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IN RE : Remote Hearings - Guidance Notes

1. A recent reference to Alice in Wonderland on the Kluwer Arbitration Blog is apt to our current circumstances; *“Alice again enters a fantastical world, this time by climbing through a mirror into the world that she can see beyond it. There she finds that, just like a reflection, everything is reversed”* and *“walking away from something brings you towards it”*.¹
2. This reference to the experiences of Alice should be considered with the words of Douglas Adams *“Anything that is in the world when you’re born is normal and ordinary and is just a natural part of the way the world works. Anything that’s invented between when you’re fifteen and thirty- five is new and exciting and revolutionary, and*

¹ (Alice’s Adventures in Wonderland, Lewis Carroll) <http://arbitrationblog.kluwerarbitration.com/2020/04/26/offline-or-online-virtual-hearings-or-odr/> Mireze Phillipe Offline or Online? Virtual Hearings or ODR?

you can probably get a career in it. Anything invented after you're thirty-five is against the natural order of things."²

3. The global Covid-19 pandemic has merely accelerated the technological developments that have occurred in our fantastical world of Dispute Resolution and Alternative Dispute Resolution which is now referred to as Online Dispute Resolution, Remote Hearings and Hybrid-Remote Hearings (Remote Hearings), a process and development to be embraced considering its many benefits and continuous daily developments.
4. In our *new normal* as a consequence of the global Covid-19 pandemic technology has become of great relevance and importance in our practices with reference to both formal and alternative dispute resolution, the new normal being Remote Hearings. Remote courts, remote arbitrations and e-hearings are no longer conceptual ideas of a forum that has no physical presence that provides the same dispute resolution services available in courtrooms or arbitration hearings with reference to online access. As such, the parties remain the same but participating in the hearing from different locations (Remote Hearings) or most of the parties remaining attending at the hearing venue with some participants attending remotely (Hybrid-Remote Hearings) requiring control and integrity of the electronic and digital proceedings, especially the control and integrity of the evidence presented by witnesses and expert witnesses.
5. The terms online and remote hearings have reference to the use of the internet or related communication technologies and platforms which include various web based videoconferencing or virtual interaction digital platforms as the primary method of communication during the remote hearing proceedings, be it Microsoft Teams, Zoom Meetings, Cisco Webex or the like. As such, remote hearing extends the functions and

² Douglas Adams, *The Salmon of Doubt*

services that would normally be found at a physical hearing venue to remote participants all over the world, allowing conferences and hearings to continue uninterrupted by physical restrictions and time zones.³

6. It appears that that the conduct of remote hearings or e-hearings and the conduct of hearings through electronic means and electronic platforms are mostly subject to the discretion of the person presiding over the virtual hearing and the underlying agreements reached between the parties, with reference to the conduct of virtual hearings and the receipt of evidence from witnesses and experts in a proper and acceptable manner from a secure location, protecting the integrity of the evidence received from the witnesses and experts.
7. Arbitral institutions have over the years facilitated remote hearings with limited virtual hearing rules and guidelines in online dispute resolution with reference to administered, ad-hoc and private arbitrations. Fortunately, these institutions and entities have recently with the advent of Covid-19 issued further and more comprehensive guidelines regarding remote hearings to address issues that arose as a consequence of the digital hearing platforms and the electronic presentation of evidence with the simultaneous display of documentary evidence to all participants, and the recording of the proceedings. However, limited guidance has been provided until recently on the electronic presentation of oral and documentary evidence and the integrity and reliability thereof as presented by witnesses.
8. Since the advent of Covid-19 various Courts and Arbitral Institutions globally including the South African judicial system have accepted and embraced the conduct of online dispute resolution by way of virtual hearings and for such purposes Updaters,

³ Hong Kong International Arbitration Centre presentation

Guidelines, statements, directives, Draft Procedural Orders and the like have been issued in various jurisdictions which include: ⁴

- 8.1.1. United Kingdom: England and Wales (National Courts, Arbitral Institutions – London Court of International Arbitration (LCIA));
- 8.1.2. United Arab Emirates (The Dubai Courts, the DIFC Court, Arbitral Institutions – Dubai International Arbitration Centre (DIAC));
- 8.1.3. United States of America (National Courts, Arbitral Institutions – American Arbitration Association (AAA));
- 8.1.4. France (National Courts, Arbitral Institutions – International Chamber of Commerce (ICC));
- 8.1.5. Germany (National Courts, Arbitral Institutions - German Arbitration Institute (DIS));
- 8.1.6. Turkey (National Courts and enforcement/bankruptcy proceedings, Arbitral Institutions - Istanbul Chamber of Commerce Arbitration and Mediation Centre (İstanbul Ticaret Odası Tahkim ve Arabuluculuk Merkezi – ITOTAM, Istanbul Arbitration Centre (İstanbul Tahkim Merkezi – ISTAC));
- 8.1.7. Singapore (National Courts, Arbitral Institutions - Singapore International Arbitration Centre);

⁴ Notrton Rose Fulbright: Covid-19 and the global approach to further court proceedings, hearings, publication of April 2020, <https://www.nortonrosefulbright.com/en/knowledge/publications/bbfeb594/covid-19-and-the-global-approach-to-further-court-proceedings-hearings>

- 8.1.8. Hong Kong (National Courts, Arbitral Institutions – Hong Kong International Arbitration Centre);
- 8.1.9. Australia (National Courts, Arbitral Institutions – The Australian Centre for International Commercial Arbitration (ACICA));
- 8.1.10. India (National Courts, Arbitral Institutions – Indian Council of Arbitration (ICA));
- 8.1.11. The Netherlands (National Courts, Arbitral Institutions – Netherlands Arbitration Institute (NAI));
- 8.1.12. Canada (National Courts, Arbitral Institutions – The British Columbia Commercial Arbitration Centre and ADR Institute);
- 8.1.13. South Africa (National Courts, Arbitral Institutions - Arbitration Foundation of Southern Africa, the Association of Arbitrators);
- 8.1.14. Kingdom of Lesotho (Court of Appeal).
- 8.1.15. This list is not exhaustive in nature.

9. Some of these institutions and entities which have, and are developing guidelines include, amongst other the Chartered Institute of Arbitrators,⁵ the International Chamber of Commerce's International Court of Arbitration (ICC);⁶ the London Court of International Arbitration (LCIA);⁷ the Singapore International Arbitration Centre (SIAC);⁸ the Hong Kong International Arbitration Centre (HKIAC);⁹ the United

⁵ <https://ciarb.org>

⁶ <https://iccwbo.org>

⁷ <https://www.lcia.org/LCIA/introduction.aspx>

⁸ <https://www.siac.org.sg/our-rules/rules/siac-rules-2016>

⁹ <https://www.hkiac.org/>

Nations Commission on International Trade Law (Uncitral);¹⁰ the American Arbitration Association's International Centre for Dispute Resolution (AAA/ICDR);¹¹ People's Republic of China and Chinese Ministry of Justice Internet Arbitration System;¹² and the International Centre for Settlement of Investment Disputes (World Bank Group) (ICSID).¹³ The list is also not exhaustive.

10. By way of example, Article 19.2 of the LCIA Arbitration Rules grants the arbitral tribunal the fullest authority to establish the conduct of an arbitrable hearing and permits hearings to take place by video or telephone conference or in person, or a combination thereof.¹⁴ Both the ICC Rules of Arbitration and ICDR International Dispute Resolution Rules & Procedures provide for and acknowledges the conduct of arbitral proceedings by way of videoconference in administered arbitrations. UNCITRAL provide for ad-hoc arbitrations and vests in its tribunal the power to conduct the arbitration in such a manner as it considers appropriate so as to avoid unnecessary delays and expenses in providing a fair and efficient process for the resolving of the dispute between the parties.¹⁵
11. Other Arbitral Institutions¹⁶ merely grant their tribunals with authority to conduct proceedings in a fair, expeditious and effective manner, vesting the discretion in the tribunal to conduct hearings in such a manner to ensure the fair, expeditious, economical and final resolution of disputes.

¹⁰ https://uncitral.un.org/en/library/online_resources/online_dispute_resolution

¹¹ https://www.icdr.org/sites/default/files/document_repository/ICDR_Rules.pdf defaulting to <https://go.adr.org/covid-19-virtual-hearings.html>

¹² http://www.moj.gov.cn/government_public/content/2020-03/03/tzwtj_3243112.html

¹³ <https://icsid.worldbank.org/en/Pages/icsiddocs/ICSID-Convention-Arbitration-Rules.aspx>

¹⁴ LCIA Arbitration Rule 19.2: "*The Arbitral Tribunal shall organise the conduct of any hearing in advance, in consultation with the parties. The Arbitral Tribunal shall have the fullest authority under the Arbitration Agreement to establish the conduct of a hearing, including its date, form, content, procedure, time-limits and geographical place. As to form, a hearing may take place by video or telephone conference or in person (or a combination of all three). As to content, the Arbitral Tribunal may require the parties to address a list of specific questions or issues arising from the parties' dispute.*"

¹⁵ UNCITRAL Arbitration Rules (revised in 2010) "*Section III. Arbitral proceedings - General provisions: Article 17 1. Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at an appropriate stage of the proceedings each party is given a reasonable opportunity of presenting its case. The arbitral tribunal, in exercising its discretion, shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties' dispute*"

¹⁶ Singapore and Hong Kong

12. The African Arbitration Academy recently launched (during May 2020) an African Arbitration Academy Protocol on Virtual Hearings which details recommendations on virtual hearings considering the specific challenges and circumstances that may arise in relation to remote hearings in Africa. As such, it provided guidelines and best practices for arbitrations within Africa and to encourage African arbitral institutions and governments to make express reference to virtual hearings in arbitration rules and laws.
13. The Protocol provides in section 8 for “Virtual Hearings and Presentation of Evidence”, in section 10 for “Security and Privacy Considerations” and in section 11 four “Hearing Protocol, Infrastructure and Technical Standard”.¹⁷
14. In providing a guideline the following overarching principles should provide guidance to the various parties, tribunal, judicial proceedings and institutions making use of virtual hearings, the general guidelines being:
 - 14.1. Minimum logistical and technological specifications should be met in order to ensure a proper and just remote hearing process;
 - 14.2. The Remote Hearing process and proceedings must be fair to both parties ensuring compliance with the rules of natural justice;
 - 14.3. The presentation of evidence by witnesses must be closely monitored and effectively and efficiently displayed to all parties from a secure Witness Room to ensure the integrity of the evidence presented with reference to documents and exhibits; and

¹⁷ <https://www.africaarbitrationacademy.org/protocol-virtual-hearings/>

- 14.4. The integrity of the Remote Hearing proceedings must be maintained and secured requiring limiting of access to the Remote Hearing to party representatives, observers, witnesses, interpreters and paralegals.¹⁸
15. Guidelines and principles for remote advocacy was drafted by the Inns of Court College of Advocacy¹⁹ because of the Covid-19 pandemic which has forced both courts and advocates to adapt at pace. The guidelines and principles concentrate on the way in which advocates can most efficiently deploy their professional skills in communication and persuasion in the new working environment and was summarised in eight principles:
- 15.1. Liaise in advance;
 - 15.2. Understand the technology;
 - 15.3. Make sure all parties can be seen and heard;
 - 15.4. Know how to handle the documents;
 - 15.5. Make the best use of written argument;
 - 15.6. Be prepared, then be brief and to the point;
 - 15.7. Avoid over speaking; and
 - 15.8. Maintain confidentiality.
16. Remote Hearing is a process beneficial to dispute resolution during the Covid-19 period and thereafter, in giving effect to the new normal and the injection of technology in the

¹⁸ Arbitration Proceedings In the Age of Virtual Hearing Rooms – Law360 dated 9 May 2020 <https://www.law360.com/articles/1261894/arbitration-proceedings-in-the-age-of-virtual-hearing-rooms>

¹⁹ <https://www.civillitigationbrief.com/2020/04/16/the-inns-of-court-college-of-advocacy-principles-for-remote-advocacy/>

dispute resolution process. The benefits of Remote Hearings to name but a few are the integrity of the process created by digital hearing platforms, savings associated with time and travel and on-site digital attendances by various parties.

17. The Remote Hearing process, if properly and effectively managed would have the necessary integrity resulting in an arbitral award or judicial finding flowing from a fair process based on party autonomy and party's ability an opportunity to present their cases in accordance with the principles of natural justice.

18. Notwithstanding the benefits of the Remote Hearing process there will always be objections thereto. However, Remote Hearings are the accepted new norm allowing for *"a mode of trial conducted over virtual platforms from participants' homes."*

18.1. In taking into consideration fairness to parties with reference to a remote solution and various objections the Federal Court of Australia directed that a long-running trial in the matter of Capic v Ford Motor Company of Australia Limited²⁰ proceed by way of remote hearing.

18.2. In the matters of Eaton Partners LLC v Azimuth Capital Management IV Ltd the United States District Court for the Southern District of New York with reference to Bisnof v King²¹ held that a witness appearing by video would not constitute a deprivation of a party's right to a fundamentally fair hearing.

19. Remote Hearings, the various digital hearing platforms and technology is available to mitigate against disruption preventing prejudice to the parties. The law, and developing laws, rules and procedures in various jurisdictions make it possible to resolve disputes by way of Remote Hearings which parties have embraced both locally and

²⁰ (Adjournment)[2020] FCA 486 Perram J 16 April 2020

²¹ 18 Civ. 11112 (ER), 154 F. Supp. 2d 630, 639 (S.D.N.Y. 2001)

internationally and parties should continue to embrace it, explore it and use it post Covid-19. Any perceptions of the inadequacies of Remote Hearings can be resolved by the use of technology.

20. In order to provide guidance in the use of Remote Hearings in the Online Dispute Resolution Process the following Guidance Notes are provided to assist legal practitioners and party representatives in the conduct of Remote Hearings through the use of technology and digital hearing platforms. These Guidance Notes may be applied to arbitration, mediation, adjudication, negotiation, expert determination, dispute resolution boards, dispute resolution and any other type of alternative dispute resolution.
21. These Guidance Notes are attached hereto as:
 - 21.1. Annexure A - The Remote Hearing - Preparation Guidance Note; and
 - 21.2. Annexure B - The Remote Hearing - Hearing Guidance Note.

Yours sincerely

(Electronically Signed: Adv H Louw)²²

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²² Electronic Communications and Transaction Act 25 of 2002

Online Dispute Resolution – Remote Hearing

The Remote Hearing – Preparation Guidance Note¹

- 1 In the event of the parties participating in an administered arbitration process or in a judicial hearing, the administering institution should be consulted with the applicable institutional guidelines on Remote Hearings to be followed. This guidance note could be used to supplement the institutional guidelines.

- 2 In the event of ad-hoc arbitral proceedings this Guidance Note could be followed to facilitate the efficient remote resolution of the party disputes online.

- 3 The parties to the Remote Hearing should agree, in advance:
 - 3.1 On all procedures, time schedules and timelines to be adhered to in the remote proceedings;

 - 3.2 The digital hearing platform to be used, technology, software, equipment and the type of connection which is to be tested prior to any meetings and the Remote Hearing;

 - 3.3 The identity of all party-representatives, participants and invited attendees to the Remote Hearing with reference to their email addresses and contact details;

¹ AAA-ACDR Virtual Hearing Guide for Arbitrators and Parties Utilizing ZOOM; AAA-ICDR Model Order and Procedures for a Virtual Hearing via Videoconference, AAA-ICDR Virtual Hearing Guide for Arbitrators and Properties, Africa Arbitration Academy Protocol on Virtual Hearings, Chartered Institute of Arbitrators Guidance Note on Remote Dispute Resolution Proceedings, Federal Court of Australia National Practitioners/Litigants guide to Virtual Hearings and Microsoft Teams

- 3.4 Access to Remote Hearing, Waiting Rooms, Witness Rooms and Breakaway Rooms and the use and requirement of such rooms; and
 - 3.5 Security Protocols and Requirements with reference to the various rooms, especially the Witness Room.
- 4 Prior to the conduct of the Remote Hearing the invited participants and attendees should have a trial run with the Arbitration Panel, the Judicial Officer/s and the technical support individuals to confirm the highest possible quality audio and/or video connectivity.
- 5 The digital hearing platform should be reviewed with reference to:
 - 5.1 Any level of cyber security and security technology and protocols required with reference to all aspects of the Remote Hearing, Breakaway Rooms and Witness Rooms to include remote meetings and conferences;
 - 5.2 The party-representatives, invited participants and attendees list with their contact details including email addresses and cellular telephone numbers;
 - 5.3 The venue/s to be used by the various Remote Hearing participants and the witnesses with reference to Witness Rooms and their access to technology and internet connectivity;
 - 5.4 The use and hearing protocol with reference to Muting/Unmuting and the use and disabling of the video function;
 - 5.5 The use of screen sharing, document sharing, editing functions, whiteboard functions and incorporating Caselines into the digital hearing platform;

- 5.6 The control of the digital hearing platform and the passing of control thereof to various participants;
 - 5.7 The use of the Waiting Room, the Remote Hearing and the Witness Room;
 - 5.8 Whether the Remote Hearing should be locked, or not.
- 6 Inter-party agreement on:
- 6.1 The commencement times of the various allocated time periods of the Remote Hearing and agreement on how long before the commencement of the time periods the participants must log-in to the Remote Hearing;
 - 6.2 Breakaway times and individuals granted access to the various Breakaway Rooms;
 - 6.3 The identifying of witnesses and expert witnesses, the recording of their identifying particulars, the application of the oath or affirmation and the location from which they would present evidence;
 - 6.4 The participation and conditions of participation of witnesses in the Remote Hearing and secure Witness Room to protect the integrity of the evidence produced;
 - 6.5 The control of the digital hearing platform with reference to:
 - 6.5.1 The digital hearing platform various control functions;
 - 6.5.2 The Witness Room, Breakaway Rooms the Remote Hearing;

- 6.5.3 Screen sharing, Exhibit Bundle and document sharing, chat settings to either “private” or to all participants, document editing and screen writing functions;
- 6.5.4 Audio and visual control whilst participants are not actively participating or presenting in the virtual hearing;
- 6.5.5 Interjection or objection procedures for the participating parties; and
- 6.5.6 The recording of the proceedings.

7 The participants to the Remote Hearing should enter into a Pre- Remote Hearing Agreement on the aforementioned issues to prevent any inter-party or procedural challenges to the conduct and value of the Remote Hearing. It is recommended that the aforementioned issues be recorded in writing and signed by the party representatives to the Remote Hearing.

8 It is advised that the Arbitral Tribunal or the Presiding Officer provide a Directive or Order confirming the agreement between the parties as a Directive or Order of the proceedings.

Online Dispute Resolution – Remote Hearing

The Remote Hearing – Hearing Guidance Note¹

- 1 In the event of the parties participating in an administered arbitration process all in a judicial hearing, the administering institution should be consulted with the applicable institutional guidelines on Remote Hearings to be followed. This guidance note could be used to supplement the institutional guidelines.
- 2 In the event of ad-hoc arbitral proceedings this Guidance Note could be followed to facilitate the efficient remote resolution of the party disputes online.
- 3 It is advisable that either the Arbitral Tribunal (either one or more Arbitrators) or the Presiding Judicial Officer serve as the host to the Virtual Hearing, being in control of the digital hearing platform, such individual, or individuals delegated by them ensuring that all parties, party representatives, participants and invited attendees received proper notification and invitations for attendance at the Remote Hearing.
- 4 The host to the Remote Hearing should consider the various physical locations and time-zones of the participants and invited attendees, the method of the taking of evidence from witnesses and experts and securing the location of witnesses and experts to ensure the integrity of their evidence presented.
- 5 Electronic devices with large screens, monitors or multiple monitors should be used in the conduct of the virtual hearing with many participants and the sharing or viewing of documents. Three screens or monitors are recommended, the first screen

¹ AAA-ACDR Virtual Hearing Guide for Arbitrators and Parties Utilizing ZOOM, AAA-ICDR Model Order and Procedures for a Virtual Hearing via Videoconference, AAA-ICDR Virtual Hearing Guide for Arbitrators and Parties, Africa Arbitration Academy Protocol on Virtual Hearings, Chartered Institute of Arbitrators Guidance Note on Remote Dispute Resolution Proceedings, Federal Court of Australia National Practitioners/Litigants guide to Virtual Hearings and Microsoft Teams

to view the participants in the hearing and the digital hearing platform (Microsoft Teams, Zoom Meetings, Cisco Webex or the like), the second screen to view and share documents / exhibits and the third screen for inter-party team communication.

- 6 Participants should disable any pop-up notifications to prevent it from appearing on-screen while actively participating in the virtual hearing and the electronic device used in the Remote Hearing should not be used for anything else but the Remote Hearing.
- 7 All participants must ensure that a proper high-speed and preferably wired internet connection is used which could accommodate both audio and video interaction. In the event of the internet connection not being able to facilitate both audio and visual video link at the same time, or in the event that the use of both audio and visual video link causes stuttering, the video link should be disconnected while the participant does not actively participate in the virtual hearing.
- 8 All participants and witnesses must use a good quality webcam and ensure proper lighting conditions. Parties should not use backlighting, prevent backlighting and be aware thereof that digital backgrounds accessed through the digital hearing platform could be visually disturbing to participants to the Remote Hearing.
- 9 All participants should use proper microphone and speaker systems or headsets whilst participating in the Remote Hearing. Take note that microphones of various participants at the same location should be muted to prevent audio echo and audio interferences. In the event of a participant not actively participating or presenting in the Remote Hearing the microphones of such participants must be muted.

- 10 Participants in the Remote Hearing must participate from a quiet location with no or limited background noise. Participants presenting must be careful not to have papers, papers movement or note taking interfere with their microphones.
- 11 Witnesses participating in the Remote Hearing and proceedings should present evidence, documents and be examined and re-examined whilst the witness is in a secure and controlled Witness Room to ensure the integrity of the evidence presented and documents produced. The Witness Room should:
 - 11.1 Be a secure room;
 - 11.2 Contain a computer, two monitors, a webcam directed at the witness, a wide-angle webcam viewing the entire room from above to ensure that the witness is neither assisted nor interfered with, and the necessary audio and visual devices to allow the witness to communicate over the digital hearing platform both visually and orally and if required by way of remote whiteboards with the assistance of a keyboard and mouse;
 - 11.3 Have a high-speed internet connection with limited, if any access to any applications and the like to prevent communication with the witness by anyone,
 - 11.4 Protected by way of various security protocols agreed to between the parties to protect the integrity of the process, and
 - 11.5 Grant the witness access to an index in indices of the documents to be used, a hard-copy and digital copy of the documents and exhibits to be presented to the witness during the Remote Hearing as referred to hereinafter.

- 11.6 The oath or affirmation must be administered to the witness prior to commencement of the evidence and if required, the witness must be assisted by an interpreter agreed to between the parties.
- 11.7 The parties must agree whether or not the interpreter will participate in the Remote Hearing from the same location as the witness, or from a different location and whether consecutive or simultaneous interpretation services are to be provided during the Remote Hearing.
- 12 An index of any and all documents and exhibits, including but not limited to memorials, witness statements, slides and graphics (“documents”) to be used in the Remote Hearing must be available to the witness in the Witness Room in hardcopy, with the documents in both in electronic format on the digital hearing platform device and in hardcopy form.
- 12.1 The witness must be granted access on the digital hearing platform to make annotations, drawings, notes or mark-ups on the documents.
- 12.2 A procedure and a digital hearing platform for the transmission and storage of the documents must be agreed upon and be made available to the witness and all parties concerned.
- 13 Necessary security considerations must be implemented for the Remote Hearing with reference to the digital hearing platform. In general:
- 13.1 The Remote Hearing must be secured with the attendance of invited participants and attendees only;

- 13.2 In the event that the digital hearing platform allows for it, the Remote Hearing must be password protected;
- 13.3 Invited participants and attendees should have secure internet connections and not attend from public locations or locations where non-invitees could hear or see the Remote Hearing proceedings;
- 13.4 The host of the Remote Hearing must have a list of the participants which included witnesses and their email addresses and contact details for the purpose of inviting them and controlling the invited participants and attendees;
- 13.5 The Waiting Room feature of the digital hearing platform can be used to control the access to invited participants and attendees, or potential attendees, and any communications with the Arbitrator/s or Judicial Officers prior to the commencement of the virtual hearing. The host should designate a proper name to the Waiting Room – (XXX (Pty) Ltd v YYY (Pty) Ltd Waiting Room;
- 13.6 In the event of an arbitration, or if required in civil proceedings, the host should create Breakaway Rooms with specific invited participants and attendees’ access to the individual Breakaway Rooms. The host should designate an appropriate name to the Breakaway Rooms – Party XXX (Pty) Ltd Breakaway Room and Party YYY (Pty) Ltd Breakaway Room;
- 14 The digital hearing platform generally has a “private” chat feature to provide for inter-party team chats or a general chat format with “everyone” allowing all

participating parties and invitees to communicate with one another, therein. Ensure caution in using this chat facility.

- 14.1 It is advisable that the chat function be set to “everyone” and that team or inter-part chat takes place by way of an external chat platform not related to the Remote Hearing platform used, for instance Whatsapp on a different monitor or device;
- 14.2 Any general communication with the invited participants and attendees can then take place on the “everyone” chat function of the digital hearing platform; and
- 14.3 The Witness Room must not have access to, or the use of the “private” chat function.
- 14.4 The Remote Hearing should be recorded by the hearing host by way of the recording function on the digital hearing platform and if required, by way of an additional recording system.