



**Hogan  
Lovells**

Protocol for the use of  
technology in international  
arbitration hearings

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# Purpose

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The use of technology in international arbitration has continued to increase over the years, and in 2020 the international arbitration community used technology to help overcome various challenges to the adjudication of disputes.

As we proceed, parties may agree to use technology to provide time and cost savings and efficiencies as well as help reduce the environmental impact of international arbitrations. Whether using technology out of convenience or necessity, implementing an agreed protocol of procedures helps ensure a smooth process for all involved. The following Protocol provides updated recommendations and best practices for the use of technology in international arbitration hearings.

The guidance outlined within this Protocol are recommendations and their use is optional. Further adapting and customizing may also be required on a case-by-case basis. This Protocol is intended to promote and enable the fair and transparent presentation of evidence and prioritize the seamless and secure transmission of documents, video, and audio from different locations, while limiting technical disruptions. Depending on the conditions, the guidance on the use of technology outlined in this Protocol may be used for fully remote hearings where all participants are in different locations, as well as for semi-remote or hybrid hearings where some participants are in one main hearing location with others participating from one or more remote locations.

This Protocol shall not supersede any agreement between the parties as well as any agreed-upon arbitration rules, which shall govern in the event of a conflict. We at Hogan Lovells hope that the use of this Protocol will encourage the use of technology to help, where appropriate, reduce barriers to the efficient adjudication of disputes in international arbitration.



# Key considerations

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Prior to conducting and participating in a remote hearing, the parties may wish to address the following:

- 1. Location:** Generally it is important for all parties to understand and be transparent as to where the tribunal, lead counsel, party representatives, vendors, and fact and expert witnesses will be physically located during the hearing.
- 2. Time zones:** The locations of the participants also relate to the time zones across which the arbitration will be spread and the corresponding impact on scheduling of the hearing. Daily schedules and factors such as minimum times between hearing days all must be considered in light of the time zones of the participants.
- 3. Pre-hearing conference:** In addition to the case-specific issues discussed at pre-hearing conferences, scheduling an initial discussion among the parties, the tribunal, necessary vendors, and the arbitral institution (where applicable) to discuss issues and procedures relating to the remote hearing is usually helpful and can avoid subsequent organizational problems.
- 4. Test session(s):** Apart from the pre-hearing conference, it may be advisable to have a pre-hearing remote test session with the parties, the tribunal, vendors, and all witnesses. In addition to confirming the system works for the intended purposes, the tribunal can instruct the attendees on any preferred procedures. This might include how witnesses should be called and any restrictions relating to their remote testimony. Of course, parties can and probably should also conduct their own test sessions, including with their witnesses and experts, before the joint session is held.
- 5. Third party remote hearing services providers:** As with any hearing, a number of service providers may be needed for remote hearings. Reporters, interpreters, and various technology vendors may all be necessary and require preparation.
- 6. Hearing platform(s):** There are a number of platforms that may be suitable for a remote hearing, depending on the functionality required. The parties should agree on one main platform, and perhaps a backup. In determining the agreed-upon platform, security should be the most important consideration, followed by ease of use and accessibility for all participants, including witnesses who may not have the most advanced computer technology.
- 7. Cybersecurity:** The parties in every case should take time to consider not only legally required security measures but any additional security measures that should be instituted given the locations and circumstances of the participants.
- 8. Flexibility:** Remaining flexible is often furthered by agreeing in advance to backup plan(s) in the case of technical failures.

# Hearing preparation

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## 1.1 Pre-hearing conference

Ahead of the hearing, the parties and the tribunal should conduct a pre-hearing conference to discuss the requirements and schedule for the remote hearing. This will provide the participants an opportunity to discuss any suggested hearing platforms, requirements, as well as any areas of agreement and/or disagreement. The tribunal can also provide its view on its requirements and preferences for the conduct of the remote hearing.

The pre-hearing conference should be held far enough in advance of the remote hearing to allow the parties sufficient time to address any issues that may come to light. Additional pre-hearing conferences may be held as necessary either to confirm that issues have been resolved or to address technical aspects of the hearing with other witnesses and participants.

## 1.2 Remote hearing services providers

The parties should consider whether to engage one or more service providers in connection with the remote hearing. Vendors can provide some or all of the following services:

- a) setting up the remote hearing and breakout rooms;
- b) assisting with the electronic presentation of evidence (EPE);
- c) integrating the parties' chosen platform(s) and any third-party service providers' equipment and programs, where relevant;
- d) providing rental hardware, including monitors, cameras, speakers, and other audio/visual equipment; and/or
- e) providing online document hosting facilities.

## 1.3 Hearing run-through/test session

Whether at a pre-hearing conference or otherwise, in advance of the hearing, the parties should schedule at least one technical run-through and test session with all participants, including the tribunal, all testifying witnesses, and any reporters or service providers who will be involved. This is an opportunity for all participants to familiarize themselves with all technical features that will be employed during the hearing. This is particularly true for witnesses, who may be unfamiliar with giving evidence remotely. It also provides the participants with the opportunity to troubleshoot, if any issues arise during the test session.

This hearing run-through/test session should be held sufficiently in advance of the hearing to allow time for additional test sessions if required.

At the test session(s):

- a) The presiding arbitrator or a designated/agreed third-party remote hearing services provider should serve as the “host” of the meeting.
- b) The participants should seek to use the technical equipment that will be employed during the hearing. Further, they should seek to attend from the location from which they will attend the remote hearing to test internet connectivity, as well as the video and audio quality.
- c) The meeting host should work together with the parties to test the various technical features that the parties will employ during the hearing, including the platform(s) to be used to view and mark exhibits, conduct breakout sessions, and share documents.

- d) Counsel may also decide to test the internal mechanisms that they will use to communicate among themselves and/or with party representatives during the hearing (e.g., an open conference line to communicate during breaks or the use of an additional device to communicate in writing during the hearing). Of course, no alternate means of communication may be used with any testifying witness during testimony.
- e) If parties intend to use transcription services or translation services, such service providers should be present at the hearing run-through/test session to ensure that they understand the agreed procedure and are able to connect remotely via the means agreed to by the parties.
- e) No party should be expected to partake in a hearing at an unreasonable time based on their individual time zones. Adjustments to the timetable to accommodate participants in different time zones may include shortening sitting times and prolonging the overall length of the hearing.
- f) The schedule should allow for at least an eight-hour gap between the end of one session and the start of another.
- g) The parties may consider including longer breaks in the schedule and/or incorporating time specifically for any unforeseeable technical delays.

## 1.4 Scheduling of the hearing

- a) Parties should cooperate to find an acceptable schedule that is practical for all, bearing in mind the availability of support personnel. If there are competing preferences, the parties should defer to the wishes of the tribunal.
- b) When considering a schedule for the remote hearing, parties should take into consideration the physical locations of all participants.
- c) Regarding different times zones, parties may consider, where appropriate, traveling to locations that minimize time-zone differences.
- d) In situations where travel is not practical, the parties and the tribunal should seek to minimize inconvenience for testifying witnesses. They should also give preference to individuals and witnesses with special circumstances. For example, witnesses with health, family, or other circumstances that raise special concerns as to the location from which they will testify should be given preference over those that do not have such limitations.

## 1.5 Security

- a) To protect the security of the hearing, electronic calendaring invitations with relevant dial-in information and passwords should be limited to authorized attendees and, to the extent possible, should only include the relevant case number but not the entire case name.
- b) The parties should seek to agree on a list of participants who may attend the hearing, which should be provided to the tribunal in advance of the hearing.
- c) All attendees should use a particular username that identifies which party they represent and that should be indicated on the list of attendees.
- d) The platform(s) used to host the remote hearing should be password-protected. Depending on the platform employed, a “waiting room” or similar feature should be used and the host should grant access to the main hearing room only to persons included in the list of attendees as confirmed by their username.
- e) The relevant electronic calendar invitations should only be forwarded to persons included in the list of attendees and no participant should forward them to others without prior authorization of the tribunal.

## 1.6 Venue

- a) Where practicable, the parties may find it beneficial for their counsel teams and/or party representatives to sit together in one venue for the duration of the hearing, in a “cluster.” To the extent that one party’s witness or witnesses testify from such a cluster, the other party should be afforded the same opportunity.
- b) Where parties decide to cluster, all participants should be notified before the hearing.
- c) To the extent practical, all or some witnesses may wish to testify from a neutral venue (a reporter’s office, for example) in order to have access to required equipment and technology.
- d) One or more members of the tribunal may choose to be physically present in the same location as each other during the hearing, provided that the video capability will be of sufficient resolution to adequately and accurately present them.
- e) The parties may seek to agree to be present at the same venue as the tribunal. Neither party nor their witnesses, however, shall be present at the same venue as the tribunal, or any member of the tribunal, unless the other party is also present.

## 1.7 Platforms

The parties should agree to the platform(s) to be used in aid of the pre-hearing conference (as well as any run-through/test session(s)) and hearing, and should endeavor to select a secure and stable platform to protect the integrity of the proceedings. In selecting such platform(s), parties should consider the level of encryption a platform offers, the types of security measures in place (e.g., whether the platform offers password-protected meetings), and inquire into the potential cyber-risks presented by the platform.

The parties should also consider the following functionalities that may be required, and that the respective platform(s) should offer (some platforms may offer a combination):

- a) end-to-end encryption and password protection
- b) video- and audio-conferencing;
- c) breakout rooms;
- d) text messaging;
- e) document presentation and annotation;
- f) transcription;
- g) interpretation channels (for either simultaneous or consecutive interpretation); and
- h) document storage and transmission.

Those platforms may include, but are not limited to:

- a) Videoconferencing and text messaging platforms such as Zoom, Microsoft Teams, Blue Jeans, WebEx (Cisco), Skype (Microsoft), KUDO or other high-end teleconference systems. The chosen videoconferencing platform should be password-protected, and all other security features of the platform should be used to ensure that the platform is secure.
- b) Document-sharing platforms such as CaseMap, Exhibit Manager, FileCloud, Opus Magnum, SharePoint, Strutlegal, TransCEND, or Affinitext.
- c) Transcription platforms, which are generally provided by reporters.

In order to minimize disruption, a secondary platform should be selected should the first fail for any reason. Details of this secondary platform should be circulated in advance of the hearing to ensure ease of access should a change become necessary.

Additionally, the parties should select a separate means of internal communication via secure text message, videoconferencing platform, or telephonic dial-in. Virtual breakout rooms are one such option available within many videoconferencing services. If the parties use virtual breakout rooms, they should consider what, if any, features may be used to prevent one party joining another's breakout session.

## 1.8 Technology

The parties may agree on the specifications of the technology to be used in aid of the hearing. In reaching any such agreement, the parties should consider the practical circumstances of the participants and in doing so may consider the following recommendations:

### 1.8.1 Hardware

The following hardware is recommended:

- a) dedicated microphones (not built into laptops for example) for each speaker (depending on the circumstances, a headset with integrated microphone may be preferred);
- b) if a speaker is used, it should have sufficient volume to be audible for all participants in any location or cluster;
- c) high-definition webcams;
- d) devices for each participant or cluster to connect to the remote hearing, for example a desktop computer, laptop, or if necessary, a tablet; and
- e) preferably two monitors/screens for each participant or cluster in order to view comfortably both shared screens and the other participants.

Where practicable, the parties should consider that the main participants, including the tribunal and lead counsel, should have backup hardware, such as headsets, webcams, and laptops.

### 1.8.2 Connection

- a) A stable and reliable internet connection is required. A wired network connection is preferred over a wireless connection.
- b) Participants should ensure that their internet connections have sufficient bandwidth for the chosen platform(s).
- c) Where a wired connection is unavailable, parties should under no circumstances use public WiFi networks but must instead use password-protected, secure wireless connections.
- d) Participants may also consider having a smartphone or tablet, with mobile data connection and mobile hotspot functionality, available as a backup internet connection.

## 1.9 Recording

- a) Most platforms offer the ability to record the conference, and recording may be helpful, even as only a backup for the transcribed written record. The parties should agree in advance whether to record and the procedure for recording the proceedings.
- b) Consent of all participants, including reporters and interpreters where relevant, should be sought before recording.
- c) The parties should jointly designate an individual responsible for ensuring that all proceedings are recorded; that individual should, in turn, either have the technical training required to record the proceedings or have immediate access at all times to support personnel that can readily assist in troubleshooting recording issues.
- d) With the exception of reporters, the hearing participants must not separately record – or otherwise capture – the proceedings unless all parties agree.



- e) Individuals responsible for recording in all media should circulate the recordings to the parties and the tribunal within 24 hours of the close of each hearing day.

## 1.10 Technical support

At each venue, the parties should jointly designate at least one person with adequate technical knowledge to be present (remotely or otherwise) at the pre-hearing conference and available during the actual remote hearing.

This person should be familiar with the technology, platforms, systems, and devices used at each of the venue) they are supporting.

To the extent that more than one technical adviser participates in the proceedings, they should cooperate with each other and report any issues promptly to the tribunal.

## 1.11 Reporters

- a) If the parties agree to transcribe the proceedings, they should agree to a single reporting service provider for all or any given portion of the hearing.
- b) The reporter need not be present at the same venue as the parties but should remain available to contact at all times during the proceedings to ensure integrity and ease of communication between the parties and the reporter.
- c) Further, parties may consider using a reporting service that provides a real-time display of the transcript through a video connection with the participants. To the extent practicable, when using real-time transcription, the transcript should be displayed on a different device from the one used for the videoconferencing.
- d) Any service should also provide its own dedicated support personnel that are available throughout the hearing to troubleshoot problems as they arise.

## 1.12 Documents

### 1.12.1 Electronic documents

The parties may agree to utilize an online document repository to store the documents introduced during the proceedings. This may be a standalone platform or part of a more extensive online case management platform that the parties have agreed to use.

The parties should ensure that any agreed platform complies with relevant cybersecurity, confidentiality, and data protection requirements. For example:

- a) Any sensitive electronic documents should be password-protected or have restricted access.
- b) If third-party cloud storage is used to transfer documents, the parties should take adequate steps to ensure that the system is password protected and secure.
- c) If sensitive documents are printed for use in the proceedings, the parties should take care to ensure that those documents are either returned to the parties or destroyed at the conclusion of the proceedings.

### 1.12.2 Electronic presentation of evidence

- a) During the hearing, where the parties have agreed not to produce hard-copy bundles, they may seek to refer to evidence on the record by presenting it electronically, so that all participants can view the relevant evidence simultaneously. In order to do so, depending on the platform(s) used, the parties may either present the evidence themselves via a “screen share” or engage a third-party EPE provider.
- b) While presenting evidence electronically, the parties may wish to annotate or mark up their documents, or where relevant, ask the third-party provider to do so.

## 1.13 Interpreters

- a) If interpretation services are needed for witness examinations, counsel should arrange for any interpreters needed for the witness they intend to present.
- b) In case simultaneous interpretation in multiple languages is required, arrangements should be made for multiple audio feeds with participants permitted to select which audio channel they wish to hear. Some platforms allow 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.
- c) If only one audio feed can be arranged, parties should opt for sequential rather than simultaneous interpretation in order to avoid situations where the witness, interpreter, and examining counsel speak over each other.
- d) Each audio feed should be recorded if and as agreed.
- e) Opposing counsel may retain their own separate interpreter to ensure the accuracy of the interpretation, but coordination will be needed for the inclusion of such participants in the remote hearing.



# Hearing

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## 2.1 Practical considerations and hearing etiquette

In order to ensure that the hearing runs as smoothly as possible, the following recommendations may be helpful for all participants:

- a) turn video off, with the exception of the tribunal and active speakers, in order to preserve bandwidth and to assist the tribunal;
- b) only one active speaker should be in the camera frame at once;
- c) mute all cell phones and disable other alert systems on personal laptops and devices;
- d) use a quality, dedicated microphone or headset whenever possible and mute these devices when others are speaking to minimize background noise;
- e) shut down all background browsers and applications on the device used in aid of the arbitral hearing;
- f) disable pop-up notifications on the device in use;
- g) enter the hearing-room platform half an hour before the start of a hearing day to ensure a punctual start; this will allow any technological issues to be addressed before the starting time;
- h) be cautioned about speaking over each other, as this may not only disrupt the proceedings but may also interfere with transcription or any interpretation;
- i) speak slowly and pause between phrases to assist with any transcription or interpretation; and
- j) immediately report to the rest of the attendees if connectivity is lost using a designated messaging system. This is especially relevant where there is only an audio connection.

To the extent possible, it may be helpful for the parties to agree that an open chat window should remain active during the proceedings. The chat window may be used to allow all participants (including the reporters) to raise non-time sensitive communications with all participants at the hearing.

There shall be no ex parte chat window communication with the tribunal. Similarly, there shall be no ex parte chat window communication between testifying witnesses and counsel offering their testimony. Each party should identify a member of their team to monitor the chat room and flag any relevant issues to their team.

## 2.2 Host of the hearing and role of the presiding arbitrator

- a) At the outset of any remote proceedings, the presiding arbitrator or a designated/agreed third party should be made the host and moderator of the meeting to the extent possible. Ideally, that person would have already familiarized themselves with the “host” functions and commands of the agreed platform.
- b) The presiding arbitrator should outline the agenda for the remote proceedings, as well as any points of hearing etiquette agreed by the parties.
- c) If multiple participants are speaking at the same time, it should be the role of the host to operate the “mute” function on the audio feed and to pause the proceedings and determine the appropriateness of any participants’ contribution at the time in question.
- d) If one of the parties or the participant speaking loses connectivity and reports it through a designated messaging system, the presiding arbitrator should instruct the other participants to remain silent until connectivity is restored.

## 2.3 Attendance

- a) An electronic attendance sheet should be made memorializing all participants attending each day of the proceedings.
- b) At the outset of the proceedings, all participants should be identified; the parties should agree on measures to be taken to identify all individuals present on the hearing platform and at their respective locations.
- c) Additionally, the presiding arbitrator is encouraged to conduct and record a colloquy with the parties to confirm that:
  - i) the only persons permitted to attend the hearing are those noticed or approved by opposing counsel and the tribunal, and that no unauthorized parties shall attend in violation of that agreement; and
  - ii) any witness who is giving evidence shall not be assisted directly or indirectly during the course of their testimony.

## 2.4 Agreement not to challenge award on basis of remote hearing

Before any remote hearing, the parties should agree in writing that:

- a) videoconferencing constitutes an acceptable means of communication permitted by the applicable rules, including those at the juridical seat of the arbitration;
- b) the use of videoconferencing is acceptable in the current matter as the means for conducting the arbitral hearing; and
- c) no party will seek to vacate any resultant arbitral award on the basis that the arbitral hearing was not held in person.

In order to minimize any risk of vacatur in certain jurisdictions where remote hearings may be viewed as infringing on due process rights, it is recommended that the parties sign the above-referenced agreement and present it to the tribunal at the pre-hearing conference described above.

The tribunal may also seek confirmation from the parties at the end of the hearing that there are no objections to having held the hearing entirely or partially remotely so that the parties' confirmation and acquiescence is on the record.



# Witness examination

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## 3.1 Attendance

- a) Counsel offering the witnesses is responsible for ensuring that those witnesses comply with the agreed procedures set out in the agreed protocol. This includes ensuring that they have the required hardware and internet connections and meet the relevant security guidelines.
- b) Witnesses need not be in attendance at the same venue as the offering party but parties should ensure that witness participation will not be inhibited by their chosen venue.
- c) Counsel offering the witnesses is responsible for ensuring that they are online and ready to join the remote hearing when required. The host should not permit any witness into the remote hearing room until it is time for their testimony.
- d) When providing witness testimony, counsel and the witness should identify all individuals present in the room where the testifying witness is present and confirm in an oath that the witness is not receiving communications of any sort during the course of his/her testimony and that they are acting in accordance with the tribunal's procedures. A suggested version of the oath is below:

“I swear to have followed the tribunal's procedures regarding the accuracy, truthfulness, and fairness of my testimony to the best of my ability. I affirm that there is no one else in the room with me [except authorized attendees], that no unauthorized parties can communicate with me, and that I am not currently aware of what documents will be shown to me by opposing counsel.”
- e) If available, a 360-degree webcam may be used or the witness may turn the webcam (remotely or by hand) around to ensure that no unauthorized persons are in the room.

- f) The witness should be visible to counsel and the tribunal – and counsel and the tribunal should be visible to the witness – at all times during the examination.
- g) The witness should not use a “virtual background” and the venue from which they are testifying should remain visible.
- h) When presenting a witness, counsel should ensure that both the table in front of the witness and the top of the witness's head are in the frame.
- i) The parties should agree which, if any, other participants may remain on video during the cross-examination to observe the proceedings.

## 3.2 Presenting documents

- a) All exhibits and documents used in the course of a witness examination should either be provided in hard copy to the witness immediately before the commencement of the examination and/or be visible to the witness via screensharing or an EPE platform.
- b) If it is agreed that hard-copy documents should be used, the cross-examining party should deliver to the locale of testimony, prior to the hearing date, a sealed package containing the relevant documents. The witness should unseal and open the package on camera in front of all parties to ensure that the enclosed documents were not previously viewed.
- c) Counsel will then take the witness through the relevant documents during the examination. Those materials should be provided to all parties electronically at a time and in a manner mutually agreed in advance.

- d) In situations where witnesses are relying on hard copies, it is preferable for a representative of the examining party or for a designated neutral individual to be present at the venue with the testifying witness to assist with the exhibits. Where a representative of the examining party is present with the testifying witness, a representative of the other party may also be present.
- e) If additional documents that are not available to the witness in hard copy need to be shown to the witness during the examination, the witness should be shown the relevant documents either via screenshare or by a third-party EPE provider, where relevant.

### 3.3 Objections

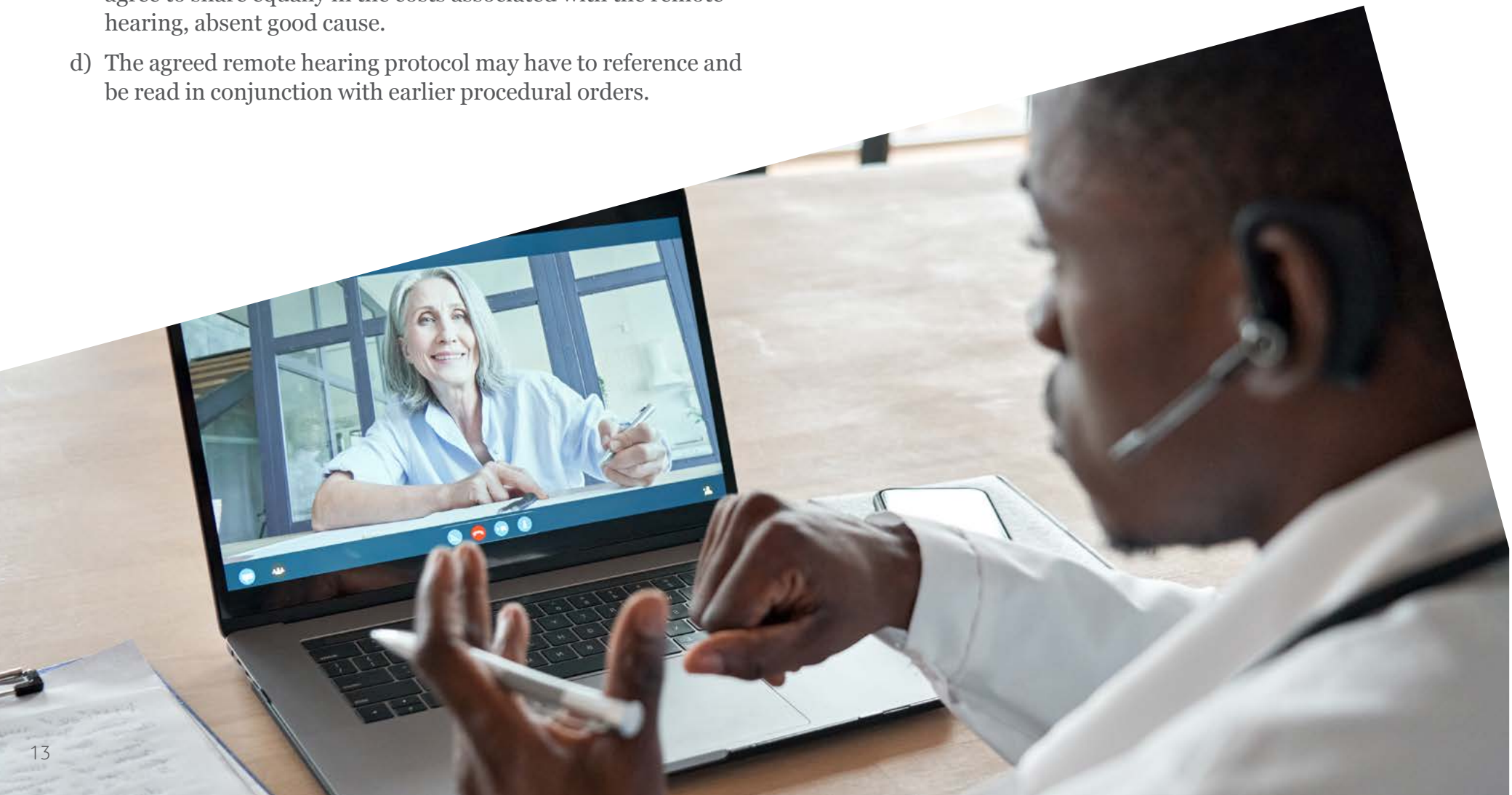
- a) Parties and witnesses are to be mindful during examinations that the other party may object to questions posed to witnesses.
- b) As a result, all parties and witnesses should allow additional time for such objections to be made.
- c) If multiple participants are speaking at once, it will be the collective role of the tribunal and of counsel to defer to the representative defending the testimony.
- d) Where “sidebars” are required between only certain participants in the hearing (such as between the tribunal and counsel), arrangements should be made for the relevant participants to briefly move into a breakout room.



# Final matters

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- a) All participants should ensure compliance with all data protection laws and regulations in each jurisdiction from which there is participation.
- b) The parties should ensure that all third-party providers agree to any appropriate confidentiality agreements.
- c) Pending a final award of costs by the tribunal, parties should agree to share equally in the costs associated with the remote hearing, absent good cause.
- d) The agreed remote hearing protocol may have to reference and be read in conjunction with earlier procedural orders.



# Remote hearing checklists

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## Preliminary agreements

- Procedural order, effects
- Remote hearing platform
- Backup platform
- Venues/locations, all participants
- Technical support contacts
- Reporters/stenographers
- Real time transcription
- Interpreter(s)
- Document handling & presentation, methods/vendors

## Scheduling considerations

- Witness Locations
- Time Zones
- Test Sessions (joint/individual)
- Pre-Hearing Conference
- Cybersecurity
- Back-up procedures
- Procedure for issuing hearing calendar invitations

## Remote testifying witnesses

- Distraction-free neutral venue, virtual backgrounds generally discouraged
- Broadband, secure internet connection
- Lawyer present or remote at testimony?
- High-definition camera
- Camera placement at eye level
- Quality, dedicated microphone
- Front lighting, consistent for time of day
- Review document handling, review, and presentation
- Meeting invitation, confirm
- Technical-support lifeline

## Pre-hearing conference/test session

- Designate platform “host”
- Test A/V connections
- Discuss security protocol
- Confirm invitation lead and process
- Confirm procedures for calling, adding, and dismissing witnesses
- Review use of “waiting rooms” and/or “breakout rooms”
- Identify unique procedures for experts
- Review back-up system and tech lifelines
- Confirm dates and locations of participants



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