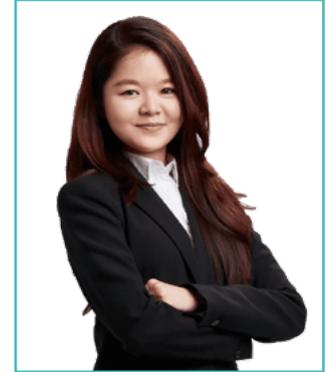


HOW VIRTUAL ARBITRATION HEARINGS GAINED POPULARITY AND ARE HERE TO STAY THE FUTURE OF ARBITRATION LANDSCAPE

MS. KELLY ONG.
SENIOR ASSOCIATE, RAJA, DARRYL & LOH



INTRODUCTION

One of the significant changes to the legal industry in Malaysia originating from the global pandemic in 2020 is the sudden shift from conducting cases in person to conducting them virtually. This article will mainly focus on how the landscape of arbitration has changed and its impact on the way future arbitrations are conducted.

Even though, prior to March 2020, there had already been a gradual shift to place more reliance on technology in the manner of conducting arbitrations, the global pandemic has effectively streamlined the entire industry to adapt quickly or risk falling behind entirely. I will firstly discuss in detail the aspects of arbitration which have been impacted and the considerations involved.

CHANGES IN THE CONDUCTING OF ARBITRATIONS

CASE MANAGEMENT AND DISPOSAL OF INTERIM APPLICATIONS

Firstly, case managements and determination of interim applications throughout the arbitration are regularly conducted virtually through various online platforms. Communication vide email has become the norm to ensure that all relevant parties are in receipt of the same information at the same time. This ensures that issues that may pop up every now and then get resolved in a timely manner, without impacting the arbitration timeline and having to incur significant costs every time the Tribunal and parties involved are required to congregate in a physical location and settle the matter in person.

DOCUMENTS

Secondly, parties involved in an arbitration are slowly getting accustomed to adopt a “paperless” approach and be mindful not to cause any unnecessary wastage in the course of arbitration proceedings. As arbitration matters often involve disputes where large sums are at stake and documents which span across a lengthy period of time involving various parties,



the bundles of documents for an arbitration are often so voluminous that it has no problem filling up an entire storage unit for just a single arbitration.

The costs start to stack up when parties are required to ship hard copies to the Tribunal, normally comprising of three arbitrators with different nationalities from the litigating parties, who may be located in different countries across the world, which causes unnecessary carbon emissions and paper wastage.. The “paperless” approach has been effective in reducing the time and costs involved, thereby making it more expedient moving forward. Even in the event where documents are too voluminous, simply couriering a hard drive across would be sufficient for parties to access the documents.

TIME EFFECTIVENESS

Thirdly, the time required to conduct an arbitration has lessened. This is partly due to the fact that whilst parties may be from different time zones, it is easy to come to an agreement to adopt a time that is agreeable to all parties and hop on a zoom call from the comfort of their location. Whereas in the past, where matters are conducted in person, parties were required to make arrangements to meet their schedule and travel to a pre-determined location at a specified date, make all the necessary arrangements for travelling and accommodation, in order to attend arbitration proceedings. In the event of any last minute hiccups, there would be a major hassle in making alternative arrangements which would be agreeable to everyone.

By conducting matters virtually, in the event case management or a hearing has ended earlier than anticipated, parties are then free to move on with their ordinary course of business without having to reschedule a host of travelling and accommodation arrangements. It becomes more time and cost effective for all parties involved over the course of arbitration proceedings.

ARBITRATION HEARINGS

Fourthly, the conducting of arbitration hearings virtually. This part of the arbitration hearing involves the most amount of change, as it requires coordination from a multitude of different parties. Other than the Tribunal and parties who are in dispute with one another (and their legal representatives), conducting a hearing virtually often requires a third party moderator to ensure

that virtual breakout rooms are managed fairly without the risk of overhearing confidential discussions.

In terms of referencing the documents, parties have quickly adapted to share the documents on screen so that everyone is able to follow along without any complications. Often, two screens are required for everyone involved as one screen would be showing the faces of everyone present, and the other screen for showcasing the documents referred to and live note transcribing (if any).



The main issues parties inevitably encounter may be technical difficulties or connection problems, though this can be easily resolved in a short amount of time and usually does not result in the overall proceedings being delayed.

ENVIRONMENT

Fifth, whilst some may be of the opinion that the solemnness of witnesses examination is now significantly lessened as witnesses are somewhat protected behind a computer screen during examination by barristers, instead of being placed under intense scrutiny should everyone be present in the same venue, this may end up being more of a pro than a con in the long run.

Witnesses who are being examined under immense pressure are often affected by the environment and are unable to perform optimally or recollect matters effectively. By removing that barrier, this ensures that witnesses face less resistance when recounting and giving evidence, thereby improving the quality of the evidence given.

CONCLUSION

In a nutshell, considering the convenience and expediency of conducting arbitration virtually based on the aforementioned points, be it in terms of cost or time savings, the benefits largely outweigh any cons for all the parties involved. As parties are able to ensure that any problems faced during the course of the arbitration gets communicated across and resolved in a timely manner, the overall period for an arbitration to conclude is therefore significantly reduced. This is in line with the aim of arbitration of determining disputes in an expedient and cost-effective manner.

Moving forward, this is likely going to be the new normal in the landscape of arbitration as parties are able overcome the problems faced by arbitrations traditionally conducted in person. Given that technology remains ever evolving, it is not surprising should future arbitration be conducted in a virtual reality setting or streaming of site inspections by utilising drone assistance. In fact, this may already be the new reality in high-stake arbitrations where parties have access to such advancements. As a famous Greek philosopher, Heraclitus, once said "the only constant in life is change".

MORE INFORMATION

If you would like to find out more details about any of the subjects covered in this Ebriefing please contact DGA Group through the contact details below or at DGAGroup@dga-group.com

DGA GROUP HEADQUARTERS

25 Eastcheap
London
EC3M 1DE

Tel: +44 (0)203 961 5340

SINGAPORE

#11-09,
Eon Shenton
70 Shenton Way
Singapore
079118

Tel: +65 62916208

AUSTRALIA

Level 8
One Melbourne Quarter
699 Collins Stree
Melbourne
Vic 3000

Tel: +61 (0)3 8375 7620

AUSTRALIA

Level 23
52 Martin Place
Sydney
NSW 2000
Australia

Tel: +61 (0)2 9220 5027

UNITED ARAB EMIRATES

PO Box 6384
Dubai
United Arab Emirates

Tel: +971 4 437 2470

CANADA

61 Legacy Landing SE
Calgary
Alberta
Canada
T2X 2EH

Tel: +1(587) 586 5502

AFRICA

Building 2
Country Club Estate
21 Woodmead
Sandton
South Africa
2054

Tel: +27 (0)11 258 8703

HONG KONG

6/F Luk Kwok Centre
72 Gloucester Road
Wan Chai
Hong Kong

Tel: +852 3127 5580

DGA UNITED KINGDOM

