Seoul Protocol on Video Conferencing in International Arbitration[1]

Introduction

This Protocol on Video Conferencing in International Arbitration (**Protocol**) is intended to serve as a guide to best practice for planning, testing and conducting video conferences in international arbitration.

Definitions

Agreed Bundle of Documents	shall mean the agreed and indexed documents submitted to the Tribunal for the purposes of the hearing.
Hearing Venue	shall mean the site of the hearing, being the site of the requesting authority, typically where the majority of the participants are located.
Observer	shall mean any individual who is present in the Venue other than the Parties, Tribunal, Witness, interpreter, as described in Article 3.
Party / Parties	shall mean the party or parties to the arbitration.
Remote Venue	shall mean the site where the remote Witness is located to provide his/her evidence (i.e. not the Hearing Venue), typically where a minority of the participants are located.
Venue	shall mean a video conferencing location, including the Hearing Venue and the Remote Venue(s).
Tribunal	shall mean the arbitral tribunal.
Witness	shall mean the individual who is the subject of the examination by video, including fact witnesses and experts.

Article 1 – Witness Examination Generally

1.1 The Parties shall ensure that any and all Venues meet the logistical and technological requirements as stated in this Protocol.

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1.2 The video conferencing system at the Venue shall allow a reasonable part of the interior of the room in which the Witness is located to be shown on screen, while retaining sufficient proximity to clearly depict the Witness.

1.3 The Witness shall give his/her evidence sitting at an empty desk or standing at a lectern, and the Witness's face shall be clearly visible.

1.4 As a general principle, the Witness shall give his/her evidence during the course of the hearing under the direction of the Tribunal. Only under exceptional circumstances and subject to the direction of the Tribunal would evidence from a Witness be given/conducted outside of the hearing.

1.5 A computer with email facilities and a printer should be located at all Venues.

1.6 The parties shall ensure that an agreed translation of the oath to be administered is placed before the Witness in the remote hearing room

1.7 The Tribunal may terminate the video conference at any time if the Tribunal deems the video conference so unsatisfactory that it is unfair to either Party to continue.

Article 2 –Video Conferencing Venue

2.1 To the extent possible, and as may be agreed to by the Parties or ordered by the Tribunal, the video conference shall occur at a Venue which meets the following minimum standards:

a. The Parties shall use best efforts to ensure that the connection between the Hearing Venue and the Remote Venue is as smooth as possible, with sounds and images being accurately and properly aligned so as to minimize any delays. This principle applies equally to situations where there is more than one Remote Venue. Where a connection between additional Venues is required (for example when an interpreter is connected from a third location), the connection may be established through the use of a third party video conferencing bridge service, such as multi-point control units or third party router vendors that interlink and connect multiple video conferencing systems together in a single conference.

b. The Venue shall have at least one on-call individual with adequate technical knowledge to assist in planning, testing and conducting the video conference.

c. The Venue shall be in a location that provides for fair, equal and reasonable right of access to the Parties and their related persons, as appropriate. Similarly, cross-border connections should be adequately safeguarded so

as to prevent unlawful interception by third parties, for example, by IP-to-IP encryption.

2.2 The Parties shall use their best efforts to ensure the security of the participants of the video conferencing, including the Witnesses, Observers, interpreters, and experts, among others.

Article 3 – Observers

3.1 During the course of the video conference, the only persons present in the Remote Venue shall be the Witness giving evidence (with his/her counsel, if applicable), interpreters, paralegals to assist with the documents, and representatives from each Party's legal team on a watching brief. Each Party shall provide the identities of every individual in the room to the other Party/Parties and to the Tribunal prior to the video conference and the Tribunal shall take steps to verify the identity of each individual present at the start of the video conference.

Article 4 – Documents

4.1 All documents on the record which the Witness will refer to during the course of his/her evidence must be clearly identified, paginated and made available to the Witness.

4.2 The Party whose Witness is giving evidence by video conference shall provide an unmarked copy (without any annotations, notes or mark-ups) of the Agreed Bundle of Documents (or such volumes of the Agreed Bundle of Documents as the Parties agree or are required) at the start of the examination of the Witness.

4.3 The Parties may agree on utilizing a shared virtual document repository (i.e. document server) to be made available via computers at all Venues, provided that the Parties use best efforts to ensure the security of the documents (i.e. from unlawful interception or retention by third parties).

4.4 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 the course of questioning.

Article 5 – Technical Requirements

5.1 The video conference shall be of sufficient quality so as to allow for clear video and audio transmission of the Witness, the Tribunal and the Parties, and there shall be compatibility between the hardware and software used at the Venues. While the Parties and the Tribunal may agree on the technical requirements for the video conferencing, as a guide, minimum transmission speeds should not be less than 256 kbs/second, 30 frames/second, and the minimum resolution should be HD

standard. The Hearing Venue should also be equipped with both ISDN and IP communication line capabilities and all Venues should be equipped with appropriate portable equipment in the event of unforeseen technical complications.

5.2 For any individual participating in the video conference, there shall be sufficient microphones to allow for the amplification of the individual's voice, as well as sufficient microphones to allow for the transcription of the individual's testimony as appropriate. There shall also be adequate placement and control of the cameras to ensure that all participants can be seen.

5.3 Article 5.2 shall apply to interpreters or other participants referred to in Article 3.1, as appropriate.

5.4 There shall be appropriate microphones and connections to allow for the amplification of the relevant persons at the Hearing Venue so that the Witness and Observers may adequately hear the relevant individual(s) at the Hearing Venue.

5.5 Under appropriate circumstances, Parties may agree to use web-based video conferencing solutions instead of ISDN or IP communication lines. When using a web-based video conferencing solution, the Venue should provide for a sufficiently large screen that can project the video transmission displayed through the video conferencing solution and ensure that the Ethernet or wireless internet connection is secure and stable throughout the proceedings.

5.6 If the Witness is located in the Remote Venue and is giving testimony through a web-based video conferencing solution, the audio output device in the Hearing Venue should be of sufficient quality and volume so as to ensure that the testimony can be accurately transcribed or recorded in the Hearing Venue.

5.7 For additional detail on technical specifications, please refer to Annex I.

Article 6 – Test Conferencing and Audio Conferencing Backup

6.1 As a general principle, testing of all video conferencing equipment shall be conducted at least twice: once in advance of the commencement of the hearing, and once immediately prior to the video conference itself.

6.2 The Parties shall ensure that there are adequate backups in place in the event that the video conference fails. At a minimum, these should include cable back-ups, teleconferencing, or alternative methods of video/audio conferencing.

Article 7 – Interpretation

7.1 The Parties shall ensure that interpretation services are made available to the Witness, if applicable.

7.2 As a general principle, consecutive interpretation shall be preferred to simultaneous interpretation.

Article 8 - Recordings

8.1 No recordings of the video conference shall be taken without leave of the Tribunal.

8.2 Any recordings of the video conference shall be circulated to the Tribunal and the Parties within 24 hours of the end of the video conference.

Article 9 - Preparatory Arrangements

9.1 To the extent possible, the Parties should make the request to the Tribunal to use video conferencing at the hearing at least 72 hours before the commencement of hearing. The Party who requests the use of video conferencing (the "Requesting Party") should liaise with the appropriate individuals to ensure the video conferencing can be conducted smoothly. This includes the booking of video conferencing facilities and notifying all participants of the video conferencing arrangements. The Requesting Party shall bear the extra costs of the video conferencing facilities, if any.

9.2 The Parties shall endeavor to agree on the seating plan so as to allow each participant to be able to see the participants with whom they will be speaking to during the video conference.

9.3 Where an interpreter is required during the video conference, the interpreter shall be briefed by the appointing Party before the commencement of the hearing, including in relation to this Protocol and the arrangements for video conferencing that may impact or require adjustment of their interpretation service.

9.4 Before the commencement of the hearing, the Parties shall inform the participants of any backup plans in case of communication or technological breakdowns.

Annex 1 Technical Specifications

Video conferencing equipment used should meet minimum industry standards in order to ensure the efficient and smooth operation of each hearing. The common industry standards recommended by the International Telecommunications Union - the United Nations specialized agency in the field of telecommunications, are listed below, and is intended to serve as a guideline as to the technical specifications that each Venue adopting video conferencing should entail.

Video

- For ISDN-based networks:
    - H.320 Standard (umbrella recommendation for narrow-band video conferencing over circuit-switched networks i.e. N-ISDN, SW56, dedicated networks); and
    - H.310 Standard (wide-band (MPEG-2) video conferencing over ATM and B-ISDN)
- For video over Internet/LAN-conferencing:
    - H.323 Standard (narrow-band video conferencing over non-guaranteed quality-of-service packet networks (Internet, LAN, etc.))

Data Conference / Data Collaboration

- T.120 Standard.

Audio

- Standards for audio coding:
    - G.711 (3kHZ audio-coding within 64 kbit/s)
    - G.722 (7kHZ audio-coding within 48 or 56 kbit/s)
- Echo-cancellation microphones with a frequency range of 100-7,000 Hz, audio muting, on/off switch and full-duplex audio.
- H.281 (umbrella standard for local and far-end camera control protocol for ISDN (H.320) video conferencing calls, with camera(s) that have the ability to pan, tilt and zoom, both manually and using pre-sets).

Picture

- H.263 (video coding for low bitrate communication i.e. less than 64 Kbps);
- H.264 (new video codec standard that offers major improvements to image quality. Picture quality standard of 30 frames per second Common Intermediate Format (CIF) at between 336 and 384 kbps); or
- H.239 (Picture-in-picture (PIP) or DuoVideo H.239. H.239 defines the role management and additional media channels for H.300-series multimedia terminals, and allows endpoints that support H.239 to receive and transmit multiple, separate media streams).

Channels, bandwidth and bridging

- Minimum of six channels for room video-conferencing systems using ISDN that has the capacity to use 3 ISDN lines.
- Standards for Codecs:
    - H.261 (full motion video coding for audiovisual services at p x 64 Kbps);
    - H.263 (video coding for low bitrate communication i.e. less than 64 Kbps); or
    - H.264 (new video codec standard that offers major improvements to image quality. Picture quality standard of 30 frames per second Common Intermediate Format (CIF) at between 336 and 384 kbps).
- Bandwidth On Demand Inter-Networking Group (BONDING) standards (ISDN and H.320 only) for inverse multiplexers.
- H.243 (the H.320/H.323 Standard for Bridging Technology).
- H.460 (the standard for the traversing of H.323 videoconferencing signals across firewalls and network address translation (NAT)).