



INTERNATIONAL INSTITUTE OF CONSTRUCTION ARBITRATORS (IICArb)

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REMOTE HEARINGS

The new normal? Or is there more to it?

Remote hearings are essentially defined as a hearing conducted either through telecommunication, or videoconference or any other means of telecommunication technology where parties involved in the hearing are in one or more locations but participate simultaneously. This has become a norm in a post-covid-19 world, but should we always conduct it as a norm?

Considering the very nature of remote hearings and although very convenient from a time and cost point of view, should bear in mind that it requires integrity from the parties involved and acting on the principle of good faith.

Factors to Consider

There are various factors (the below is therefore not an exhaustive list) to take into consideration in determining whether a remote hearing should be followed or not:

- The first factor to consider is whether there is in the public interest, and the interest of both parties involved will be regarded as health concerns, costs, and travel arrangements.
- Secondly, the nature of the hearing plays a vital role in determining whether a remote hearing will be appropriate or not. In this instance, certain factors are looked at, such as is whether it is for procedural purposes only or whether it will use it to hear testimony and argument. In this instance, should consider privacy and security and the standard rules relating to leading evidence.
- Thirdly, in a case where one or more party is physically attending, and the rest are not, it could not be in the interest of justice to proceed partially remotely. There are benefits to physical attendance, significantly when leading and presenting evidence which should not underestimate.
- It is fourthly opting for a remote hearing if an in-person hearing would result in an undue delay and not in the interest of justice or the swift resolution of the matter.
- The fifth factor that will play an essential role in determining whether a remote hearing should be considered is cost. An in-person hearing will be more expensive than remote hearing; then, remote hearing should be considered.
- Finally, for there to be a remote hearing, specific equipment and infrastructure is required for the remote hearing to be possible. These include the navigation of documents and other forms of evidence to be used in the hearing or proceedings. In addition, there should be a stable internet connection, required software and equipment. Not only should these be present, but the parties should also know how to operate these systems and the equipment.

Conclusion

Remote hearings are convenient and often ensure a reduction in costs. However, the nature of the matter and privacy, justice and public interest should not be outweighed by convenience or price. It is therefore advisable not to opt for this option without thorough consideration.