

GUIDANCE NOTE FOR REMOTE HEARINGS
FOR CIVIL BUSINESS IN THE HIGH COURT
(Phase 1 : Video-Conferencing Facilities)

Introduction

1. Because of the Covid-19 pandemic, the Chief Justice has directed that all proceedings are generally adjourned with effect from 29 January 2020. By further directions of the Chief Justice, the period of the general adjournment of proceedings (i.e. the General Adjourned Period or GAP) has since been extended continuously up to 13 April 2020. As the public health situation keeps changing rapidly, it is currently uncertain when GAP will end.
2. The unprecedented challenge to the operation of the court in the current Covid-19 pandemic, with serious public health concerns if the court were to resume full operation in the usual manner, requires the use of alternative modes of hearing so as to maximize the continued and safe operation of the justice system while maintaining social distancing and reducing the risk of Covid-19 spreading in the community as far as possible. It is of paramount importance that justice is duly administered continuously and effectively without compromising public health and safety.
3. As an alternative mode, paper disposals are considered suitable for many civil cases not involving live witnesses. They are welcomed by the profession and have proved to be successful so far. They should continue to be adopted as the first alternative mode of hearing as far as possible during GAP.
4. However, it is recognized that in some cases oral submissions are still necessary. This requires the court to conduct remote hearings by means of available technology during GAP.
5. This Guidance Note is issued to set out the practice for remote hearings by electronic means in civil cases in the Court of First Instance and the Court of Appeal of the High Court during GAP. The guidelines set out in this Guidance Note are intended to apply on a “technology neutral basis” to the possible use of differing electronic means in phases.

6. Phase 1 entails using existing court's video-conferencing facilities ("VCF"). Subsequent phases envisage the possible use of other video and electronic technology, subject to ensuring that the use of such technology is permitted by the law as it is and applicable court rules and procedures, logistically feasible, and appropriately secure.
7. Whatever technology is employed for remote hearings will require the flexible application of these guidelines.
8. The essence is to replicate as closely as practically possible the core requirements of court hearings. The ultimate question is one of fairness, it being understood that standards of fairness are not immutable and the requirements of fairness are flexible and closely conditioned by the legal and administrative context.
9. Remote hearings using video technology preserve most of the benefits of an oral hearing, allowing parties and their legal representatives and the court to interact with each other on a real-time basis. Parties and their legal representatives will be expected to focus their submissions (and evidence, if applicable) so as to promote the efficient use of the technology within the shortest possible appropriate time. As even remote hearings may require some persons to be physically present in the same place, the duration of hearings should be limited to reduce public health risk to those present. All participants should keep in mind the wider public interest of maintaining social distancing as a strategy to combat the pandemic.
10. Insofar as the conduct of remote hearings might impact the open justice principle, it is settled law that different balances may be struck with regard to different aspects of open justice being subject to restrictions when other competing fundamental rights are engaged. The court will be astute to ensure the appropriate balance is struck, for example by the continued public dissemination of reasoned decisions.
11. These guidelines can also be used in conjunction with current and future means of electronic lodging of documents with the court, or with any particular Judge (such as by use of a 'no-reply' email address, or e-lodgment platforms).

12. All participants in remote hearings will need to be sympathetic to the technological and other difficulties which might be experienced by other participants, in the setting up of and in the conduct of remote hearings.

Guidance – Phase 1

13. PD 29: Practice Direction 29 on “Use of the Technology Court” shall not apply to remote hearings conducted by VCF or other video and electronic technology.
14. Existing VCF: The following paragraphs refer specifically and are limited to remote hearings using existing court’s VCF. (A further or amended Guidance Note may be issued in due course if remote hearings are to be conducted by other video or electronic means.)
15. General: A remote hearing can be conducted in and from any court room with VCF available, or in and from any court room where VCF can be made available. Such hearings will require the use of equipment at the remote locations which is compatible with the court’s VCF and meets the operational requirements of court hearings.
16. Decision as to use of VCF: In view of the competition for the use of limited VCF resources, Judges will consider which of their cases (for which hearings have been fixed for future dates) might be suitable for disposal by a remote hearing using VCF. In other words, for the time being the initiative will come from the court and judges will not entertain any application to use VCF. This temporary restriction is imposed to ensure a fair and effective distribution of the limited VCF to cases which in the court’s view warrant remote hearings. It will be lifted as and when appropriate.
17. The court can of its own motion order a remote hearing, and Order 1A rule 4(2)(j) and (k) and Order 1B rule 3 of the Rules of the High Court shall apply. It is a case management decision within the discretion of the Judge concerned as to which hearings, or any part of hearings, should be conducted as remote hearings.
18. In practice, before ordering a remote hearing the court will propose it to the parties or make an order *nisi* to that effect. If the parties

disagree with the court's proposal or *nisi* order for a remote hearing, they may make submissions in writing (by use of "no reply" email addresses, or such other means directed), copied to the other parties, stating what other proposal they put forward as more appropriate. After considering the matter, the court will make a determination as to the method of dealing with the hearing, and will give all necessary and appropriate directions.

19. Before any remote hearing is ordered, the court will check that suitable remote hearing facilities are available. Whilst attempts will be made to have suitable remote hearings conducted on dates as originally fixed, remote hearings may be ordered to take place on dates and/or at times different from the originally fixed hearing date and time.
20. Use: Once a remote hearing has been directed, the parties shall liaise with the court (with the clerk to the Judge allocated to the hearing) to promote the timely and efficient conduct of the remote hearing, including as to technical matters, and any necessary equipment tests.
21. The court shall give the necessary and appropriate directions for that purpose. A draft of typical directions is attached for guidance at Appendix A.
22. Types of hearing suitable to be conducted remotely: In the Court of First Instance, all interlocutory applications or appeals will be considered for hearing remotely. Final hearings ordinarily dealt with on written evidence (that is, without live oral evidence), such as applications for judicial review, will also be considered for hearing remotely. In the Court of Appeal, all civil appeals and interlocutory applications, including applications for leave to appeal will be considered for hearing remotely. In general, applications suitable for hearing remotely by VCF are those which the Court thinks focused oral submissions can be concluded within 2 hours.
23. At present, trials will not be considered suitable for remote hearings.
24. Listing: Hearings fixed for remote hearing by use of VCF will be listed on the daily cause list, with an indication that the hearing will be dealt with remotely.

25. At the hearing: It will generally be the responsibility of any person participating in a remote hearing to make all arrangements necessary for or incidental to ensuring that the use of VCF proceeds smoothly and effectively. For example, all such persons should ensure attending the remote site and linking with the court's VCF in good time for the remote hearing to take place, and all persons should have been duly supplied with the copies of or access to any documents relevant to the hearing.
26. If the hearing is listed to be heard in open court, even though conducted as a remote hearing, robes should be worn by the barristers and/or solicitor advocates appearing, as well as by the Judge. All court rules and practice on court etiquette will continue to apply (save that standing when making submissions or at the beginning and end of hearings will not be necessary).
27. Normally, the proceedings will be recorded using the DARTS system. No other participant or person, whether physically in the court room or at any remote location, is permitted to record the hearing in any form.
28. Subject to the direction of the Judge, a remote hearing will be conducted openly where public and media can attend physically. However, in the exceptional circumstances of the threat to public health caused by the current pandemic, the impossibility of public or media access to a hearing should not ordinarily prevent the remote hearing taking place. The decision whether, how, and to what extent, to permit public or media access to a remote hearing rests with the Judge conducting the hearing.
29. Costs: Where the court's VCF facilities are to be used in conjunction with services and/or materials provided by commercial entities (such as telecommunications carriers providing videoconferencing services or providers of real-time court reporting and transcription services), it shall be the responsibility of each party wishing to avail himself of such services and/or materials to make appropriate contractual arrangements directly with such commercial entities and directly to meet their charges.
30. The costs of the use of VCF and any other services and/or materials used in conjunction with them will form part of the costs of the

proceedings, and will be subject to such costs orders as the court thinks fit.

31. This Guidance Note will take effect on 3 April 2020. It may be subject to amendment and will continue until further notice.

Dated this 2nd of April 2020.

(Jeremy Poon)
Chief Judge of the High Court

[Case Heading]

UPON the Court determining that, in the exceptional circumstances of the current public health crisis, this matter is suitable for remote hearing by means of the Court's video-conferencing facilities.

ON ITS OWN MOTION [AND BY CONSENT]
IT IS ORDERED THAT:

1. The hearing of [summons dated xxx] [application dated xxx] shall be conducted by way of remote hearing, unless the Court otherwise directs.
2. The parties and their representatives shall attend the remote hearing by way of the Court's video-conferencing facilities.
3. No person may take any form of recording of the remote hearing, other than the Court [and name of permitted transcription service].
4. The remote hearing shall take place at [time] on [date] with a time estimate of [length].
5. The remote hearing shall be conducted by the Court from [Court xx] in the [High Court Building] / [Court of Final Appeal building].
6. All applicable Court rules or practice as to dress and etiquette will continue to apply to the remote hearing, except that there is no need to stand at the beginning or end of hearings or when addressing the Court.
7. The [applicant] / [respondent] / [other party] shall be responsible for arranging with the Judge's clerk (via [telephone number] / [email address] / [other]) the necessary facilities to conduct the remote hearing, allowing sufficient time for any necessary testing to take place. All appropriate contact details for the parties and the representatives necessary for the conduct of the remote hearing will be provided to the Court.

8. The [applicant] / [respondent] / [other party] shall confirm the details of the arrangements for the remote hearing to the other parties and to the Court no later than [time and date prior to the remote hearing taking place].
9. The hearing bundle, skeleton arguments and lists of authorities (together with copies of the authorities [and any other documents ordered] shall be provided to the Court by [time and date] using [means, e.g. “no-reply” email address or e-lodging]
10. [Any other necessary directions]
11. [Provision for costs]