



PRACTICE NOTE 31

VIRTUAL HEARINGS

1. With the World pandemic we have seen an increasing necessity to utilise virtual platforms for the conduct of meetings and, of course, hearings in arbitrations. The 2018 Rules for the Conduct of Arbitrations did not foresee this situation and accordingly we only find an authority to examine witnesses via virtual platforms in Article 28.4 which provides:

“The arbitral tribunal may direct that witnesses, including expert witnesses, be examined through means of telecommunication that do not require their physical presence at the hearing (such as videoconference).”

2. This authority does not permit the tribunal to direct that the entirety of the hearing be conducted by way of a virtual platform.
3. The Association of Arbitrators (Southern Africa) NPC ('the Association') is considering amendments to the 2018 Rules to provide express authority to Arbitrators to direct that meetings and hearings be conducted on virtual platforms.
4. In the interim, the Board has decided it would be appropriate for a practice note to be issued to cater for the situation in order to give Arbitrators guidance.

PRACTICE NOTE

5. It is recommended that Arbitrators should include the following in their terms and conditions of appointment. The wording may also be utilised where an arbitration has already commenced, and the parties consent thereto:

“The parties agree that the arbitral tribunal shall have the power:

a) to direct that the arbitral proceedings, as a whole or any part thereof, shall be conducted through means that do not require the physical presence of anyone; and

b) to direct protocols to regulate proceedings so conducted.”

C D BINNINGTON

Director

ASSOCIATION OF ARBITRATORS (SOUTHERN AFRICA) NPC

12 March 2021