

ADGM
Arbitration Centre

ADGM ARBITRATION CENTRE

PROTOCOL FOR REMOTE HEARINGS

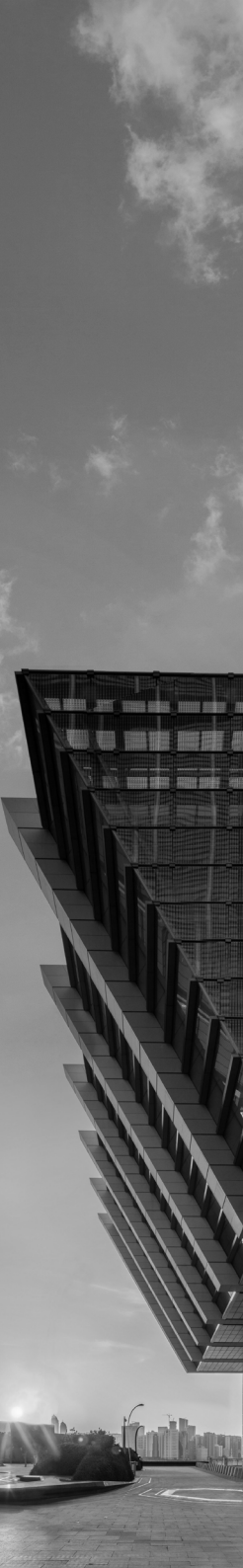




TABLE OF CONTENTS

A. Introduction and Guiding Principles	5
B. Choice of Platforms and Service Providers for Remote Hearing	5
C. Participants, Speakers and Attendees	6
D. Technical Requirements	7
E. Use of Platform for Remote Hearing	7
F. Sitting Days and Hours	9
G. Sequence of Proceedings	9
H. Timetable	10
I. Confidentiality	10
J. Semi-Remote Hearing Arrangements	11
K. Electronic Bundles of Documents	11
L. Examination of Fact and Expert Witnesses	12
M. Presentations and Demonstratives	15
N. List of Issues	16
O. Transcripts	16
P. Preparatory Arrangements	16
Q. Modification	17
R. Hearing Costs	17
S. Location	17
T. Recognition and Enforcement	18



INTRODUCTORY COMMENTS

The purpose of this Protocol is to provide the Parties to the arbitration, their lawyers and the Tribunal with a suggested set of procedural and logistical arrangements for the conduct of hearings to be conducted remotely (whether fully or in part), with no or only limited in-person participation (***Remote Hearings***).

As with each of the Modules of the Abu Dhabi Global Market Arbitration Centre (**ADGMAC**) Arbitration Guidelines, the Protocol or any part of it can be adapted by the Parties and/ or the Tribunal to the specific requirements of each case and, if necessary, implemented by the Tribunal in a Procedural Order. In particular, the choice of Service Providers or Platforms (as discussed further below) may influence some of the provisions in this Module which relate to technical matters.

The Protocol is designed to cover merits hearings at which fact and expert witness evidence are heard and oral submissions are made, but it can be adapted to be used for case management conferences at which procedural and organisational matters are discussed. It can also be used in conjunction with the ADGM AC's 'Smart Arbitration' services.

A. INTRODUCTION AND GUIDING PRINCIPLES

1. This Protocol sets out (a) the logistical arrangements that the Parties have agreed will be put in place for the remote hearing to take place from **[start date]** to **[end date]** (**the Remote Hearing**), and (b) rules according to which the Remote Hearing will be conducted, subject to the Tribunal's confirmation.
2. The Protocol is designed to ensure that the Remote Hearing is organised and conducted in a fair, efficient, reliable and cost-effective manner.
3. The Parties agree that they will conduct the Remote Hearing in accordance with the following guiding principles:
 - a. In a manner consistent with the principles of fairness, cooperation and good faith;
 - b. In a manner that ensures the enforceability of any resultant arbitral award; and
 - c. In a manner that ensures confidentiality.
4. The reference to "days" in this Protocol is a reference to calendar days.
5. The Tribunal may at any time, after consulting with the Parties, vary any of the provisions of this Protocol.

B. CHOICE OF PLATFORMS AND SERVICE PROVIDERS FOR REMOTE HEARING

6. The functional requirements for the Remote Hearing comprise:
 - a. A video-conferencing system (**Video-Conferencing Platform**);
 - b. An electronic document management system (**Document Management Platform**); and
 - c. Real-time transcript (**Transcript Platform**), (individually **Platform** and collectively **Platforms**).
7. The Parties shall seek to agree the service providers for the Platforms (individually "**the Service Provider**" and collectively "**the Service Providers**"). If the Parties are unable to agree on one or all of the Service Providers for the Platforms, the Tribunal shall determine one or all of the Service Providers

(as the case may be) for the Remote Hearing, after giving the Parties a reasonable opportunity to present their views on the issue.

8. Each Service Provider will arrange, monitor, support and troubleshoot its Platform for and during the Hearing.

C. PARTICIPANTS, SPEAKERS AND ATTENDEES

9. Each person who is permitted to attend the Remote Hearing, being each of the Tribunal members or sole arbitrator, the Tribunal Secretary (if any), each Party's legal counsel, and each Party's representatives, witnesses, and experts, is a **Participant**.
10. In this Protocol, a distinction is made between **Speakers**, who are Participants who can be both seen and heard by all other Participants on any given day; and **Attendees**, who are Participants who are only able to see and hear the Speakers, but cannot themselves be seen or heard.
11. The Speakers for any given day of the Remote Hearing will be:
 - a. The Members of the Tribunal;
 - b. Members of the Parties' legal counsel who will be advocating for the Parties;
 - c. Any fact witness or expert witness who is testifying on that day; and
 - d. Any simultaneous interpreter who is needed on that day.
12. All other individuals (e.g. other members of the Parties' legal team, any Party representatives or personnel, and any other permitted Participant such as a secretary to the Tribunal,) will join as Attendees.
13. The Parties shall exchange and provide to the Tribunal their respective list of Participants by **[time], [X]** days before the commencement of the Remote Hearing. Any objection to the lists of Participants shall be made within 24 hours of exchange of the lists.
14. The final lists shall be provided to the Tribunal and the Service Providers at the very latest the day before each Hearing day.
15. The lists shall set out the Participants' names and email addresses, and will indicate in each case whether they are a Speaker or an Attendee.

D. TECHNICAL REQUIREMENTS

- 16.** The selected Platforms shall be of sufficient quality so as to allow for:
 - a.** Clear video and audio transmission of all Speakers;
 - b.** Documents to be shown to all Speakers as and when required; and
 - c.** An accurate written transcript of the proceedings on a real-time basis, and there shall be compatibility between the hardware and software used at the different venues from which the Participants will attend the Remote Hearing.
- 17.** The Parties shall, in advance of the Hearing and in coordination with the Service Providers, agree on the technical requirements of the Platforms for the Remote Hearing.

E. USE OF PLATFORM FOR REMOTE HEARING

- 18.** The Remote Hearing will be held in private and shall take place via the Platforms, which will be administered by the Service Providers.
- 19.** The Service Providers shall host the Remote Hearing and collectively coordinate all necessary technical requirements for the Parties. This will involve circulating login details to all Participants, and performing a test run at the latest the week prior to the Remote Hearing, on a date convenient to the Parties, their legal representatives and the Tribunal, and any witnesses and experts who may be required to attend (to ensure all Participants will have a stable connection to the videoconference).
- 20.** The Video-Conferencing Service Provider will make virtual rooms available throughout the duration of the proceedings, each with access controlled by the Service Provider only (or else password-protected with the passwords made available to the various Participants granted access to them). The rooms will be as follows:
 - a.** The virtual hearing room, to which all Participants shall be given access;
 - b.** The Claimant's break-out room, to which only the Claimant, the Claimant's lawyers and the Claimant's expert(s) shall be given access;
 - c.** The Respondent's break-out room, to which only the Respondent, the Respondent's lawyers and the Respondent's expert(s) shall be given access;

- d.** The Tribunal break-out room, to which only Members of the Tribunal (and the Tribunal Secretary, if any) will be given access; and
 - e.** The witness break-out room, where the witness will be located before and during their hearing (i.e. during the time they are sequestered). After a witness has completed his or her evidence and is no longer sequestered, he or she may be admitted to the break-out room of the Party calling them.
- 21.** All Participants shall connect 10 minutes prior to the scheduled starting time on each day to allow timely access to the hearing room. This will also allow time to address any set-up, connectivity and other technical issues before the starting time. When joining the Participants will, depending on the Video-Conferencing Platform used, either:
 - a.** Be placed in a 'virtual waiting room' until their identity can be verified by the Video-Conferencing Service Provider and the Tribunal is ready to start the hearing, at which time the Tribunal will confirm that the Service Provider may admit the Participants to the virtual hearing room; or
 - b.** Join the virtual hearing room directly, identifying themselves with use of their full name in their user profile, and if necessary by briefly activating their audio or video to confirm their identity to the Tribunal and/ or Service Provider.
- 22.** All Participants shall connect not less than 5 minutes prior to the time on which the Hearing is scheduled to resume after each break. If a Video-Conferencing Platform with a virtual waiting room is used the Participants will be placed in the waiting room until the Tribunal is ready to resume the Hearing, at which time the Tribunal will admit the Participants to the virtual hearing room.
- 23.** A Speaker who has temporarily lost an adequate connection to any of the Platforms must promptly notify the Tribunal of that event (either through alternate means on the Video-Conferencing Platform, or by intervention of another Participant), so that the Tribunal can take adequate measures to resolve the issue and resume the Remote Hearing.
- 24.** The Video-Conferencing Service Provider shall provide optional telephone dial-in details to all Participants and the Tribunal three working days before the start of the Remote Hearing in case at any time the Platform ceases to work or if one or more Participants has poor quality computer audio.

25. The Remote Hearing shall not be recorded, except by the Transcript Platform Service Provider to the extent necessary for the preparation of the transcript, as discussed below. No Participant attending the Remote Hearing is permitted to make their own audio- or visual- recording of the Remote Hearing without the prior written permission of the Tribunal.

F. SITTING DAYS AND HOURS

26. Hearing days shall be *[day]* to *[day]*, generally from *[start time]* to *[end time]*, *[time zone]*.
27. There shall generally be a lunch break of one hour each day, as well as at least one break of 15 minutes in the morning and at least one break of 15 minutes in the afternoon. The Parties will also allow 15 minutes each day for any logistical issues that may arise as part of the Remote Hearing.
28. Before each break in the Remote Hearing, the President of the Tribunal will confirm the time for all Parties to reconvene in the hearing. The Parties will make every effort to be punctual and not delay the recommencement of the Remote Hearing following breaks.

G. SEQUENCE OF PROCEEDINGS

29. The Parties will agree an indicative timetable for the Remote Hearing, which follows the following sequence:
- a. Claimant's oral opening submissions;
 - b. Respondent's oral opening submissions;
 - c. Claimant's fact witnesses;
 - d. Respondent's fact witnesses;
 - e. Expert witnesses by like discipline (with the Claimant's experts in each discipline appearing first, followed by the Respondent's equivalent expert);
 - f. Claimant's oral closing submissions; and
 - g. Respondent's oral closing submissions.
30. Oral opening submissions shall be limited to [number] hours for each Party.

31. Whether the Parties will make closing submissions, and/ or answer Tribunal questions, whether oral and/ or written, shall be decided upon by the Tribunal prior to the conclusion of the Hearing, after consulting with the Parties.

H. TIMETABLE

32. The Parties shall seek to agree an indicative timetable for the Hearing by **[date]**. The Tribunal will determine, in the absence of agreement, the times to be allocated to each Party for the presentation of its case; including opening submissions, calling of a Party's own witnesses and cross examination of the other Party's witnesses, and closing submissions. This timetable shall be set out in Appendix 1 to this Protocol.
33. If Participants are located in materially different time zones, the Hearing shall be scheduled to be reasonably convenient for all, which may require a shorter or longer than usual hearing day.
34. Each Party is free to decide how to use its allocated time, subject to making reasonable accommodations for witnesses who are appearing from a different time zone.
35. The Parties shall keep track of time used at the Hearing, and time shall be monitored according to the chess-clock principle used in international arbitration. At the end of each Hearing day, the Parties shall (in consultation with the Tribunal or Tribunal Secretary) agree the total amount of time used by each Party during that day and the time allowance left for each Party.
36. To the extent that there are material deviations from the indicative timetable at Appendix 1, the Parties will update that timetable during the course of the Remote Hearing.

I. CONFIDENTIALITY

37. The Parties shall take all steps necessary to ensure the confidentiality of the proceedings.
38. The Parties are responsible for jointly considering and raising well in advance of the Hearing (no less than two weeks from the start of the Hearing) any laws applicable at the location of any Participant that may present an obstacle or

issue of legal compliance with privacy, confidentiality, data protection and security requirements. After consulting the Parties, the Tribunal shall decide on what measures, if any, to take to address any of these issues that may impact the access or connectivity of any of the Participants.

39. The Parties may also agree on a more detailed cyber-protocol, prior to the Hearing, in order to ensure compliance with any applicable regulations, and also to protect the confidentiality of electronic communications within the arbitration proceedings and any Platforms used for the Hearing.

J. SEMI-REMOTE HEARING ARRANGEMENTS

40. A semi-remote configuration is a situation in which several Participants attend the Remote Hearing from the same physical room.
41. The Parties may agree upon a semi-remote configuration. If the Parties agree upon such a configuration, they shall do so in advance of the Hearing and this shall be reflected in the List of Participants.
42. The Tribunal shall ensure that the Parties are treated equally, inter alia, with respect to the appearance of the Parties and their lawyers before the Tribunal.
43. Unless otherwise agreed by the Parties, the following arrangements should be avoided where possible:
 - a. The Tribunal and the legal team of only one of the Parties appearing in person, while the legal team of the other Party appears remotely; and/ or
 - b. The legal team of one of the Parties examining an opposing Party's witness or expert in person, without the opposing Party and/ or its legal team also present in person.
44. In the context of a semi-Remote Hearing, expert and fact witnesses shall remain sequestered for the duration of their testimony.

K. ELECTRONIC BUNDLES OF DOCUMENTS

45. Electronic bundles shall be used for the Remote Hearing.

46. The Parties have made arrangements with the Document Management Platform Service Provider to establish an online 'document room'. This online document room will be accessible by the Parties and the Tribunal in advance of and during the Remote Hearing.
47. The online document room will contain a paginated bundle of documents comprising the 'Remote Hearing Bundle'. The Parties shall endeavour to agree the contents of the Remote Hearing Bundle as soon as possible, so that it can be uploaded to the online document room by **[date]**.
48. Cross-references in written submissions, witness statements and expert reports to exhibits shall, where practicable, be hyperlinked to the exhibits.
49. If the Service Provider provides an 'Operator' who shall attend the Remote Hearing the role of the Operator will be to rapidly call up any documents for all Participants to view on screen, as and when documents are referred to by a Speaker.

L. EXAMINATION OF FACT AND EXPERT WITNESSES

Fact Witnesses

50. Fact witnesses shall be sworn in or give an affirmation, in accordance with any applicable laws, before giving their testimony, using the following text: ***"[#text of oath or affirmation]"***
51. If a fact witness is to swear an oath on a holy book, arrangements should be made in advance by the Party calling the witness for a copy of the holy book to be made available to the witness on the day he or she testifies.
52. A fact witnesses may provide their evidence from any location approved by the Tribunal. The location from which it is proposed that each witness will give evidence is to be disclosed by the Party calling that witness to the Tribunal and the other Party at least 7 days before the witness is due to give evidence.
53. Each fact witness will confirm the following to the Tribunal at the commencement of his or her evidence:
 - a. He or she can see and hear the other Speakers clearly;
 - b. No other person other than those persons agreed by the Parties, or approved by the Tribunal, is in, or will enter, the room in which the witness is providing evidence;

- c. The witness has access to no hard copy documentation other than his or her witness statement(s); and
- d. The witness will not and has no means to communicate with any person in any way while the witness's examination is in progress, other than through the Platforms.

- 54. Fact witnesses shall not have access to any real-time transcript that is being made available to other Participants.
- 55. Fact witnesses may not be present for the examination of other fact witnesses or review the transcripts of the cross-examination or re-examination of other fact witnesses or discuss such examination with anyone else, until after that fact witness has given evidence and been discharged by the Tribunal.
- 56. Fact witnesses will be asked to make themselves available to join the hearing room 10 minutes before they are scheduled to give their testimonies and will not join the virtual hearing room (whether from a virtual waiting room, or by logging onto the Platforms), until they are called by the Tribunal to testify.

Expert Witnesses

- 57. Expert witnesses shall give evidence in the following order:
 - a. The Claimant's [discipline] expert (followed by the Respondent's equivalent expert);
 - b. The Claimant's [discipline] expert (followed by the Respondent's equivalent expert); and
 - c. After examination of the Parties' experts by like discipline, time may be set aside for joint expert conferencing during which the Tribunal may ask further questions of the experts.
- 58. The Parties' expert witnesses may give presentations prior to their cross examination, any such presentations being limited to no more than [#] minutes and to the contents of their reports. Any slides or demonstratives must be exchanged and provided to the Tribunal at least 24 hours before the first of the two experts testifies.

Witnesses in General

- 59. Questions asked in direct examination will be limited to introducing the witness or expert and confirming the contents of the witness statement(s) or expert report(s). Questions asked in re-direct examination will be limited to matters raised in cross-examination and shall not be leading questions.

60. If a Party's Speaker wishes to interject during the course of questioning of an expert or witness by the opposing Party, they shall first raise their hand (both physically so they can be seen on their video feed, and virtually if the Video-Conferencing Platform features a 'raise hand' function) and wait for the Tribunal President to call on them. It is for the Tribunal President to moderate any interjections arising during examination. A Party Speaker should not simply unmute his or her audio feed to make an interjection without being invited to do so by the Tribunal President.
61. The Parties shall arrange, where possible, for a hearing invigilator to attend at the same premises as the fact or expert witness, to ensure the integrity of the examination (i.e. that there is no person or recording-device present that was not approved or agreed). The invigilator may:
- a. Inspect the room from which the witness is expected to testify just prior to the testimony to ensure that only the authorised materials and equipment are present;
 - b. Remain inside the room during the witness's testimony to ensure that no one enters the room; and
 - c. Observe that sequestration of the witness is maintained.
62. Alternatively, if the attendance of an invigilator is not possible, witnesses shall provide their testimonies while alone in a room containing a camera which provides a clear and reasonably complete view of the witness and the room he or she is in.
63. Fact and expert witnesses are not permitted to use a virtual background.
64. Each Party will be responsible for ensuring that its witnesses and experts have sufficient internet connectivity and hardware available to them to participate in the Hearing (it is recommended that they have at least three screens available for each of the Platforms).
65. Each Party will be responsible for ensuring that its witnesses and experts have been familiarised with the hearing technology and this Hearing Protocol in advance of the Hearing. Counsel for the Party will test the internet connection in advance and assure the Tribunal and the other Party that it is sound and will not compromise the effective conduct of the Hearing. Unless the Tribunal determines otherwise in any particular case, time spent resolving problems with a witness's connectivity will be taken from the time allocated to the Party calling that witness.
66. The Parties shall arrange for clean hard copies of witness statements or expert reports to be provided, if needed, to their respective fact and expert witnesses. The fact and expert witnesses are not to mark up the clean copy of their evidence in advance of giving their evidence.

67. The Parties are to confirm one week prior to the Remote Hearing whether interpreters are required for examination. If interpretation services are needed for examination then:
- a. The Party calling the witness or expert who requires interpretation shall arrange for any interpreter the witness or expert needs in aid of his or her examination;
 - b. In case simultaneous interpretation in multiple languages is required, arrangements shall be made for several audio feeds with Participants selecting which audio channel they wish to hear;
 - c. If only one audio feed can be arranged, Parties shall opt for sequential interpretation in order to avoid situations where the witness, interpreter, and examining lawyer speak over each other; and
 - d. Each audio feed shall be recorded.

M. PRESENTATIONS AND DEMONSTRATIVES

68. A Party may use a slide presentation or any other demonstratives during oral opening submissions, provided that such materials shall reflect and reference (with exhibit numbers) evidence already on the record and shall not introduce new evidence, directly or indirectly. The simultaneous exchange of materials/ presentation to be used during oral opening submissions is to occur on **[date]**.
69. The Parties may make use of visual aids (**demonstratives**) in support of the cross-examination of a witness or expert, provided that those materials reflect and reference (with exhibit numbers) evidence on the record and do not seek to introduce new evidence, directly or indirectly.
70. Each Party shall provide electronic copies of any demonstratives to be displayed during the proceedings to the Tribunal and the other Party 24 hours in advance of the day of the hearing day on which they are to be deployed (i.e. typically before 10 am (**[time zone]**) the preceding day).

N. LIST OF ISSUES

71. The Parties shall seek to agree a List of Issues containing a list of issues of law and the issues of fact that arise from the claim or counterclaim by **[date]**. In the event that the Parties do not agree on any part of the List of Issues, they will provide to the Tribunal their proposed issues, with each proposed issue identified by reference to the paragraph(s) of the written submissions from which it emerges. The Tribunal will then proceed to fix the List of Issues for that claim or counterclaim, by reference to the Parties' written submissions.
72. In preparing the List of Issues, the Parties shall consider which issues are essential to be heard at the Remote Hearing and which can be dealt with "on papers only", and if necessary, identify them in the List of Issues.

O. TRANSCRIPTS

73. A real-time transcript shall be made available by the Transcript Platform Service Provider which may be viewed by all Participants to the Remote Hearing.
74. Documents called up by Speakers and/ or the Tribunal during the Hearing shall be hyperlinked by the Service Provider directly in the real-time transcript.
75. A transcript shall be made available to the parties and the Tribunal at the end of each day of the merits hearing. If a Party wishes to make any correction to a transcript, it shall notify the other Party of any proposed correction within 72 hours of having received the transcript. The Parties shall endeavour to agree upon any correction to the transcript within 7 days.

P. PREPARATORY ARRANGEMENTS

76. All Participants shall be informed of the content of the Remote Hearing Protocol in advance of the Hearing.
77. A Pre-Hearing Conference shall be scheduled in advance of the Hearing, with the sole purpose of testing the remote hearing arrangements, in order to ensure the Hearing can be conducted smoothly. Such conference shall be held a week prior to the commencement of the Hearing.

- a. The Service Providers shall collectively serve as the ‘host’ of the meeting.
- b. The Service Providers shall arrange for each Participant to be able to test the various technical features that the Participants will employ, including the Platforms to be used to view and mark exhibits, and to conduct break-out sessions.
- c. If the Parties intend to use translation services, such service provider shall if necessary be present at the Pre-Hearing Conference to ensure that they understand the Protocol and are able to connect virtually via the means agreed to by the Parties.
- d. The compatibility and connectivity of each Participant’s equipment (software, hardware) shall be tested during the Pre-Hearing Conference, and the Participants shall check that they have sufficient audio and video presence in the remote hearing room.

Q. MODIFICATION

- 78. The Parties may request the Tribunal to modify any of the requirements in this Protocol, or the Tribunal may modify any of the requirements on its own initiative after consultation with the Parties.
- 79. Any modification to this Protocol shall be in writing.

R. HEARING COSTS

- 80. The costs of and associated with the Hearing shall be paid equally by the Parties, and such costs as have been incurred or may be incurred may be subject to any costs order that the Tribunal might make in due course.

S. LOCATION

- 81. The Remote Hearing shall be deemed to take place at the seat of the arbitration, [city], [country].

T. RECOGNITION AND ENFORCEMENT

82. The Parties have agreed that:

- a. The Tribunal may use remote video-conferencing as the means for conducting the arbitral hearing in this matter;
- b. Remote video-conferencing constitutes a fair and acceptable means of holding hearings and taking of evidence by the Tribunal pursuant to the Parties' arbitration agreement and the rules and legal requirements applicable in this matter, including those at the seat of the arbitration;
- c. The conduct of the Hearing is consistent and compliant with the *[law of the seat]* and is substantially in accordance with this Protocol; and
- d. No Party will seek to set aside or oppose the recognition or enforcement of any resultant arbitral award on the basis that the arbitral hearing was conducted by remote video-conferencing, and hereby waives any right to seek any such set-aside.

[Signed: Claimant's authorised representative]

[Signed: Respondent's authorised representative]

ADGM Arbitration Centre
Level 20, Al Maqam Tower
ADGM Square, Al Maryah Island
PO Box 111999, Abu Dhabi
United Arab Emirates
enquiry@adgmac.com
+971 2 333 8601
www.adgm.com/arbitrationcentre



ADGM
Arbitration Centre

