note 17; LCIA Update COVID-19, *supra* note 26; Swiss Chambers’ Arbitration Institute, ‘Important Information: Our Continued Commitment Towards Supporting You’, available at: [www.swissarbitration.org/](http://www.swissarbitration.org/) (SCAI Emergency Measures).

32 See German Arbitration Institute, ‘Announcement of Particular Procedural Features for the Administration of Arbitrations in View of the COVID-19 Pandemic’, 31 March 2020, available at: [www.disarb.org/files/veranstaltungen/591/DIS%20Announcement%20Particular%20Procedural%20Features\\_Covid-19.pdf](http://www.disarb.org/files/veranstaltungen/591/DIS%20Announcement%20Particular%20Procedural%20Features_Covid-19.pdf).

33 Cairo Regional Centre for International Commercial Arbitration, ‘Update: COVID-19 Measures During the Month of Ramadan’, available at: <https://crcica.org/NewsDetails.aspx?ID=123>.



as have other international dispute settlement bodies, such as the International Court of Justice (ICJ)<sup>34</sup> and the Arbitration and Mediation Center of the World Intellectual Property Organization (WIPO).<sup>35</sup> That the COVID-19 pandemic is creating common challenges facing arbitral institutions is exemplified by the joint statement issued by several institutions – including the ICC, ICSID, LCIA and SCC – seemingly as a sign of solidarity rather than to provide practical guidance to parties.<sup>36</sup>

It is clear from the trends in the e-measures illustrated above that arbitral institutions, while facing varied challenges and demands that may stem from the different nature and subject matter of the disputes they typically administer, face common challenges to the functioning of arbitrations and have enacted e-measures geared towards maintaining their ability to administer disputes despite the ongoing pandemic, mainly by going online and enabling electronic communication.

### 3 E-Measures as the Future?

It will be interesting to monitor which of these e-measures become permanent at the various institutions adopting them, and which give way again to the old guard approach. This will likely depend not only on the needs of a given dispute resolution institution but on the institutions themselves and their practices regarding modernization, remote case administration and the shift towards ever-more-virtual proceedings. Institutions might find themselves losing out on market share if they do not adapt their rules or practices to enable parties to participate as electronically as possible, while preserving the integrity of the arbitral process. However, constraints such as those discussed in Section 1, such as the need for certain types of awards for enforceability purposes, are likely to remain in place at least for some aspects of traditional international arbitration and dispute settlement proceedings.

Nonetheless, it is anticipated that the shift towards ever-more electronic proceedings will continue, such as to allow e-filing for one party without the agreement of the other, and/or email/e-filing and communication as the default. It is further hypothesized that these e-measures – originally swiftly conjured out of necessity and in reaction to the COVID-19 pandemic – may cause this shift to surge ahead on the spectrum of where it might otherwise be but for the pandemic, as a result of the practices adopted by arbitral institutions during this

34 See International Court of Justice, 'ICJ Press Release No 2020/9', 20 March 2020, available at: [www.icj-cij.org/files/press-releases/0/000-20200320-PRE-01-00-EN.pdf](http://www.icj-cij.org/files/press-releases/0/000-20200320-PRE-01-00-EN.pdf); International Court of Justice, 'ICJ Press Release No 2020/10', 7 April 2020, available at: [www.icj-cij.org/files/press-releases/0/000-20200407-PRE-01-00-EN.pdf](http://www.icj-cij.org/files/press-releases/0/000-20200407-PRE-01-00-EN.pdf); International Court of Justice, 'ICJ Press Release No 2020/11', 23 April 2020, available at: [www.icj-cij.org/files/press-releases/0/000-20200423-PRE-01-00-EN.pdf](http://www.icj-cij.org/files/press-releases/0/000-20200423-PRE-01-00-EN.pdf).

35 World Intellectual Property Organization, 'COVID-19 Updated on WIPO's Arbitration and Mediation Operations', available at: [www.wipo.int/amc/en/center/wipoupdate.html](http://www.wipo.int/amc/en/center/wipoupdate.html).

36 Stockholm Chamber of Commerce, 'Arbitration and COVID', available at: <https://sccinstitute.com/media/1658123/covid-19-joint-statement.pdf>.

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period, which may serve to normalize electronic aspects of dispute settlement for all users and institutional service providers.

Indeed, evidence of this shift is already visible: for example, on 19 March 2020, in the midst of the COVID-19 pandemic, ICSID made electronic filing the default for all arbitrations, not just limited to the duration of the COVID-19 situation.<sup>37</sup> Furthermore, CAS enacted an updated version of its arbitral rules on 1 July 2020, which among other changes, permanently adopted the possibility first foreseen in CAS' e-measures for parties to unilaterally chose to utilize e-filing in lieu of filing written submissions in hard copy.<sup>38</sup> As disputes inevitably begin to arise directly from the COVID-19 crisis (e.g. non-fulfilment of contractual obligations and invocations of *force majeure*), possibly necessitating speedy resolution while restrictions remain in place, e-measures will likely remain necessary. Indeed, the AAA/ICDR<sup>®</sup> already has a specialized page dedicated to COVID-19 disputes on its "COVID-19 Resource Center".<sup>39</sup>

As the pandemic lingers and e-measures continue to be the most viable solution for arbitration and other dispute settlement bodies to administer disputes and minimize disruptions, it is not hard to imagine that e-measures will remain in place, and that virtual arbitral proceedings and dispute resolution will become, as has been argued with respect to ODR, the 'only dispute resolution'.<sup>40</sup>

37 International Centre for Settlement of Investment Disputes, News Release, 'ICSID Makes Electronic Filing Its Default Procedure', 13 March 2020, available at: <https://icsid.worldbank.org/en/Pages/News.aspx?CID=359>.

38 Article R31 of the 2020 edition of the Code of Sports-related Arbitration.

39 AAA/ICDR COVID-19 Resource Center, *supra* note 16.

40 M. Xuhui Fang, 'ODR Update from China', *The National Center for Technology and Dispute Resolution*, 16 April 2020, available at: <http://odr.info/files/china.pdf>.

## Annex: Arbitral Institutions' E-Measures

| Arbitral institution  | Applicable dates of the measures  | Measures applicable to new procedures  | General measures applicable to pending procedures   | Measures applicable to the hearings  |
|-----------------------|---|--|---|--|
| AAA/ICDR <sup>a</sup> | 20 March 2020 until 1 September 2020.   | For new procedures, parties can file a case electronically by using the platform Fast File Case. | Case management staff will contact parties and arbitrators to discuss alternative arrangements, including the use of video, teleconferencing, or postponements. Submissions can be filed via AAA WebFile.   | The ICDR can assist with alternative hearing arrangements, including the use of video teleconferencing that will allow for remote participation in hearings.<br>No hearings will take place in AAA-ICDR hearing facilities until at least 1 September 2020.<br>In-person hearings may take place outside the AAA-ICDR's facilities or by Alternative Hearing Capabilities.   |
| CAS <sup>b</sup>      | From 16 March 2020 to 17 May 2020 (limited provisions extended until 30 June 2020). | E-filing available for new cases.  | Submissions can be filed via the CAS e-filing portal instead of courier, without needing the agreement of the other disputing party(ies).<br>The parties may suspend proceedings.<br>An automatic 2-week extension will be granted for a first request for extension without need to consult the relevant division president. | CAS will not host in-person hearings until 17 May 2020.<br>The arbitrators and parties are encouraged to conduct hearings by videoconference or to cancel them (final award on the basis of the written submissions). If such measures are not possible or appropriate, the hearings must be postponed until May 2020 or later.<br>Depending on the evolution of the COVID-19 outbreak, the prohibition of in-person hearings may be extended. |

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*(continued)*

| Arbitral institution | Applicable dates of the measures | Measures applicable to new procedures  | General measures applicable to pending procedures  | Measures applicable to the hearings  |
|----------------------|----------------------------------|--|--|--|
| ICC <sup>c</sup>     | From 17 March 2020.              | Parties intending to file new cases should notify the Secretariat via email. | <p>Parties, counsel and tribunals have shared obligations to consider procedural measures that can mitigate the process, including delays caused by the COVID-19 pandemic. In doing so, they should take into account that certain aspects of the arbitral process should not be materially delayed by the pandemic.</p> <p>The tribunal may adopt appropriate procedural measures or modify the procedural timetable by means of a further case management conference or otherwise.</p> <p>All communications with the Secretariat of the ICC Court have to be conducted by email.</p> <p>Parties may agree that: (i) any award be signed by the members of the tribunal; and/or (ii) can be assembled in a single electronic file and notified to the parties by the Secretariat by electronic means.</p> <p>Amendments to the rules and practice guidance acknowledged the possibility of virtual hearings.</p> <p>Applications for emergency arbitrators should be made via email.</p> | <p>If the parties agree, or the tribunal determines, that convening in a single physical location is indispensable yet impossible under current conditions, tribunals and parties should make every effort to reschedule the hearing or conference in a way that minimizes delay.</p> <p>If the parties agree, or the tribunal determines, to proceed with a virtual hearing, the ICC stands ready to assist the parties in this regard.</p> <p>If a tribunal determines to proceed with a virtual hearing without party agreement, or over party objection, the arbitral tribunal, after consulting the parties, may adopt such procedural measures as it considers appropriate, provided that they are not contrary to any agreement of the parties.</p> <p>After studying the written submissions of the parties and all documents relied upon, the tribunal “shall hear the parties together in person if any of them so requests;” this language can be construed as referring to the parties having an opportunity for a live, adversarial exchange and not to preclude a hearing taking place “in person” by virtual means if the circumstances so warrant.</p> |

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| <b>Arbitral institution</b> | <b>Applicable dates of the measures</b>   | <b>Measures applicable to new procedures</b>  | <b>General measures applicable to pending procedures</b>  | <b>Measures applicable to the hearings</b>  |
|-----------------------------|---|---|---|---|
| ICSID <sup>d</sup>          | From 19 March 2020.   | New requests for arbitration or post-award applications may be filed electronically only (hard copies will only be needed if requested by the other party). | ICSID encourages parties and tribunals to implement electronic-only filing of written pleadings.<br>For queries regarding specific cases, parties should contact the arbitral tribunal or committee secretary directly.<br>For general queries, parties are advised to contact the ICSID Secretariat via email. | ICSID is coordinating with arbitrators and parties on precautionary measures to be taken by all participants to ICSID hearings.   |
| HKIAC <sup>e</sup>          | For people arriving in Hong Kong from outside of the People's Republic of China: effective 19 March 2020.<br>For people from Mainland China: effective 8 February 2020. | E-filing or service by mail possible.   | The HKIAC's premises in Hong Kong remain operational and accessible for hearings and meetings.  | In respect of persons arriving in Hong Kong from other countries, the HKIAC has advised that any person to whom such policy applies shall not be permitted to enter HKIAC for at least 14 days from the date of arrival in Hong Kong.<br>All persons entering HKIAC's headquarters in Hong Kong will be subject to a temperature check. Entry will only be granted to individuals with a temperature below 37.8°C.<br>Parties may consider using HKIAC's virtual hearing service. |

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| <b>Arbitral institution</b> | <b>Applicable dates of the measures</b> | <b>Measures applicable to new procedures</b>  | <b>General measures applicable to pending procedures</b>   | <b>Measures applicable to the hearings</b>  |
|-----------------------------|---|---|--|---|
| LCIA <sup>f</sup>           | From 19 March 2020.                     | Parties should file all requests through LCIA's online filing system or by email.<br>Applications must be notified in advance by email.   | Parties and arbitrators should send all other questions, documents and correspondence to the LCIA by email only, and should avoid contact by telephone.<br>Arbitrators are requested to deliver their awards by email, and should notify the LCIA if for any reason this is not possible.<br>The LCIA will, in all but exceptional cases, transmit awards to parties electronically, with originals and certified copies to follow, once the LCIA office has reopened. | The LCIA will, in all but exceptional cases, correspond with parties and arbitrators by email only. |
| SCAI <sup>g</sup>           | From 19 March 2020.                     | Applications for Emergency Relief, Notices of Arbitration, Answers to the Notice of Arbitration, and Requests for Mediation should be filed not only by post/courier, but, from now on and until further notice, also by email. | Exceptionally proceed to notifications by email when necessary.<br>Contact by email for all queries.   | NA  |

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| <b>Arbitral institution</b> | <b>Applicable dates of the measures</b> | <b>Measures applicable to new procedures</b>            | <b>General measures applicable to pending procedures</b>                  | <b>Measures applicable to the hearings</b>   |
|-----------------------------|---|---|---|--|
| SCC <sup>h</sup>            | From 18 March 2020.                     | Made by email (also requests for emergency arbitrator). | The case management is fully operational, working remotely and in shifts. | The SCC refers users to the checklist on holding hearings in times of COVID-19 prepared by Delos Dispute Resolution, <sup>i</sup> which identifies considerations for hearings conducted under any arbitration rules or administered by any institution, including deciding whether to maintain the date of the hearing, and preparing, conducting and following up on the hearing in light of COVID-19. |

a See, e.g., AAA/ICDR COVID-19 Resource Center, *supra* note 16.

b See CAS Emergency Guidelines, *supra* note 13.

c See, e.g., ICC Urgent Communication, *supra* note 25.

d See, e.g., ICSID Emergency Measures & ICSID Emergency Measures Update, *supra* note 17.

e See HKIAC, 'Precautionary Measures at HKIAC in Response to COVID-19', updated 26 March 2020, available at: [www.hkiac.org/content/precautionary-measures-hkiac-response-covid-19](http://www.hkiac.org/content/precautionary-measures-hkiac-response-covid-19); HKIAC Continuity Service, *supra* note 14.

f See LCIA Update COVID-19, *supra* note 26.

g See SCAI Emergency Measures, *supra* note 31.

h See SCC Response COVID-19, *supra* note 18.

i The complete checklist is available at: <https://delosdr.org/index.php/2020/03/12/checklist-on-holding-hearings-in-times-of-covid-19/>.