



# STRATEGIC PLANNING GROUP MEETING MEMO

*16TH JULY 2020. 13.00-14.00 CEST  
TIME*

**Swiss Chinese Law Association**

**PREPARED BY**

*Hermann Knott  
Martin Winkler*

**PRESENTED BY**

*Tianze Zhang*

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# INTRODUCTION

At the start of this meeting, Mr. Zhang welcomed the Delegates and gave a presentation the focus of which was on the background and the details of the envisaged survey on Internet Arbitration. This survey shall be addressed to lawyers in private practice, arbitrators and Arbitration Institutions. The survey will benefit them by offering a platform to discuss and promote each other's legal services across different countries. It also allows exchange of experience and thus contributes to fostering best practice in online arbitration. What is more, this survey will provide access to firsthand data and trends in Internet Arbitration. Mr. Zhang then went on explaining how the survey will be conducted. First of all, the questionnaire will be multilingual. It will be conducted offline and in the form of video and telephone interviews. The duration of the survey will be 3 to 6 months and its results will be published. Finally, Mr. Zhang invited the Delegates to participate in this survey by offering their insight or helping to conduct the survey, analyzing the data and produce the report for a certain region (the contents of such reports being the presentation of the results and an analysis of the survey) or by funding the survey in exchange of which the logo of funders will be appearing on all coordination and publication.

Then, Mr. Knott introduced the vision and mission for the Working Group on Online Arbitration. Accordingly, the proposed vision consists in being a recognized partner in the development of concepts for Online Arbitration for disputes between Chinese and European companies. The proposed mission essentially consists in the survey on Online Arbitration in order to submit proposals and solutions to all aspects of Online Arbitration. Mr. Knott then explained the proposed tools available to fulfill the proposed mission: These are the internal questionnaire and the Internal report, the Survey and Report on Online Arbitration which should then be addressed to private practitioners, law firms and Arbitration Institutions. He referred to the list of questions he had prepared and which should serve as the basis for the survey. He highlighted that



with 52 Delegates the sign stands for an innovative spirit of this working group. He referred to this virtual meeting being a historic moment in launching an important project of worldwide coverage.

After the two initial presentations by Mr. Tianze Zhang and Mr. Hermann Knott, they initiated the subsequent discussion by drawing the attention to the Proposed List of Questions for The Global Survey of the Internet Arbitration which had been designed by Mr. Knott and distributed to the participants in advance in connection with the Online Arbitration Forum. Mr. Zhang asked the Delegates to share their previous experience in digital arbitration.

## **1. Major observations by the members of the Working Group:**

Mr. David Bateson from 39 Essex Chambers, Singapore, observed that under SIAC Rules digital arbitration works quite well.



He reported that in a SIAC Arbitration he was concerned that a witness had been coached. For the future, the question arises how to avoid witness coaching? He also suggested to add a question on experts and witness protocols and another question on what happens if one Party wants a virtual hearing and the other Party does not, should the Arbitral Tribunal proceed with the virtual hearing? In Vietnam for example you cannot have a virtual hearing unless both Parties consent. Therefore, this question will depend on the jurisdiction and the Arbitration Institution involved.

The point raised by Mr. David Bateson as to the conditions which must be fulfilled to organize an online arbitration is very important and relevant. If both parties must express their consent, then one of them – the one trying to gain time by delaying the arbitration - may not agree and thereby obstruct the process. Therefore, it should be discussed whether the arbitration rules should allow the Arbitral Tribunal to decide on whether the procedure will be conducted in a digital manner or not. Of course, the parties need to be heard and potential obstacles on the enforcement level should be as much relevant as other important reasons raised by the parties or otherwise known to the Tribunal. In line with this the catalogue of questions for the survey will be extended in this regard.

Mr. Doran Doeh from 36stone, London, observed that the Strategic Planning Group is in an unusual position since it is combining the approaches of the Swiss and Chinese legal systems which are both based on the civil law system and it will be able to develop concepts and protocols for use in such disputes. This will simplify the procedure. He also

recommended the Prague Rules (<http://praguerules.com/upload/medialibrary/11d/11d53f14eb33e62bd1997605e9a6faad.pdf>) as a checklist on how to handle the online-Procedure and the online filing system for documents because these Rules are based on a civil law rather than common law approach.

He also observed that technology is manageable even though some people experienced that it was tiring in terms of staying concentrated. Then he observed that we should be talking about the entire procedure (filing of documents, discovery and the hearing) being digitized.

Mr. Paul Starr from King & Woods Mallesons, Hong Kong, observed that in Hong Kong the Arbitral community is very familiar now with Online Arbitration. He suggested also addressing the list of questions to arbitrators and arbitration practitioners and to include a question on Model Arbitration clauses by Arbitration Institutions dealing with Online Arbitration.

Mrs. Huang Zhijin, the representative of the ICC in China, also highlighted the importance of the ICC Model Arbitration Clause for the Survey. ICC issued its Guidance note on possible measures aimed at mitigating the effects of the Covid-19-pandemic in March 2020 (<https://iccwbo.org/content/uploads/sites/3/2020/04/guidance-note-possible-measures-mitigating-effects-covid-19-english.pdf>). Attached to this Guidance note is a Model Arbitration clause and also a checklist for the Arbitrators and the Parties for the virtual hearings. She also highlighted that due process is very important for Arbitration Institutions.

Mr. In Murthy of ICADR (International Center for Alternative Dispute Resolution), New Delhi, observed that it is essential to check under the applicable law whether both Parties need to agree on virtual Arbitration. A further important aspect is data security.

Ms. Bukky Okunade from the University of London suggested adding a question on virtual site visits.

Mr. Fui Tsikata from Reindorf Chambers, Accra, Ghana, raised the question how to make the participation of developing countries in digital Arbitration more effective?

Mrs. Nazareth Romero from Rome, Italy (she is also a Spanish lawyer from Madrid) said she will help the SCLA to connect with Arbitration Institutions like Milan Arbitration Chamber and Madrid International Arbitration Center.

Mr. Leke explained that contentions against Arbitral Awards taken in Nigeria are resolved in the English Courts. Against this background he asked where is the final decision taken upon a challenge against an arbitral award resolving a dispute between Swiss and Chinese companies?

Mr. Dhandapani explained that his personal concern is the security of the Internet.

### 1. Next steps – From the Organizers

Mr. Knott suggested as next steps to collect the observations on the list of his proposed questions for the global survey of the Internet Arbitration and to broaden the scope and the addressees of these questions. Then, the issues for the survey will be defined.

There should be as many in the Working Group as possible accepting responsibilities in the work to be performed as a next step. Mr. Knott invited everyone who was interested in fulfilling a particular role or function in the Group to approach Mr. Zhang or himself. Mr. Zhang and he would also be approaching members of today's group whether they are prepared to be e.g. regional leaders for the survey. There is also a need for country leaders coordinating disseminating, following up during the monitoring process and collecting the responses to the the survey in key jurisdictions. The country



leaders will be closely cooperating with the regional leaders. They are most important as they supervise and organize conducting the survey in the relevant jurisdiction. Please volunteer in particular now for sponsoring the Survey.

We will be producing country and Regional Reports as well as one Global Report on the Survey. Law firms, arbitration institutions and other entities involved in International Arbitration are invited to join as sponsors allowing their names and profiles to be appearing on the Report. Other ways of promoting their respective entities are also possible. In this regard please keep in mind that the Survey will cause a considerable amount of cost both for personnel and for e.g. purchasing the tool for conducting the survey. On the basis of having tested several products available on the market we have decided in favor of 'Survey Monkey' which appears to be offering the best functionality.



### CONTACT

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## LIST OF THE MEMBERS OF THE STRATEGIC WORKING GROUP (UPDATED ON 16TH JULY)

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| <b>Ian Hunter Qc</b>                   | Essex court chambers  |
| <b>Amar Singh</b>                      | Gujarat national law university                               |
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| <b>Olga Tsiptse</b>                    | The MEDILUTION team   |
| <b>George Kabwebwe</b>                 | Amani legal practitioners                                     |
| <b>Camilla Perera De Wit</b>           | Netherlands arbitration institute                             |
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| <b>Gabor Damjanovic</b>                | Forg, damjanovic & partners                                   |
| <b>Doran Doeh</b>                      | 36 stone  |
| <b>Pascal Pichonnaz</b>                | University of Fribourg (Switzerland)                          |
| <b>Noel</b>                            | Knight & knight   |
| <b>Matthew Finn</b>                    | Ankura consulting   |
| <b>Piotr Nowaczyk</b>                  | Nowaczyk law offices  |
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| <b>Agis Georgiades</b>                 | Cga   |
| <b>Fui</b>                             | Reindorf chambers   |
| <b>Grace</b>                           | Nigerian Law school   |
| <b>Flip Petillion</b>                  | Petillion   |
| <b>Susanne Tanner Qc</b>               | Amperand Advocates (Scotland) and Crown Office Chambers (E&W) |
| <b>Tom Nyagare</b>                     | Thinkly intellectual property                                 |
| <b>Paulo Fernando Pinheiro Machado</b> | Pinheiro machado advocates                                    |
| <b>Bukky Okunade</b>                   | University of London (Birkbeck)                               |
| <b>Mark Dempsey Sc</b>                 | Australian bar association                                    |
| <b>Kc Hue</b>                          | K.c hue & co  |
| <b>Shashank Garg</b>                   | Advani & co   |
| <b>Dzung Manh Nguyen</b>               | Adr vietnam chambers llc                                      |
| <b>David Bateson</b>                   | 39 essex chambers   |
| <b>Yuen Wah Foo</b>                    | Gan partnership   |

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(UPDATED ON 16TH JULY)**

| <b>NAME</b>                         | <b>INSTITUTIONS</b>                         |
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| <b>Paul Starr</b>                   | Hendawy law                                 |
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| <b>Chloe Terrapon</b>               | Zulficar & partners law firm                |
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| <b>Dmitry Shamrin</b>               | Japan commercial arbitration association    |
| <b>Hiroko Nihei</b>                 | Alhanaee Law Firm - Dubai / UAE             |
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| <b>Eduard Mullaraj</b>              | Legal alliance                              |
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| <b>Fui Tsikata</b>                  | James sonde & co                            |
| <b>James</b>                        | Icc china                                   |
| <b>Zhijin Huang</b>                 | Swiss Chinese Law Association               |
| <b>Hermann Knott</b>                | Swiss Chinese Law Association               |
| <b>Martin Winkler</b>               | Swiss Chinese Law Association               |
| <b>Tianze Zhang</b>                 | Swiss Chinese Law Association               |

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