

AmCham Virtual Arbitration Guide

AMCHAM-PERU



CENTRO INTERNACIONAL
DE ARBITRAJE

AmCham Virtual Arbitration Guide

On April 24, 2020, the plenary session of the International Court of Arbitration of AmCham Peru met virtually, in the context of the pandemic generated by COVID-19, in order to unanimously approve certain adjustments to its Regulations to facilitate the virtual arbitration processes, as well as a note titled AmCham Peru Virtual Arbitration Guide.

The AmCham Peru International Arbitration Center has been promoting the continuation of the arbitration cases in its charge, by facilitating the virtual work of the arbitration tribunals in all the cases where it has been possible. The publication of the Guide and the amendments to the Regulations are intended to provide greater institutional support to both arbitral tribunals and parties, as users of the AmCham Peru Center.

The Guide has been designed for arbitration cases that are currently under the administration of the Center, while the amendments to the Regulations will be applicable to all new cases beginning on or after May 1, 2020.

For any questions that the arbitration tribunals or users of international and domestic arbitration may have, in regard to conducting virtual arbitration proceedings before the International Arbitration Center of AmCham Peru, the following electronic address shall be utilized: arbitraje@amcham.org.pe



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AMCHAM VIRTUAL ARBITRATION GUIDE

As is a matter of general knowledge, the sanitary crisis caused by COVID-19 has generated a series of measures worldwide, which have restricted the movement of people, resulting in some cases, such as in Peru, in mandatory confinement at home.

This situation has required arbitration institutions to adopt measures to promote and enable continuation of arbitration proceedings under their organization and administration, assisting both parties and arbitral tribunals in their efforts to accomplish such purpose, according to the circumstances of each case.

Along these lines, AmCham Peru International Arbitration Center (“AMCHAM Center” or “Center”) reaffirms its willingness to continue administering and organizing the cases of which it is in charge on a remote basis, under the same quality standards. In this regard, the AMCHAM Center has succeeded in continuing underway about one-third of its cases in spite of the limitations imposed by current circumstances.

However, AMCHAM Peru’s Court of International Arbitration has deemed convenient to provide both the parties and the arbitral tribunals with certain guidelines aimed at allowing them, on the basis on the Arbitration Rules of the AMCHAM Center (“the Rules”), to adopt measures and make decisions which allow the continuity of their arbitration proceedings, including those that have been suspended or stayed, according to the circumstances of each case.

For such purpose, the Court of International Arbitration of the AMCHAM Center (“the Court of Arbitration”), taking into account the authority vested by Article 1(4) of the Rules and Article 4 of the By-laws of the Center has issued the guidelines contained in this Guide (“Amcham Virtual Arbitration Guide”).

Most recently, the AMCHAM Court has adjusted its Arbitration Regulations to facilitate cases filed from May 1, 2020 onwards. The Spanish-language consolidated text of the AMCHAM Arbitration Regulations can be found in the following link: <https://amcham.org.pe/arbitraje/clausula-y-reglas/>

1. Electronic communications and notices

1. Article 5(3) of the Rules provides that notices and communications in the arbitration proceedings can be made by electronic mail or other technological means allowing to confirm submission thereof. In this connection, the Court of Arbitration requests users of the Center to submit

¹ Unofficial translation from Spanish. In case of discrepancies between this text and the original Spanish version, the latter shall be controlling.

communications and written documents by electronic mail, with copies to all parties, to all members of the arbitral tribunal, and to the Secretariat-General (“the Secretariat”). Article 4(2)h of the Center Bylaws provides that one of the duties of the Court of Arbitration is to interpret the Rules and other regulations of the Center.

2. If necessary, due to capacity restrictions of electronic mail servers (MB limits of attachments), links to platforms allowing to share documents by cloud computing may be used, assessing the degree of security thereof. Access to documents shall be enabled for at least thirty (30) days following the e-mail submission date.
3. For cases still handled in physical form, the parties are requested to provide the Secretariat the electronic mail addresses of persons who act on their behalf in the arbitration proceedings, including their legal representatives and counsel, with a view to continuing the proceedings by electronic means, considering the circumstances of each case.
4. Given the benefits and advantages of virtual arbitration, the Center will continue handling proceedings in this manner when the State of Emergency ends, for which purpose it will digitalize all documents of the proceedings that have been handled physically and create an electronic “file” of the case.
5. Based on Articles 5(3) and 5(4) of the Rules, the Secretariat or, as applicable, each arbitral tribunal, may issue supplementary rules to calculate the procural calendar, such as: (i) specify that the time limits are computed as from the date following submission of a communication or notice by electronic mail, and (ii) setting a specific time of day (considering the UTC time zone) as the end of the term.

2. Filing a request for arbitration

6. The Centre has been receiving digital requests for arbitration at the following electronic mail address: arbitraje@amcham.org.pe
7. Based on Article 5(3) of the Rules, the Secretariat may give notice of requests for arbitration to the electronic mails set forth in the agreement or document containing the consent to arbitration.
8. The plaintiff may also validate before the Center the electronic mails used in an exchange of communications on the arbitration agreement or the dealings preceding the controversy.
9. The Secretariat will review all the information provided by the plaintiff to decide on the electronic addresses where the request for arbitration will be notified.

3. Appointment of arbitrators

10. In cases where the arbitral tribunal has not been appointed, the Court and Secretariat should take all reasonable measures to complete such appointment and continue with the arbitration proceedings by virtual means, according to the circumstances of each case.
11. The parties may hold, by telephone or videoconference, interviews with arbitrator candidates to establish whether they are not impeded from accepting the appointment, taking into account the provisions in Article 7 of the Code of Ethics of the Center.
12. Furthermore, for purposes of appointing the chair of the arbitral tribunal, the co-arbitrators may follow the procedures to coordinate with the parties and the possible candidates, at all times within the scope of Article 7 of the Code of Ethics.
13. Communications on the appointment of arbitrators must be made by electronic mail addressed to the Secretariat, with copies to all the parties and, when applicable, the arbitrators.
14. Statements and acceptance forms must be submitted by electronic mail to the Secretariat with a copy to all parties and, when necessary, to the arbitrators.
15. The Court of Arbitration continues to conduct sessions remotely for purposes of confirming arbitrators, making appointments by default, settle any arbitrator challenges, and for other matters under its competence.

4. Rules for each arbitration

16. As provided in Article 15 of the Rules, the Secretariat is authorized to summon the parties to coordination meetings for better development of the arbitration, which could be conducted by telephone conferences or videoconferences to assess the current conditions available for a proper defense of their case.

17. In cases where the arbitral tribunal has been established and no specific rules or a Schedule for the proceedings have been adopted, the Court of Arbitration shall request the arbitrators to take into account that Article 26 of the Rules allows them to adopt additional rules, so that they may issue rules for the electronic conduction of the arbitration proceedings, according to the circumstances of each case.
18. The Secretariat provides a form of additional rules that may be used in this circumstance and adjusted to the needs of each case within the framework of the Rules of Arbitration.
19. In cases where there specific rules or a Schedule for the proceedings issued by the arbitral tribunals are already in place, the Court of Arbitration shall request the arbitrators, upon hearing the parties, to issue additional rules allowing them to continue with the proceeding and conducting hearings virtually, according to the circumstances of each case.
20. In that case, the Court of Arbitration requests the arbitrators to take into account that Article 31(1) of the Rules provides the obligation of the arbitral tribunal to conduct the proceedings promptly, ensuring that the parties are treated equally and allowing them a reasonable opportunity to state their case.
21. For cases where the State of Emergency poses a challenge for the defense of the parties, the arbitral tribunal arbitral may take into account that Article 5(8) of the Rules authorize it to extend the deadlines set for the parties, even upon lapsing thereof, if a valid justification for such extension exists.
22. Furthermore, in arbitration proceedings to which the Peruvian State (or any of its subdivisions, agencies or companies) is a party, the Center or the arbitral tribunal may take into account the specific nature and conditions of each entity to adapt to technological requirements, according to the circumstances of each case.

5. Hearings

23. The State of Emergency has caused several arbitration proceedings, including the scheduled hearings, to be suspended or deferred due to restrictions to the mobility of people and sanitary protection. In this connection, the Court of Arbitration requests the parties and the arbitral tribunals to make every effort to continue with each of their arbitrations and conduct hearings by virtual means, assessing the circumstances of each case.
24. In this connection, Article 4(3) of the Rules provides that the arbitral tribunal, upon consulting with the parties, may hold hearings anywhere it considers appropriate. Furthermore, Article 31(3) of the Rules provides that the arbitral tribunal summons the parties reasonably in advance for them to appear on the date and place set. The Court of Arbitration understands that, for purposes of the Rules, the term "place" may include a virtual space or location.
25. Likewise, in accordance with Articles 31(4) and 32(3) of the Rules, the arbitral tribunal may conduct the hearings as it may deem appropriated, being authorized to summon such persons as it may deem convenient. The Court of Arbitration believes that the Rules do not limit the possibility of holding hearings and making witness and expert statements by virtual means.
26. Likewise, Article 32(7) of the Rules provides that, unless otherwise agreed by the parties, the arbitral tribunal may apply the International Bar Association (IBA) Rules on the Taking of Evidence in International Arbitration. Under Article 8(1) of such Rules, in exceptional cases the arbitral tribunal may resort to using videoconferencing or a similar technology for taking witness and expert statements.
27. In this connection, the arbitral tribunal, taking into account the "equality of arms" principle contained in Article 31(1) of the Rules, may set additional rules to hold virtual hearings.
28. The Center is licensed to use the following platforms to hold videoconferences made available to the parties and the arbitral tribunals: Cisco Webex, Microsoft Teams, BlueJeans and Zoom.

29. However, the parties and the arbitral tribunal may agree that the hearings be held through any other platform suitable for their requirements. The Court of Arbitration recommends using computer platforms which allow sharing documents and facilitating access to them while the hearings are conducted.
30. To hold virtual hearings, the Court of Arbitration requests the arbitral tribunals to hold a prior telephone conference with the parties for the purpose of setting with them the requirements necessary for development thereof and reviewing the rules applicable to the hearing (including a cyber-protocol if deemed convenient), and to conduct the tests required to solve in advance any technological problem that may arise.
31. In this conference, [the Court of Arbitration] suggests assessing the degrees of security and confidentiality that the various platforms allow (the use of a certain platform based on the technological tools available to the participants thereat), and such other aspects it may deem convenient to take into account to conduct the hearing in the best possible way for the case (security measures for access and identification of the parties to the virtual hearing, video-recording of the hearings, break-up rooms, protocols for participation by the parties, witnesses and experts –including the determination of mechanisms intended to prevent the witnesses from receiving instructions during the hearing–, alternatives in the event of failure of the connection, the possibility of hiring stenographers allowed access to the hearing, etc.).

6. Award

32. Article 27(4) of the Rules provides that for the deliberation and adoption of decisions, including the award, arbitrators may conduct non-presential sessions and make decisions by technological means allowing to set the expression of their determination on record.
33. If having all awards signed by all members of the arbitration tribunal in the same physical document was not possible, based on Article 27(4) of the Rules, the Court of Arbitration considers that arbitrators may sign the award by digital means and submit it by electronic mail to the Secretariat General for the giving of notice thereof.

34. Where the rules for each arbitration do not contain a provision expressly setting forth that the award will be communicated by electronic means, the Court of Arbitration requests the tribunals to consider taking the measures required the electronic notification of the award.
35. The Court of Arbitration requests the parties and the arbitral tribunals to take these guidelines as flexibly and efficiently as practicable based on the needs and circumstances of each case and make their best efforts to accomplish continuation of the proceedings and that the parties arrive at a final resolution to their dispute.

For any information on the filing of requests for arbitration, forms of arbitration, arrangement of virtual hearings, coordination of new arbitration rules for virtual handling of arbitration proceedings and any other queries, please contact the following persons of the Secretariat:

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