



## INTERNATIONAL ARBITRATION AMISDT COVID-19

For months the world has been in suspense due to the COVID-19 famously referred to as the Coronavirus. There are hundreds of thousands of confirmed Coronavirus cases worldwide; the widespread of this particular virus has attracted the World Health Organization (WHO) to declare it as a world Pandemic.

While the WHO has been promoting various measures to be taking in order to reduce the spread of the virus, the virus has affected many and most business relations consequently increasing the influx of complaints that require international arbitration for the virus has hit worldwide.

Arbitration is one of the alternative dispute resolution procedures that is preferred by many for it is quick, flexible, and more parties friendly. The attractiveness of arbitration has not excluded it from the effects of the coronavirus. International arbitration has been challenged because, many countries have been forced to be on lockdown, and businesses are operating at a loss thus international movements have been restricted. The restrictions and losses interfere with the effectiveness of the arbitration process. Also, this bars parties to attend hearings, delays in the delivery of hearings in most areas thus delays in the whole arbitration process. Additionally, hearings have required rearrangement to areas where the virus has not widely spread or areas that have not been affected by the virus at all. Hearings that require parties' personal attendance are being postponed or canceled until further notice by most arbitration centers.

Tanzania has recently enacted the new arbitration Act,2020 which replaces the ACT no 15 which was made in 1931 hence very outdated.

It appears however that during these times, most businesses/companies are focused on ensuring the survival of their businesses and the safety of their employees rather than focusing on commencing disputes, maybe until later dates.

### **Options**

Parties and their lawyers are likely to be considering the following four options:

1. Adjourning their hearings - thus avoiding the need to put in place the practical steps needed to arrange a remote hearing. However, it is not clear at the moment for how long this pandemic will last and when travel restrictions will be lifted to enable a



physical hearing to take place. A distinction should also be made between merits hearings and procedural hearings.

2. Agreeing to have the dispute dealt with on documents alone, this might be a sensible option where factual evidence is not key to the issues.
3. Agreeing to submit only part of the dispute to arbitration, either to be heard on documents alone, or via a reduced remote hearing. This may work well for disputes with distinct heads of claim.
4. Proceeding with a remote hearing.

These however leave room for question on how to do for example witness evidence whose credibility is key or Awards being certified electronically and how that is accepted at the seat of arbitration. Cybersecurity however is a concern.

Fortunately, international arbitration enjoys the fruits of technological advancement except maybe in jurisdictions that are less technologically advanced or depending on the parties' arbitration agreement. The arbitration process may in many institutions commence electronically and submissions may be made through emails thanks to technological advancement. However, case progression may be slower in these circumstances because still employees are working remotely and this causes delays.

What have individual institutions been doing amidst the COVID-19 pandemic:

1. London Court of International Arbitration (LCIA) encourages the use of online filing for requests and bank transfers/credit card payment for fees, parties can also make use of its online filing/registration facility at this link.<sup>5</sup> Email is to be used for applications and correspondence, and awards will be emailed to the parties with hard copies to follow once it has re-opened (*LCIA Services Update: COVID-19*).
2. International Chamber of Commerce (ICC) requests for arbitration, emergency arbitration (including exhibits) to be filed with the Secretariat by email. At the time of writing the ICC confirms that all hearings scheduled to take place at the ICC Hearing Centre in Paris have been postponed or canceled (ICC guidance)<sup>7</sup>. Remote hearings will be explored.
3. Hong Kong International Arbitration Centre (HKIAC), has not closed its center and is prepared to hold physical hearings (Precautionary measures at HKIAC in response to COVID-19)<sup>8</sup>, although enables remote hearings as well (eHearings guidance).
4. Singapore International Arbitration Centre (SIAC) asks that all applications and communications are sent via email, with payments are to be via electronic bank transfer (*COVID-19: SIAC Case Management Update*).



The crucial need and use of new technologies for arbitration proceedings and settlements is growing (even before this pandemic came into existence). New technologies will most likely replace physical meetings while ensuring accurate and adequate face-to-face interactions between parties, witnesses, and arbitrators. Tanzania and its new arbitration center may need to adapt to the use of technology post COVID to add speed and easy access.