



LAGOS CHAMBER OF COMMERCE INTERNATIONAL ARBITRATION CENTRE

PROTOCOL FOR THE MANAGEMENT OF VIRTUAL PROCEEDINGS 2020



LACIAC
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INTERNATIONAL ARBITRATION CENTRE

LACIAC assists local and international businesses
by creating cost-effective and efficient dispute
management and resolution solutions

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1. Scope of Application

- 1.1. This Protocol for the Management of Virtual Proceedings is based on the Africa Arbitration Academy Protocol on Virtual Hearings in Africa (“the AAA Protocol”) with such modifications as are considered necessary to align the AAA Protocol with LACIAC’s rules and practices.
- 1.2. This Protocol shall apply whenever parties to arbitration under LACIAC’s rules agree to conduct part or all of such proceedings on LACIAC’s Online Dispute Resolution (ODR) electronic portal (“the LACIAC ODR Portal”), or on any other similar electronic portal. The protocol shall also apply whenever parties to mediation, adjudication or expert determination under LACIAC’s rules (hereafter referred to as “other ADR proceedings”) agree to apply the protocol, and the following paragraphs of this protocol which apply to arbitrations shall equally apply to such other ADR proceedings with necessary changes required by the nature of each type of proceeding as the parties may agree, or, in the absence of such agreement, as the Mediator, Adjudicator or Expert may direct.

2. Preliminary Considerations, Logistics, and Pre-Virtual Hearing Arrangements

2.1. Preliminary Considerations

- 2.1.1. The procedures, schedules and deadlines as detailed under the LACIAC Arbitration Rules shall apply to all virtual hearings, including procedures carried out through the LACIAC ODR Portal.
- 2.1.2. The parties shall be deemed to have agreed to carry out the arbitration proceedings or aspects of the arbitration proceedings virtually through the LACIAC ODR platform when: (a) the Claimant initiates an arbitration on the platform and the Respondent delivers its Response to the Request for Arbitration through the platform. The Centre shall be responsible for ensuring that the ODR portal shall, as much as possible, meet the minimum standards detailed under Annex I of this Protocol.
- 2.1.3. The parties and the arbitral tribunal shall also take into consideration the level of cyber security required to safeguard the security and integrity of electronic filings and virtual hearings. In any event, the parties and the arbitral tribunal shall jointly work together to ensure that in using the LACIAC ODR portal, they abide by the cyber security measures detailed under Annex I of this Protocol.
- 2.1.4. Where a hearing is held virtually, each party and the arbitral tribunal shall ensure that they have in place at least (1) back-up internet service provider. The Centre shall have in place a back-up electronic portal to hold hearings in the event that any technical breakdown occurs and threatens the smooth continuation of a virtual hearing.
- 2.1.5. Where any of the parties do not have access to the technology, software, and equipment to be used for virtual hearings, the party shall promptly inform the Centre and the Centre may arrange to provide a video conferencing location for such party. The financial burden arising from such provision shall be borne by the party.

2.2 Logistics

- 2.2.1** To the extent necessary, a party may request the arbitral tribunal to convert a scheduled physical hearing to a virtual hearing. Such request shall be made no later than twenty-one (21) days before the scheduled date of the arbitral hearings.
- 2.2.2** The parties and the arbitral tribunal shall engage in a pre-hearing virtual conference that should be held no later than three (3) days before the scheduled start date of the arbitral hearing. During this pre-hearing virtual conference, the Parties shall be acquainted with the virtual hearing features of the LACIAC ODR electronic portal and the LACAIC case manager or the tribunal registrar shall, together with the parties, undertake a dry run to ensure that their devices, environment and internet arrangements are compatible with the ODR process.
- 2.2.3** Each party shall be responsible for its virtual hearing arrangements. No witness shall be allowed to confer with their legal practitioner or with any party representatives while giving evidence.
- 2.2.4** The parties shall be responsible for ensuring that they are equipped or make provisions for a qualified technician to attend to technical problems that they may encounter during the hearing.
- 2.2.5** Unless the parties have expressly agreed, neither of the parties shall attend the hearing physically at the same venue as the arbitrator or arbitral tribunal if the other party can only attend through the virtual hearing.

2.3 Pre-Virtual Hearing Agreement¹

- 2.3.1** Without prejudice to article 2.1.2, where there is no agreement between parties on the use of virtual hearings, parties shall, prior to the hearing and to the extent necessary, enter into a Pre-Virtual Hearing Agreement² to expressly consent to the use of virtual hearings as per the draft in Annex II of this Protocol. In the alternative, the Tribunal shall, where appropriate and after due consultation with the parties, direct that the evidentiary hearing be conducted virtually as per the draft procedural order in Annex IV of this Protocol.
- 2.3.2** The parties and the arbitral tribunal shall endeavor to use their best efforts to ensure that the agreement referred to under article 2.3.1 of this Protocol complies with any mandatory requirements for conducting hearings under the arbitration law of the seat of arbitration.

3 The Virtual Hearings and Presentation of Evidence

¹ Clause 2.3 contemplates where the arbitration agreement is already activated. However, parties may at the contracting stage provide for a virtual hearing in their arbitration clause using the template provided in Annex II of this Protocol.

² "Pre-Virtual Hearing Agreement" where used in this Protocol, shall mean "agreement between the Parties to conduct hearings through online means" as per Annex III of this Protocol

3.1 Conduct of Virtual Arbitral Hearings

3.1.1 The parties and their counsel shall log on to the LACIAC ODR electronic portal, or other virtual hearing portal in good time for the virtual hearing, to test the technical features of the platform to be used. The arbitral tribunal shall ensure that all parties are properly notified of the agenda for virtual hearing so that necessary technical arrangements are made by the parties to test and connect to the platform.

3.1.2 In scheduling virtual hearings, the tribunal shall consider the:

- (i) Different time zones of participants;
- (ii) Number of remote locations and the possibility for tribunal members to be in the same physical location;
- (iii) Method of taking evidence from fact witnesses and experts to ensure that the integrity of any oral evidence is preserved;
- (iv) Method for confirming and identifying all participants, including any technical administrator; and
- (v) Possibility of using demonstratives, including shared screen views or electronic hearing bundle on a shared document repository hosted on the platform that guarantees access by all participants.

3.2 Witness Examination

3.2.1 Where evidence is to be given during virtual hearings, all participants shall ensure that all connecting locations meet the logistical and technical requirements as outlined in this Protocol.

3.2.2 Witnesses need not be at the same location as parties and counsel, but the location chosen by the witnesses shall comply with the minimum specifications outlined in the Protocol. The video conferencing system at the location of the witness shall allow enough visibility to see the witness and to verify that no unauthorized person is present with him/her. If it is practicable, the tribunal shall arrange with the parties for one representative of each party to be present with the witness during his or her testimony.

3.2.3 The witness shall identify all individuals present in the location where the witness is testifying and confirm that the witness is not receiving communications or assistance of any sort from any unauthorized person during the testimony. The witness shall be visible to counsel and counsel shall always be visible to the witness during the direct examination, cross-examination, and re-examination, if any.

3.2.4 To the extent required by the procedural law at the seat of arbitration, witnesses who testify shall affirm or swear in an oath (as per the draft in Annex V of this Protocol) that they act in accordance with the arbitral tribunal's procedures. The parties shall ensure that an agreed translation of the affirmation or oath, is placed before the witness in the location from which the witness will be connecting, before the commencement of witness' testimony.

3.2.5 The witness shall give evidence during the virtual hearing under the arbitral tribunal's direction and the arbitral tribunal may terminate the video conference at any time if it deems the video conference so unsatisfactory or that it is unfair to either party to continue. It is recommended that where it is possible, the hearing be reconvened as soon as it is practicable as directed by the arbitral tribunal.

3.2.6 When allocating time during virtual hearings, the arbitral tribunal shall set aside some time for housekeeping matters, objections, applications, and/or other unexpected incidents or events.

3.3 Documents

3.3.1 The parties shall ensure that all the documents which the witness may be questioned about during the virtual hearing are clearly identified, paginated, and made available to the witness during the examination, without any annotations, notes, or mark-ups. If available, a separate display screen/window (other than the screen/window used to display the video transmission) shall be used to show the relevant documents to the witness during questioning.

3.3.2 The parties shall utilize the option for submission and storage of documents on the LACIAC ODR platform or as may be directed by the Centre from time to time.

3.3.3 An electronic hearing bundle of all documents to be presented or used shall be tailored to any specificities of the virtual hearing and the platform used and shall be made available to the arbitral tribunal and all parties by no later than one week before the virtual hearing.

3.4 Interpretation

3.4.1 Where interpretation services are needed for witness examinations, each party shall ensure that qualified interpreters are made available to the witness. The parties and the arbitral tribunal shall consider the arrangements needed to

- (i) Ensure that the interpreter can provide his/her services virtually;
- (ii) Provide simultaneous or consecutive interpretation as preferred; and
- (iii) Secure the availability of any certain additional equipment for the efficiency of the interpretation process.

3.4.2 Where the interpretation is required simultaneously in multiple languages, arrangements shall be made for several audio feeds with participants selecting which audio channel they wish to hear. In considering the appropriate virtual platform, the parties and the arbitral tribunal shall, to the extent necessary select a platform that allows the host to assign interpreter roles to certain participants, which will allow them to see a different interface, intended to facilitate the process of switching channels.

3.5 Recording

- 3.5.1** A full recording of the virtual hearing shall be made available to the arbitral tribunal and the parties unless otherwise agreed.
- 3.5.2** The recording of the virtual hearing shall be made by the Centre using the LACIAC ODR electronic portal or any other appropriate technology and such recording shall be deemed to be a true and original copy of the recorded proceedings.
- 3.5.3** Any recordings of the virtual hearing shall be used to produce hearing transcripts which shall be circulated to the Parties within timelines agreed at the end of the virtual hearing.

4 Security and Privacy Considerations

- 4.1** Virtual hearings and any exchange of information made during the hearing shall be secure and private.
- 4.2** Each party to a virtual hearing shall provide the Centre with a list of all participants, not later than one week before the hearing. Subject to any other direction by the arbitral tribunal, participants to a virtual hearing shall be limited to parties' representatives, counsel, witnesses, tribunal members, tribunal secretary, reporters, and such logistical, technical, or other support as may be required to assist in the presentation of evidence or with any technical issue.
- 4.3** Only the persons on the list of participants submitted to the arbitral tribunal shall be permitted to attend the virtual hearing and where a party desires to include a person, not on the list of participants, such person may participate only upon approval by the arbitral tribunal, after hearing the other party's views. The parties shall inform the arbitral tribunal in case of any change in participation after each break in the proceedings, or in case a change occurs during the hearing itself.
- 4.4** The parties shall ensure that the rooms used to connect to virtual hearings either at their offices or in such other locations are well equipped with any equipment necessary for the virtual hearing, isolated and inaccessible to non-participants or unauthorized persons during the virtual hearing and soundproofed to the extent possible.

5 Hearing Protocol, Infrastructure and Technical Standard

- 5.1** The parties shall connect to the virtual hearing platform through locations with reliable internet connectivity that offer seamless and smooth streaming and communications during the virtual hearing. The minimum technical requirements and any back-up measures or contingency plan(s) shall be agreed between the parties and the arbitral tribunal.
- 5.2** Any participant who is not speaking at any point in time during the virtual hearing shall mute his/her microphone to minimize any background noise and ensure the best experience in connectivity and streaming.

6 Interpretation

'LACIAC ODR electronic portal' means the online electronic collaborative portal on which parties may initiate and conduct aspects of their arbitration or other ADR proceedings and which are accessible on LACIAC's website at <https://odr.laciac.org/auth/login>.

'The Centre' means the Lagos Chamber of Commerce International Arbitration Centre with its secretariat located at Commerce House, 1 Idowu Taylor Street, Victoria Island, Lagos.

ANNEXES

Annex I – Minimum Cybersecurity Standards

1. Parties, Tribunal, and all other participants are to take the following precautions:
 - 1.1. Do not join meeting/hearing via an unsecured/public Wi-Fi connection;
 - 1.2. Check device setting to ensure encryption is properly set up and NOT turned off;

Annex II –LACIAC Model Arbitration Clause (including Virtual Hearing Option)

“Any dispute, controversy, or claim arising out of or in relation to this agreement, including any question regarding its breach, existence, validity or termination of the legal relationships established by this agreement, shall be finally resolved by arbitration under LACIAC Arbitration Rules, which Rules are deemed to be incorporated by reference into this clause. It is agreed that:

- I. The number of arbitrators shall be [one/three] (optional [who is/are to be a [specify any qualifications required]);
- II. The seat, or legal place, of arbitration shall be [City and/or Country];
- III. The place of arbitration shall be [Lagos/Nigeria];
- IV. The governing law of this arbitration agreement shall be the substantive law of [the laws of the Federal Republic of Nigeria/England & Wales]; and
- V. The language of the arbitration shall be [English].”

“Where a dispute can be determined fairly otherwise than by physical hearing, as determined by the arbitral tribunal, hearings in the arbitration shall be conducted virtually in accordance with the LACIAC Protocol for the Management of Virtual Arbitration Proceedings 2020 and any such procedural order as may be issued by the arbitral tribunal. It is hereby agreed that no objection shall be taken to the decision, order, or award of the arbitral tribunal on the ground that the hearing regarding the dispute was conducted virtually.”

Annex III -LACIAC Model Virtual Hearing Agreement

“We, the undersigned Parties, agree to proceed with a virtual hearing regarding the claims, defences and arguments, pleaded in the parties written submissions and evidenced in the materials on record. The hearing shall be conducted virtually in accordance with the LACIAC Protocol for the Management of Virtual

Arbitration Proceedings 2020 and the LACIAC Arbitration Rules 2016. All other aspects of the arbitration shall be administered in accordance with the arbitration agreement in clause [xxx] of the Contract. We further agree that no objection shall be taken to the decision, order, or award of the arbitral tribunal on the ground that the hearing regarding the dispute was conducted virtually.”

OR

“We the undersigned Parties agree to proceed with a virtual hearing in accordance with LACIAC Protocol for the Management of Virtual Arbitration Proceedings 2020 and the LACIAC Arbitration Rules 2016 The arbitral tribunal shall hear the Parties on the issues listed in the attached joint list of issues. The hearing shall be conducted virtually and all other aspects of the arbitration shall be administered in accordance with the arbitration agreement in clause [xxx] of the Contract. We further agree that no objection shall be taken to the decision, order, or award of the arbitral tribunal on the ground that the hearing regarding the dispute was conducted virtually.”

Annex IV – Tribunal-Issued Cyber Protocol

The Arbitral Tribunal constituted to decide the dispute between the Claimant and the Respondent in accordance with LACIAC Arbitration Rules issues this Procedural Order following due consultation with and/or agreement of the Parties.

- I. [background/ chronology of events leading up to the decision to hold a virtual hearing]
- II. [list of participants]
- III. [hearing locations – indicating which participant(s) will be joining from each location]
- IV. [indicate date and time – specifying time according to different time zones from which participants will join the hearing]

Annex V – Technical Specifications

- a) The LACIAC ODR Portal will be used to administer all arbitrations under this Protocol.
- b) The portal is best accessed using a laptop/desktop.
- c) Each party agrees to be responsible for ensuring that said party, its representatives and witnesses shall be available to join the hearing on the date and time agreed and shall join the hearing promptly using the LACIAC ODR Portal. In addition, Parties agree to ensure that all other persons such as the Tribunal Secretary, Rapporteurs, and Reporters who will take part in the proceedings shall join the hearing on the date and time agreed and shall join the hearing promptly.

- d) Furthermore, each party shall ensure the use of a secure and reliable internet connection which will enable participants to participate effectively in the hearing.
- e) Any test-runs, trainings, manuals or guidelines including videos, pictures, and presentations which may be required to provide participants with a working knowledge of and enable them to make efficient use of the LACIAC ODR platform will be promptly made available to the Arbitral Tribunal and all other participants no less than one week before the start of the hearing. For clarity, all training, simulations, and equipment testing shall be completed no later than three (3) days before the first day of hearing.

Annex VI - Witness Oath

"In accordance with LACIAC Arbitration Rules, I swear to have followed the Virtual Hearing Protocol and the tribunal's procedures regarding the accuracy and truthfulness of my testimony, to the best of my ability. I affirm that there is no one else with me in the location from which I am connecting [except authorized attendees], that I will not be communicating with any of the parties or their representatives during the course of my testimony, and that I am not being assisted in the presentation of my evidence except as authorized by the Tribunal."