



**Russian
Arbitration
Center**

at Russian
Institute
of Modern
Arbitration

Guidelines on Oral Hearings

Oral Hearings

1. The Arbitral Tribunal shall, taking into account the opinion of the Parties, decide on the procedure for the oral hearing, using the means and methods that it considers suitable, necessary, and sufficient. At the same time, the RAC recommends that the Arbitral Tribunal take account of the following:
 - 1) the Parties must be provided with equal opportunities to present their positions. Motions, applications, and other issues arising at the oral hearing shall be considered with taking into account the opinion of both Parties;
 - 2) the Arbitral Tribunal shall seek to conduct the oral hearing efficiently, without allowing any bad faith conduct of the representatives, delays, as well as open conflicts between the representatives;
 - 3) the Panel of arbitrators shall agree on its position on all issues to be resolved in the course of the hearing and the presiding arbitrator shall not prevent co-arbitrators from posing any questions to the Parties with an aim of clarifying the position of the Parties and the facts of the case.

Model Plan of the Oral Hearing

2. The Arbitral Tribunal shall, after the arbitrators have introduced themselves, declare the oral hearing open by announcing:
 - 1) the current time and time zone;
 - 2) the case number;
 - 3) the names of the Parties and other participants, if any;
 - 4) the subject matter and the amount of claims;
 - 5) the RAC as the institution administering the dispute.
3. The Arbitral Tribunal shall ascertain the identity and verify the authority of the oral hearing's participants. Taking into account the positions of the Parties, the Arbitral Tribunal may allow the employees of the Administrative Office and other persons to attend the oral hearing.

4. If both Parties notified the Arbitral Tribunal within a reasonable time of their lack of intention to participate in the oral hearing, the oral hearing shall not be conducted and the arbitration shall be performed on the basis of the documents submitted by the Parties. If the Parties have not appeared at the oral hearing and, at the same time, have not notified the Arbitral Tribunal within a reasonable time of their lack of intention to participate in the oral hearing, the oral hearing shall be deemed conducted for the purposes of calculating the arbitration fee.
5. If one Party has not appeared at the hearing, the Arbitral Tribunal shall examine whether proof of its proper notification is available and, taking into consideration the circumstances of the case and the opinion of the Party appearing at the hearing, shall either postpone the hearing or conduct the hearing without that Party.
6. The Arbitral Tribunal shall, in examining the circumstances preventing the oral hearing from being held:
 - 1) clarify with the Parties whether they have been properly notified of the date, time, and venue of the oral hearing;
 - 2) examine whether there are any applications that must be considered before the positions on the merits of the dispute are discussed (for instance, an application to postpone the oral hearing);
 - 3) consider the respective applications, giving each Party the opportunity to make its case with respect to the application in question.
7. The Arbitral Tribunal shall clarify whether the Parties have motions for a challenge. A motion for challenge shall not, in any event, prevent the oral hearing from being conducted and the arbitration proceeding from continuing.
8. The order of presentations and the plan of the oral hearing, as a rule, shall be determined at the beginning of the oral hearing. At the same time, taking into account the circumstances and the complexity of the specific dispute, the plan of the oral hearing may be agreed upon in a preliminary oral hearing.

9. Example of the order of presentations:
- 1) discussion of the possibility of amicable settlement of the dispute;
 - 2) consideration of the issue of jurisdiction of the Arbitral Tribunal;
 - 3) Claimant's position on the merits of the dispute;
 - 4) Respondent's position on the merits of the dispute;
 - 5) Parties' questions to one another;
 - 6) Arbitral Tribunal's questions to the Parties;
 - 7) Parties' positions on the issue of allocation of the arbitration costs.
10. If witnesses or experts participate in the hearing, the order of presentations shall be determined bearing their participation in mind. Witnesses and experts shall, as a rule, attend the oral hearing only for the time of their presentations (or testimony).
11. The Arbitral Tribunal shall warn both witnesses and experts of the confidentiality of the dispute and the prohibition of disclosure of any information about it. The procedure for the provision of information by a witness or expert may be regulated by the applicable law, legal traditions, the agreement between the Parties, the Procedural Schedule, etc.
12. The Parties shall be provided with equal opportunities to examine witnesses or experts. The expert may be asked questions in connection with the expert's examination and the expert's report submitted.
13. The Arbitral Tribunal may declare the oral hearing adjourned by announcing the current time at the beginning and the end of the adjournment.
14. If the Arbitral Tribunal deems it impossible to issue a reasoned arbitral award on the basis of the positions submitted by the Parties, the Arbitral Tribunal is entitled to postpone the oral hearing or set a time limit for the Parties to file

¹ If the Arbitral Tribunal recognizes that it lacks jurisdiction, the hearing shall be concluded and the Arbitral Tribunal shall issue an order on the lack of jurisdiction.

² When considering a complex dispute comprising several independent sets of claims, the Arbitral Tribunal may invite the Parties to present their positions sequentially with regard to each of them (in that case, the Claimant shall not submit its whole position at once but shall present its position alternating with the Respondent on each set of claims).

additional written submissions or evidence on the particular issues that are relevant to the resolution of the dispute or to take other procedural steps.

15. Having ascertained that the Parties have been provided with the opportunity to present their position on all issues relevant to the resolution of the dispute, the Arbitral Tribunal shall declare the oral hearing closed by announcing the current time. Additionally, the Arbitral Tribunal shall explain to the Parties that:
- 1) the operative part of the award will not be announced and the arbitral award will be issued within the time limit prescribed by the Arbitration Rules and sent to the Parties;
 - 2) the Parties are entitled to file a request for reimbursement of arbitration costs that they incurred within 7 days from the end of the oral hearing.
16. The oral hearing shall be recorded in audio. The record and the audio recording of the oral hearing shall be provided to the Parties only upon request.

Oral Hearings *via* Videoconferencing

17. The oral hearing may be conducted *via* videoconferencing (as well as in hybrid format):
- 1) by agreement with the Parties, including in accordance with the Procedural Schedule;
 - 2) in the absence of such an agreement with the Parties, based on the decision of the Arbitral Tribunal taking into account the specific circumstances of the case.
18. A representative participating in the oral hearing *via* videoconferencing shall send by e-mail the documents certifying his/her identity and authority to the RAC and the Arbitral Tribunal in advance. To verify his/her authority and ascertain his/her identity, the Arbitral Tribunal may ask the representative to demonstrate the documents confirming his/her identity and authority as sent earlier live on camera.

19. The evidence and documents containing the position of the Parties must be submitted in full prior to the oral hearing. In case the necessity arises to submit documents during the oral hearing, the Parties are advised to use the Online Arbitration System of the RAC (OAS) for these purposes to ensure simultaneous and timely access to such documents by the Parties and the Arbitral Tribunal.
20. To avoid possible delays caused by technical malfunctions at the oral hearing, the Administrative Office shall be advised to do a test call with the participants of the oral hearing in advance. In any event, a test call with the Arbitral Tribunal shall be carried out separately from the Parties.
21. Physical premises occupied by the participants of the oral hearing must be well-lit, visible, as well as free from any third parties not allowed by the Arbitral Tribunal to participate in the oral hearing.
22. Headsets are recommended to enhance the confidentiality and audibility of the participants, as well as to reduce outside noise. Moreover, it is advised to switch microphones off when other participants of the hearing are speaking.

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