The Victorian Commercial Arbitration Scheme

RULES

VCAS is endorsed by VICTORIAN BAR

1 January 2022

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Introduction

1. Where the parties have agreed in writing that disputes shall be referred to arbitration under the Victorian Commercial Arbitration Scheme Rules ("**Rules**"), such disputes shall be referred and finally determined in accordance with these Rules.

2. These Rules shall apply to arbitrations in either one of the following forms:

   (a) "Documents-Only" arbitrations without a hearing for the presentation of evidence or oral submissions on the merits of the dispute; or

   (b) Arbitrations involving a hearing for the presentation of evidence and/or oral submissions on the merits of the dispute.

3. Where parties agree specifically to a "Documents-Only" arbitration then the arbitration shall be conducted on that basis pursuant to Rule 2(a) above. In addition, if the value of the claim and counterclaim in total (the **"Sum in Dispute"**) is not more than $50,000, then the arbitration shall, unless the Arbitrator otherwise orders that an oral hearing is necessary, be conducted as a "Documents-Only" arbitration pursuant to Rule 2(a) above. All other arbitrations conducted under these Rules shall be arbitrations under Rule 2(b).

4. Arbitrations under Rule 2(b) above may, if the parties agree, or if the Tribunal in its discretion considers it appropriate, be conducted by a hybrid approach, where some issues are determined by a "Documents-Only" arbitration and other issues by oral hearing.

5. Arbitrations under Rule 2(b) above may, if the parties agree, be conducted by way of virtual hearing using Zoom or other appropriate online technology which permits a remote hearing and/or may be conducted in a manner that limits the time available for each party to present their case at the final hearing ("stop clock" arbitration)[1]. The procedure on virtual hearings and "stop clock" arbitrations, set out in **Appendix 2** to these Rules (virtual hearings) and **Appendix 3** to theseRules (stop clock arbitrations) shall apply to any such hearing (i.e. a hearing which the partiesagree is to be carried out on a virtual or stop clock basis) if the Arbitrator orders or if the parties agree.[2]

6. Unless the parties otherwise agree, in any arbitration conducted under these Rules the place of arbitration shall be Victoria.

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[1] In these Rules, reference to a hearing where the parties agree to limit the time available for each party to present their case at the final hearing will be known as a "stop clock" arbitration.

[2] The purpose of the procedures in Appendix 2 and 3 is to facilitate the use of virtual hearings and/or stop clock arbitrations where the parties agree that one or both of those procedures is to apply.

Overriding Objective

7. The overriding objective of these Rules is to provide arbitration that is quick, cost-effective and fair, considering especially the amounts in dispute and complexity of the issues or facts involved.

8. By invoking these Rules, the parties agree to accept the overriding objective and its application by the Tribunal.

Service of documents under these Rules

9. For the purposes of these Rules, notices, statements, submissions or other documents used in arbitration shall be deemed to have been received if:

   (a) delivered personally to the party; or

   (b) delivered by leaving the document at his or her habitual residence, place of business or mailing address; or

   (c) if the party is a company, by delivering the document to the company's registered place of business; or

   (d) delivered in accordance with the practice of the parties in prior dealings; or

   (e) if none of these can be ascertained after making reasonable inquiry, then documents may be delivered by leaving them at the party's last-known residence or place of business.

10. The date that a party has notice of a document is deemed to be the date that the particular document is delivered to that party.

11. Delivery of documents to the Victorian Commercial Arbitration Scheme ("**VCAS**") shall be by email to VCAS@vicbar.com.au.

12. All documents or information supplied to the Arbitrator by one party shall at the same time be communicated by that party to the other party, except if after consulting with the parties, the Arbitrator otherwise directs.

13. Unless the Arbitrator otherwise directs, each party shall provide to the other party (or parties), and to the Arbitrator,an email address for delivery of documents in the arbitration and delivery to that email addressshall be delivery in the arbitration.

Calculating time

14. For the purposes of calculating a period of time prescribed by these Rules, the period shall begin to run on the day following the day when a notice, statement, submission or other document is received or when the act prescribed takes place. If the last day of the period is a Saturday, Sunday or public holiday, the period is extended until the first day that is not a Saturday, Sunday or public holiday. Saturdays, Sundays or public holidays occurring during the running of the period of time are included in calculating the period.

Commencement of Arbitration

15. To commence an arbitration under these Rules, the party initiating commencement of the arbitration (the "**Claimant**") shall deliver to the other party (the "**Respondent**") a notice in prescribed form in writing stating their intention to commence an arbitration under these Rules (the "**Notice ofArbitration**"). A copy of the Notice of Arbitration shall be delivered at the same time to VCAS to the email address nominated in the prescribed form.

16. The time periods for which steps are to be taken in the arbitration shall be deemed to have commenced upon confirmation of receipt from VCAS of the Notice of Arbitration.

17. The Notice of Arbitration shall include:

    (a) the names and mailing addresses of the parties to the dispute;

    (b) an email address for the delivery of documents to the Claimant as required by Rule 13;

    (c) a short statement that the parties are in dispute over a matter which is to be identified in brief terms;

    (d) reference to the agreement by which the dispute is to be arbitrated under these Rules;

    (e) unless the arbitration agreement provides otherwise, the names and professional details of at least 3 individuals nominated by the Claimant as candidates for the role of single Arbitrator of the dispute; and

    (f) a copy of the arbitration agreement.

18. Within 7 days after receipt of the Notice of Arbitration, the Respondent(s) shall deliver an Answer to Notice of Arbitration to the Claimant and to VCAS.

19. The Answer to Notice of Arbitration shall include:

(a) the names, mailing addresses, postal address, telephone numbers and email addresses of the Respondent(s) and their legal representatives;

(b) any submission that an arbitral tribunal constituted under these Rules does not have jurisdiction;

(c) the Respondent's comments on the description of the dispute set forth in the Notice of Arbitration;

(d) the Respondent's answer to the relief or remedy sought in the Notice of Arbitration; and

(e) the Respondent's answer to the proposed candidates for the role of single Arbitrator of the dispute.

20. The Answer to Notice of Arbitration may also include:

(a) the Statement of Defence referred to in Rule 36; or

(b) a brief description of any counterclaim or claim for the purpose of a set-off, if any, including where relevant, an indication of the amounts involved, and the relief or remedy sought.

Appointment of Arbitrator

21. Unless the arbitration agreement provides otherwise, any arbitration conducted under these Rules shall be conducted by a sole Arbitrator ("**Arbitrator**") whose appointment shall be agreed in writing by the parties within 7 days of the commencement of arbitration.

22. Where parties are unable to agree in writing to the appointment of an Arbitrator after 7 days of the commencement of the arbitration, the Claimant shall within 7 days thereafter notify VCAS by email to VCAS@vicbar.com.au requesting that the President of the Victorian Bar ("**President**") appoint an Arbitrator. The President or their delegate shall use his or her best endeavours within 7 days from such notification to appoint an Arbitrator to hear and/or determine the dispute, notify the parties of theappointment, and provide the parties with the Arbitrator's name and contact address. Wherean Emergency Arbitrator is appointed under Appendix 1, these timelines shall continue to runconcurrently, save that the President or their delegate shall not appoint the Arbitrator until the Emergency Arbitrator has delivered his or her interim order or Award.

23. The remuneration of the Arbitrator shall be in accordance with such rates and fees as may from time to time be prescribed by VCAS as the rates and fees applicable to Arbitrators' remuneration for arbitration under these Rules, subject to any rates and fees agreed between the parties and the Arbitrator. Parties are jointly and severally liable for the Arbitrator's fees and expenses, without prejudice to any order on costs that the Arbitrator may make.

Deposits for Costs

24. As soon as practicable after the commencement of the arbitration, the Arbitrator may request the parties to each deposit an equal amount as an advance for the Arbitrator's fees such amount to be paid in accordance with any direction of the Arbitrator.

25. If the required deposits are not paid in full within 14 days after receipt of the request, the Arbitrator shall inform the parties in order that one or another of them may make the required payment. If such payment is not made, the Arbitrator may order the suspension or termination of the arbitration or continue with the arbitration on such basis and in respect of such claim or counterclaim as the Arbitrator considers fit.

26. If a party pays the required deposits on behalf of another party, the Arbitrator may, at the request of the paying party, make an Award for reimbursement of the payment.

27. The Arbitrator may render interim invoices to the parties progressively during the course of the arbitration.

28. When releasing the final Award, the Arbitrator shall render an account to the parties of the deposits received. Any unexpended balance shall be returned to the parties in the shares in which it was paid by the parties, or as otherwise ordered by the Arbitrator.

Procedure in the Arbitration

29. Subject to these Rules, the Arbitrator shall have all powers permitted by law to ensure the just, expeditious, economical and final determination of the dispute, including the power to abridge or extend time periods prescribed by these Rules. In this regard, the Arbitrator shall conduct the arbitration in such manner as he or she considers appropriate, save that at all times the Arbitrator shall ensure that the parties are treated equally and are given a reasonable opportunity to present their case.

Statement of Case

30. The Claimant shall provide a Statement of Case to the Respondent with the Notice of Arbitration.

31. Each of the Statement of Case, Statement of Defence, any Counterclaim, and Reply, as described below, shall be comprehensive in nature and shall, as far as reasonably practicable, refer to all the material relied on.

32. The Statement of Case shall contain the following information:

    (a) a concise statement of the facts and particulars supporting the claim;

    (b) concise contentions of fact and law supporting the claim;

    (c) all items of relief and remedy sought by the Claimant; and

    (d) all quantifiable items of claim with accompanying calculations and breakdown (where applicable).

33. The Claimant shall annex to its Statement of Case all supporting materials on which it relies.

34. In a "Documents-Only" arbitration, the Statement of Case (excluding the supporting material annexed thereto) shall not exceed fifteen (15) A4 pages.

35. The Arbitrator may vary any of the requirements in Rules 31 to 34 above as he or she deems appropriate.

Statement of Defence (and Counterclaim, if any)

36. Within 28 days of the commencement of arbitration, or within some other time period fixed by the Arbitrator, the Respondent shall deliver to the Arbitrator and the Claimant a statement of defence ("**Statement of Defence**") to the Claimant's claim signed by or on behalf of the Respondent. Where the Respondent desires to advance a counterclaim against the Claimant, a statement of the counterclaim signed by or on behalf of the Respondent must be included in the same document as the Statement of Defence and such document shall be titled "Statement of Defence and Counterclaim".

37. The Statement of Defence (and Counterclaim, if any) shall contain the following information:

    (a) a confirmation or denial of the Claimant's claim;

    (b) a concise statement of the facts and particulars supporting the Respondent's defence of the claim;

    (c) concise contentions of fact and law supporting the Respondent's defence of the claim; and

    (d) where a counterclaim or set-off defence is advanced, the same information thata Claimant is obliged to give in their Statement of Case.

38. The Respondent shall annex to its Statement of Defence (or Statement of Defence and Counterclaim) all supporting materials on which it relies.

39. In a "Documents-Only" arbitration, each of the Statement of Defence (excluding the supporting material annexed thereto) and any Counterclaim (excluding the supporting material annexed thereto) shall not exceed fifteen (15) A4 pages.

40. The Arbitrator may vary any of the requirements in Rules 37 to 39 above as he or she deems appropriate.

Statement of Reply (and Defence to Counterclaim, if applicable)

41. Within 14 days of receipt of the Respondent's Defence (and Counterclaim, if any), or within some other time period fixed by the Arbitrator, the Claimant shall (if it so chooses) deliver to the Arbitrator and the Respondent a concise statement of reply ("**Statement of Reply**") to theRespondent's defence signed by or on behalf of the Claimant. Where the Respondent has advanced a counterclaim against the Claimant, a comprehensive statement of the defence to the Respondent's counterclaim signed by or on behalf of the Claimant must be included in the same document as the Statement of Reply and such document shall be titled "Statement of Reply and Defence to Counterclaim".

42. The Statement of Reply (and Defence to Counterclaim, if applicable) shall contain the following information:

    (a) a confirmation or denial of the Respondent's defence;

    (b) a concise statement of the facts and particulars supporting the Claimant's reply to the defence;

    (c) concise contentions of fact and law supporting the Claimant's reply to the defence; and

(d) where a defence to counterclaim is advanced by the Claimant, the same kind of information that a Respondent is obliged to give in their Statement of Defence.

43. In a "Documents-Only" arbitration the Statement of Reply (and Defence to Counterclaim, if applicable) shall not exceed fifteen (15) A4 pages.

44. The Arbitrator may vary any of the requirements in Rules 42 and 43 above as he or she deems appropriate.

"Documents-Only" Arbitration: for Disputes under $50,000 or as agreed

45. Where parties agree specifically to a "Documents-Only" arbitration or where the Sum in Dispute is not more than $50,000 (subject to Rule 3), the Arbitrator shall, upon receipt of the Statements referred to in paragraphs 30 to 44 above (where applicable) and such other documents as he or she may direct or require, proceed to consider the dispute and publish the Award in accordance with these Rules.

46. A hearing for the presentation of evidence or oral submissions on the merits of the dispute (for disputes under $50,000 or as agreed) is not required unless, in exceptional circumstances, the Arbitrator deems it necessary for the resolution of the dispute.

47. If either party objects to the arbitration being "Documents-Only" an application must be made within 14 days of the commencement of the arbitration.

48. Either party may apply for extensions of time in a "Documents-Only" arbitration.

Status Hearing

49. Where the arbitration is not a "Documents-Only" arbitration pursuant to Rule 45, the Arbitrator shall convene a hearing to be attended by both parties (**"Status Hearing"**), which shall proceed, unless the Arbitrator otherwise orders, no later than 6 weeks from the date of commencement of the arbitration. The Arbitrator may conduct the Status Hearing by way of virtual hearing using Zoom or other appropriate online technology.

50. At the Status Hearing, the Arbitrator shall enquire into the status of the arbitration and shall consider directions for the further conduct of the arbitration, including:

(a) directions for exchange of Statements of Case, Defence or Reply (if parties have not been able to exchange such statements within the time prescribed by these Rules);

(b) directions for the exchange of witness statements;

(c) a direction that all or any applications for interim rulings, interim relief, awards and/or directions be delivered to the Arbitrator no later than 7 days from the date of the Status Hearing (if such applications have not by such time already been delivered to the Arbitrator); and for a resumed Status Hearing to be held within 14 days of the original Status Hearing at which all applications for interim relief, awards and/or directions are to be heard and disposed; and

(d) directions, as may be appropriate for the presentation of evidence by witnesses, including expert witnesses, if any, and for oral submissions to be made on behalf of the parties.

Interim Relief

51. Subject to Rules 50(c) above and 52 below, at any stage of the arbitration prior to the Status Hearing, parties may deliver to the Arbitrator and the Respondent applications for interim rulings, awards and/or directions signed for or on behalf of the party making the application. Such applications must be supported by a statement signed by or on behalf of the parties setting out the grounds for the application and all supporting documents.

52. Applications for interim relief, awards and/or directions delivered to the Arbitrator after the time limit stipulated in Rule 50(c) above may be refused by the Arbitrator on the sole ground that they are not delivered in accordance with the said time limits. The Arbitrator may consider applications for interim relief, awards and/or directions delivered after the time limit stipulated in Rule 50(c) above if the Arbitrator is of the view that the application is necessary for the fair disposal of the arbitration.

53. A party that wishes to seek emergency interim relief prior to the appointment of the Arbitrator may apply for such relief pursuant to the procedures set out in Appendix 1.

54. A request for interim relief made by a party to a judicial authority prior to the appointment of the Arbitrator, or in exceptional circumstances thereafter, is not incompatible with these Rules.

Substantive Hearing

55. The Arbitrator shall where applicable, direct that the hearing be heard as soon as reasonably practicable and, in any event, unless the parties otherwise agree or the Arbitrator otherwise orders, the hearing shall be completed no later than 90 days from the confirmation of commencement of the arbitration.

56. In the absence of witness statements or evidence given orally at the hearing, the parties' signed Statement of Case, Statement of Defence (and Counterclaim, if any) and Statement of Reply (and Defence to Counterclaim, if applicable) shall serve as the parties' evidence at the hearing.

57. Unless the party entitled to cross-examine dispenses with that right, any witness who has provided a witness statement or given oral evidence and/or the party or parties identified in the statements and/or supporting evidence must be made available for cross-examination at the hearing. If a witness fails to attend, the Arbitrator may elect:

    (a) to proceed with the hearing and place such weight on the witness statement or evidence as the Arbitrator deems just and appropriate; or

    (b) to proceed with the hearing and exclude the statement or evidence altogether.

58. Unless the parties otherwise agree, consistently with s. 19 of the *Commercial Arbitration Act* 2011 (Vic), each party has the burden of proving the facts relied upon to support their claim or defence and the Arbitrator shall determine the relevance, materiality and admissibility of any evidence.

Awards

59. A party shall be entitled to apply for an interim ruling or Award (as the case may be) and shall as far as possible do so in accordance with these Rules.

60. Applications for interim rulings or awards must be supported by a statement signed by or on behalf of the party making the application setting out the grounds for the application and relevant facts and documents. The Arbitrator may hear such applications for interim rulings or awards and shall be empowered to determine such applications including the following:

    (a) objections that the Arbitrator has no jurisdiction, including any objections in respect of the validity of an arbitration agreement;

    (b) applications to correct any contract or arbitration agreement in accordance with the substantive rules of law applicable;

    (c) preliminary questions or points of law arising in the arbitration by which determination the arbitration may be disposed of;

    (d) applications for permission to amend the aforesaid Statements or other documents delivered in the arbitration;

    (e) applications for extension or abridgment of time periods prescribed by these Rules;

    (f) applications for disclosure of documents and facts;

    (g) such further or other applications for directions as may appear to the Arbitrator to be necessary for the fair and expedient resolution of the dispute under arbitration; and

    (h) Without prejudice to the general powers conferred on the Arbitrator under these Rules, make orders as to costs in relation to or for the purposes of Rules 60(a) to 60(g) above.

61. The Award shall state the reasons upon which it is based, be signed by the Arbitrator and shall specify the date on which and place in which the Award was made.

62. The Arbitrator shall upon payment of all outstanding fees due to the Arbitrator deliver the Award to the parties and a copy thereof to the Chair. Awards shall be made in writing and shall be final and binding on the parties. The parties undertake to carry out any such Award without delay.

63. With regard to a "Documents-Only" arbitration, the Arbitrator shall publish his or her final Award expeditiously and as far as practicable no later than 90 days from the commencement of the arbitration.

64. With regard to an arbitration with a substantive hearing, the Arbitrator shall publish his or her final Award expeditiously and as far as practicable no later than 120 days from the commencement of the arbitration.

65. With a view to saving costs and expenses, the parties to an arbitration may agree in writing that the Arbitrator is not required to give reasons for his or her Award.

Extension of Time for the Award

66. If it appears to the Arbitrator that the final Award may not be published within the time limits provided in these Rules, the Arbitrator shall, before the lapse of the said time limit, notify VCAS and the parties, in writing of the revised estimated date of publication of the Award, forthe purpose of information only.

Interpretation or Correction of the Award

67. Within 30 days after the receipt of the Award, any party, with notice to the other parties, may request the Arbitrator to interpret the Award or correct any clerical, typographical or computation errors or make an additional Award as to claims presented but omitted from the Award.

68. If the Arbitrator considers such a request justified, after considering the contentions of the parties, the Arbitrator shall comply with such a request within 30 days after the receipt of the request.

Costs

69. The costs of the arbitration shall in principle be borne by the unsuccessful party or parties. However, the Arbitrator may apportion each of such costs between the parties if he or she determines that apportionment is reasonable, taking into account the circumstances of the case. The Arbitrator shall in the final award or, if he or she deems appropriate, in any other award, determine any amount that a party may have to pay to another party as a result of the decision on allocation of costs.

Confidentiality

70. Subject to rule 71 below, all matters disclosed during the proceedings, whether by the parties or by witnesses, and all matters relating to the arbitration or the Award shall be kept confidential by the Arbitrator (including an Emergency Arbitrator), VCAS, and the parties, save for the following exceptions:

    (a) where otherwise agreed by the parties in writing;

    (b) where disclosure is made to a party's professional advisors, insurers or third-party funders or as required by law. Where a party discloses such matters to its professional advisors, insurers or third-party funders, it shall ensure that these persons are subject to confidentiality obligations that are similar to this paragraph;

    (c) where a party makes an application to a court of competent jurisdiction:

        (i) in relation to the enforcement or challenge of the Award; or

        (ii) to pursue its legal rights under applicable law.

    (d) pursuant to the order of a court of competent jurisdiction;

    (e) if compelled or required by the law of any state which is binding on the party making the disclosure;

    (f) if required to do so by any regulatory body;

    (g) where such matters have come into the public domain through no fault or breach of these Rules by either party.

71. On the expiration of 24 months from the date of the final Award made under these Rules, but subject to: (a) any order to the contrary made by the Arbitrator; and/or (b) any request in writing by a party to the Arbitrator or VCAS prior to the publication of the final Award (including as to interest and costs), VCAS shall be at liberty to publish the Award provided that

reasonable steps are taken by VCAS to anonymise the Award so that the parties cannot reasonably be identified.

Exclusions

72. The Victorian Bar and its committees (including VCAS) and their members, officers, employees or agents shall not be liable for making any decision or taking any action or failing to make any decision or take any action under these Rules, including where any such decision and/or action occurs after the Arbitrator has made a final award, the parties agree on a settlement of the dispute or the arbitration proceedings have terminated.

73. Notwithstanding the delivery of documents to VCAS for its information and the appointment of an Arbitrator where parties cannot agree by the President or their delegate, the Victorian Bar and its committees (including VCAS) and their members, officers, employees or agents are not, for the purpose of these Rules, a body administering the arbitration and are under no duty or obligation to administer or control the arbitration. The parties agree not to hold the Victorian Bar or its committees (including VCAS) or their members, officers, employees or agents responsible or liable for anything done or omitted to be done in the discharge or purported discharge of any power, function or duty under these Rules or in connection with any Arbitratoror arbitration under these Rules, including where any such action or failure to act occurs after the Arbitrator has made a final award, the parties agree on a settlement of the dispute or the arbitration proceedings have terminated.

Exclusion of liability and indemnity

74. Except in the case of fraud, all parties to the Arbitration agree:

(a) that the Arbitrator is not liable for any act or omission done in the exercise or purported exercise of powers or duties as an Arbitrator in, arising out of or in connection with the Arbitration; and

(b) to forever release, indemnify and keep indemnified the Arbitrator against any and all actual or threatened claims, demands, actions, suits or proceedings of whatever kind made by that party and for all costs and expenses incurred or suffered by the Arbitrator whether such claims arise:

(i) under or in connection with any contract;

(ii) in tort for negligence, negligent advice or otherwise;

(iii) for breach of any fiduciary relationship or obligation, actual or implied; and/or

(iv) otherwise at law (including by statute to the extent it is possible so to release, exclude or indemnify) and in equity generally, including without limitation for restitution for unjust enrichment –

in, arising out of or in connection with the Arbitration.

75. Without limiting Rule 74, each of the Arbitration parties agree that the Arbitrator shall havethe same protection and immunity as given by Section 27A of the *Supreme Court Act* 1986 (Vic) as a Judge of the Supreme Court of Victoria has in the performance of his or her duties as a Judge.

76. The provisions of these Rules are to be construed as additional to and not in any way derogating from the application, operation and effect of any applicable statutory provisions or arbitration rules conferring immunity on or otherwise releasing or indemnifying the Arbitrator in, arising out of or in connection with the Arbitration.

Dated: 1 January 2022

Appendix 1 to the VCAS Rules – Emergency Interim Relief

1. The application for emergency interim relief shall include:

   (a) the nature of the relief sought;

   (b) the reasons why the party is entitled to such relief; and

   (c) a statement certifying that all other parties have been provided with a copy of the application or, if not, an explanation of the steps taken to provide a copy of the application or notification to all other parties.

2. The Emergency Arbitrator's fees shall be determined according to the VCAS Scale Fees for Arbitrators for the time being inforce.

3. VCAS shall seek to appoint an Emergency Arbitrator within 3 (three) workingdays after receipt by VCAS of such application. An Emergency Arbitrator shall disclose to the parties any circumstances that may give rise to justifiable doubts as to his or her impartiality or independence. Any challenge to the appointment of the Emergency Arbitrator must be made within one day of the communication to the parties of the appointment of the Emergency Arbitrator and the circumstances disclosed.

4. An Emergency Arbitrator may not act as an Arbitrator in any future arbitration relating to the dispute, unless otherwise agreed by the parties.

5. The Emergency Arbitrator shall, as soon as possible but, in any event, within two days of his or her appointment, establish a timetable for consideration of the application for emergency interim relief. The Emergency Arbitrator may provide for proceedings by telephone or video conference or on written submissions as alternatives to a hearing in person. The Emergency Arbitrator shall have the powers vested in the Arbitrator pursuant to these Rules, including the authority to rule on his or her own jurisdiction, without prejudice to the Arbitrator's determination.

6. The Emergency Arbitrator shall make his or her interim order or Award within 14 days from the date of his or her appointment unless the Emergency Arbitrator extends the time. The Emergency Arbitrator may modify or vacate the interim order or Award for good cause, until the appointment of the Arbitrator.

7. The Emergency Arbitrator shall have no power to act after the Arbitrator is appointed. The Arbitrator may reconsider, modify or vacate any interim order or Award issued by the Emergency Arbitrator, including a ruling on his or her own jurisdiction. The Arbitrator is not bound by the reasons given by the Emergency Arbitrator. Any interim order or Award issued by the Emergency Arbitrator shall, in any event, cease to be binding if the Arbitrator is not appointed within 90 days of such order or Award or when the Arbitrator makes a final award or if the claim is withdrawn.

8. Subject to paragraph 7 of this Appendix, the Emergency Arbitrator shall have the power to order or award any interim relief that he or she deems necessary, and make any order or Award as to costs of the application for emergency interim relief.

9. The parties agree that an order or Award by an Emergency Arbitrator shall be binding on the parties from the date it is made and undertake to carry out the interim order or Award immediately and without delay.

10. The Emergency Arbitrator may require a party to provide appropriate security as a condition of any emergency interim measure.

Appendix 2 to the VCAS Rules – VCAS guidelines for virtual hearings

1. Where agreed[4], the arbitration (or parts of the arbitration), including the final hearing, may be conducted remotely using online video technology such as Zoom or other appropriate technology which permits a remote hearing (Rule 5).

2. The following guidelines are designed to facilitate the efficient and cost-effective remote conduct of arbitrations under the Rules. The parties may adopt or adapt these procedures by agreement. If the parties have agreed to adopt the use of online video technology, but they cannot agree on any aspect of the use of that technology in the arbitration, (including the adoption of these guidelines) the Arbitrator will decide that matter.

3. The purpose of this document is directed to the use of online video technology in connection with the final hearing; electronic discovery and document exchange, on the other hand, can be dealt with using similar procedures as agreed, adapted or directed by the Arbitrator.

Documents

4. All documents in the arbitration are to be provided, as far as possible, electronically, and the parties should agree upon an appropriate means or protocol for electronic discovery and electronic document exchange (if appropriate).

5. Evidence in chief will ordinarily be given by witness statements and witness statements should contain hyperlinks to the documents referred to therein[5].

6. The parties should agree upon a digital platform[6] to be used for the transmission and / or storage of documents, (shared or otherwise), and, where appropriate, access restrictions may be agreed or ordered by the Arbitrator.

Directions hearings

7. The parties should agree that directions hearings will be conducted remotely using online video technology[7], or by telephone in exceptional circumstances. The parties should agree on the technology to be used, and if no agreement can be reached, the Arbitrator will decide[8].

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[4] The agreement to proceed by way of virtual hearing should be recorded in writing.
[5] So that exhibits referred to in the witness statements can be opened, electronically, within the document.
[6] For example, Dropbox or iCloud.
[7] Participants must ensure a video camera is working and available for video conferencing.
[8] Once the technology platform has been determined, each party must ensure they have appropriate hardware and software to access and use the technology.

8. Ordinarily the claimant should take responsibility for ensuring that an appropriate online technology platform[9] is available and that the parties and the Tribunal have adequate notice of log-in details for directions hearings[10].

9. Ordinarily, it shall not be necessary for the parties to organise the transcription of directions hearings. If the parties cannot reach agreement in this regard, the Arbitrator will decide the matter, taking into account the parties' submissions and the amount(s) in dispute.

Venue and internet access

10. If the parties have agreed to conduct the arbitration (or any part of the arbitration) using online technology, the parties are each responsible for ensuring that they, and the witnesses they will call to give evidence, have a high quality internet connection so as to properly facilitate a remote hearing.

11. If:

    (a) a party's internet connection (including that of any witness called by that party) is of poor quality; and/or

    (b) a party is unable to properly proceed with the virtual hearing because of some other reason,

    so as to cause delay, disruption or disadvantage to the other party, subject to argument, the Arbitrator may make any order he or she considers appropriate – including (without limitation) adjourning the hearing and that any costs thrown away be paid by the party in default.

12. Where possible, rooms occupied by participants in virtual hearings, whether in their own homes (not preferred), offices or in special hearings rooms, should be completely separate from non-participants in the arbitration.

Technology use

13. Prior to the hearing the parties should take steps to ensure that they, and any witnesses they intend to call, are familiar with and able to use, properly, the relevant virtual technology platform to be used for the final hearing.

14. The parties may agree upon the use of neutral assistants to provide technical support during the hearing.

[9] Zoom, BlueJeans, Cisco WebEx Meetings, or Microsoft Teams may be appropriate.
[10] Ordinarily, at least 48 hours' notice of the log-in details for directions hearings should be provided.

Final hearing

15. If the parties decide to conduct the final hearing remotely with online technology, they should consider (and seek to resolve by agreement or by a determination of the Arbitrator absent agreement) the following matters:

(a) The provision (in advance of the hearing)[11] of the following:

i. the names and roles of each participant (including counsel, instructing solicitors, witnesses, interpreters and any other person) in the virtual hearing;

ii. a list of documents to be provided by each party at the hearing.

(b) A technology platform (including a virtual hearing room) to be used for the final hearing that will allow:

i. documents to be viewed simultaneously (shared) during the hearing;

ii. for virtual breakout rooms so that parties and their witnesses can communicate confidentially during breaks or other allocated periods.

(c) An electronic tribunal book that is prepared by the claimant (for example, with the use of https://www.bundledocs.com).

(d) Electronic bundles of documents to be used for cross-examination of lay and expert witnesses, and these will be provided in accordance with any direction of the Arbitrator.

(e) Whether they want to organise a transcript of the final hearing.

(f) Logistical issues such as whether each party should:

i. be "in attendance" in the virtual hearing room 5 minutes prior to the allocated commencement time;

ii. ensure a representative of that party is in the hearing at all times;

iii. brief any remote witness who is to give evidence about the process that will take place, including in relation to cross-examination.

[11] The parties are to agree on the time prior to hearing by which lists of participants are to be provided (and the Arbitrator shall rule in the absence of such agreement).

16. If important factual matters are in dispute, and the Arbitrator determines that he or she would be assisted by direct (oral) evidence-in-chief about those matters, the Arbitrator may order that limited oral evidence in chief may be given[12].

17. All submissions and chronologies filed by the parties should, where appropriate, include hyperlinks to the relevant document in the electronic version of the Hearing Book and List of Authorities.

18. Nothing in this procedure limits the Arbitrator's discretion to determine how the virtual hearing is to proceed so as to ensure that the parties are treated equally and to enable the Arbitrator to determine the dispute in accordance with the paramount object of the *Commercial Arbitration Act* 2011 (Vic), that is, "to facilitate the fair and final resolution of commercial disputes by impartial arbitral tribunals without unnecessary delay or expense" (see section 1AC).

[12] Nothing in this procedure limits the Arbitrator's discretion to determine how the evidence is to be given so as to ensure that the parties are treated equally and to enable the Arbitrator to properly determine the dispute.

Appendix 3 to the VCAS Rules – VCAS procedure for "stop clock" arbitrations[13]

19. Where the dispute is to be heard and determined by way of "stop clock" arbitration then this procedure shall, unless the Arbitrator otherwise orders, apply tothe arbitral hearing.

20. A stop clock arbitral hearing[14] shall, unless the Arbitrator otherwise orders, be conducted as follows:

    (a) The duration of the hearing shall be determined, by agreement, or by arbitral order, in advance of the final hearing.

    (b) The time available is to be allocated between the tribunal (to question the parties or witnesses or to attend to procedural matters and the like) and each party.

    (c) The time allocated to each party is to be equal (subject to rules of procedural fairness).

    (d) The parties are entitled to use their time as they see fit (whether by opening or closing submissions, evidence in chief, cross-examination, or otherwise).

    (e) Either a person shall be appointed by agreement to keep track of each party's time used and the time available, or each party may appoint a representative and each representative shall liaise and agree the amount of time used and time remaining (with the Arbitrator to rule on, usually each day, any disagreement).

    (f) Unsuccessful objections to evidence, and a party resisting a successful objection, shall have that time debited to the party's account (unless the Arbitrator otherwise orders).

    (g) The Arbitrator maintains a discretion in the debiting of time.

    (h) Absent agreement between the parties, time for the final hearing will not be extended, save in exceptional circumstances.

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[13] This procedure has been prepared by reference to, among other things, the article prepared by AlbertMonichino QC entitled "*Stop Clock Hearing Procedures in Arbitration*", Asian Dispute Review, July 2019.

[14] Usually only the final hearing is conducted by way of stop clock arbitration.

[15] Ultimately, if the allocation of a fixed time is likely to produce injustice, the Arbitrator may decide not to conduct the hearing on a stop clock basis.

(i) Failure to cross-examine a witness (at all, or on a particular matter) does not, of itself, amount to acceptance of the evidence.[16]

21. A draft procedural order for a stop clock arbitration is set out below.

Draft procedural order for use in stop clock arbitration hearings

(1) The hearing of the arbitration shall commence on [insert date] and shall conclude on [insert date] in [insert city].

(2) The sitting hours shall be 9.30 am to 5.00 pm each day with one hour for lunch and a morning and afternoon break of 15 minutes each.

(3) The time fixed for the hearing, (after allowing one hour each day for the Tribunal's interventions and for administrative and procedural matters), will be apportioned equally between the parties such that:

(a) the Claimant shall have a total of [insert] hours; and

(b) the Respondent shall have a total of [insert] hours.

(4) Each party is responsible for the manner in which it uses its available time.

(5) Usually, the following matters will be charged against each party's time allocation:

(a) examination of witnesses (examination in chief or cross-examination);[17]

(b) oral submissions;

(c) unjustified interruption;[18]

(d) setting up displays or presentations while the Tribunal is sitting;

(e) other unjustified delay.

(6) Each party shall designate a person to keep track of time who shall, jointly if possible, report to the Arbitrator each day or as required as to the usage of time.

(7) A party is not bound by opposing evidence that it does not challenge by cross-examination but is expected to cross-examine at least one witness with respect to any significant matter which the other party should be given the opportunity to answer.

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[16] Although cross-examination may be expected on significant matters in dispute.

[17] Subject to adjustment in the event of consistent unresponsiveness.

[18] For example, unsuccessful objection or resisting a justified objection.

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