

## *VIRTUAL REALITY*

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COVID 19 is wreaking havoc on many things, none more so than a core feature of international arbitral procedure – the in-person hearing. With airline schedules slashed and travel restrictions in force throughout the world, the prospect of hearings in international arbitration involving real witnesses, real counsel and real arbitrators taking place is, for the moment at least, well nigh impossible.

International arbitration is, however, a creature of flexibility. Where once the participants would gather together in a hearing room in London, Geneva or Singapore, now technology is stepping in to fill the COVID void where the participants simply cannot be together in the same room.

Virtual hearings are the answer and many of the main arbitral institutions such as the ICC have issued guidelines on the conduct of hearings in this way. There are many challenges and some downsides. Most arbitrators are unfamiliar with virtual hearings. Technology can be variable depending on geographical location of the participants and world time-zones are also problematic if witnesses are located in Asia, for example, with counsel in New York.

Of course, one of the most significant problems facing an arbitral tribunal adjudicating in a virtual setting, is the assessment of a witness's demeanour, vital in reaching a view on the credibility and reliability of the evidence given. Arbitrators must try to sense the nuances of a witness's presentation at a real distance, figuratively and physically. It is certainly challenging to discern body language, facial expressions and changes in tone on screen. It is even harder to do so and keep an eye on counsel at the same time, especially if all involved are thousands of miles apart.

Arbitrators will also find it challenging to ascertain if a witness is being coached off-camera or reading from a script that is carefully kept from the tribunal's view. That, in turn, could lead to dubiety about the validity of the evidence and perhaps lead to challenges to an award.

Technology is responding to these challenges, innovatively and at speed. Hearing centres such as the HKIAC are using dedicated operators to remotely manage the videolink and to introduce documents from electronic hearing bundles. Other advances include real-time transcripts and rotating cameras which help to assess the physical space in which the witness is located.

Recently, the 2020 Vis International Commercial Arbitration Moot took place by videolink, for the first time ever. Although technologically challenging, with teams competing from the four corners of the globe, in every time-zone, the competition was a judged a success and much was learned. Technology now provides high-definition imaging that meets many of the concerns surrounding assessment of witness demeanour and rotating cameras can pick up any underhand attempts at coaching or collusion.

In common with the approach taken by many domestic courts such as those in England & Wales, remote hearings are and have to be the solution to this particular COVID 19 challenge. It is a credit to the innovation of the international arbitration community that it has responded swiftly to this challenge. Virtual reality is now the "new normal" – for how long though is anybody's guess.