

GUIDANCE NOTE FOR REMOTE HEARINGS
FOR CIVIL BUSINESS IN THE CIVIL COURTS
(Phase 2 : Expanded Video-Conferencing Facilities and Telephone)

Introduction

1. This Guidance Note should be read in conjunction with the ‘Guidance Note for Remote Hearings for Civil Business in the High Court (Phase 1 : Video-Conferencing Facilities)’ (“Phase 1 Guidance Note”) issued on 2 April 2020 regarding and promoting the use of the court’s existing video-conferencing facilities (“VCF”). See in particular the Introduction to the Phase 1 Guidance Note.
2. During the General Adjourned Period or GAP, hearings were generally adjourned. In light of the changing public health situation, the Chief Justice directed that the GAP would end on 3 May 2020.
3. Notwithstanding the end of the GAP, it remains of paramount importance that justice is duly administered continuously and effectively without compromising public health and safety. As the public health situation remains fluid and may change rapidly, the courts will exercise flexibility to cater for any exigency.
4. The possibility of alternative modes of disposal should apply to all civil business across court levels. Remote hearings can be used in conjunction with other modes of hearing or disposal. It is also recognized that the public health situation in places other than Hong Kong may impact the ability of witnesses to travel to and appear in the Hong Kong courts.
5. The courts are therefore increasing the availability of VCF, including through procurement of additional VCF equipment, and expanding its use for civil business across the court levels.
6. There is also the ability to make greater use of hearings conducted by telephone. In particular, this can readily be applied to short interlocutory hearing lists before Masters, which otherwise require the attendance of many people at the same time.

7. This Guidance Note is issued to set out the expanded practice for remote hearings by electronic means in civil cases in all of the following civil courts: (1) the Court of Appeal of the High Court; (2) the Court of First Instance of the High Court (Judges and Masters); (3) the Competition Tribunal; (4) the District Court (Judges and Masters); including (5) the Family Court.

Guidance – Phase 2

Use of VCF for Hearings

8. 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. However, PD 29 will continue to apply where the only remote element of the hearing involves a witness giving evidence from outside Hong Kong, but all other parts of the hearing are conducted as usual in a court room.
9. Existing VCF: The following paragraphs refer specifically and are limited to remote hearings using the 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.)
10. 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. Technical specifications of the court’s VCF (as may be enhanced from time to time) are available from the Judiciary.
11. All remote locations must be suitable and appropriate for the conduct of a court hearing, and must be suitable and appropriate for the particular part or parts of the court hearing in which that remote participant will be engaged.
12. Because of the greater lead time required for arranging remote hearings (including ensuring suitability of remote location(s), technical compatibility of equipment, pre-testing, and arranging for documents to be available at remote locations), all parties and the court will need to give earlier consideration as to how a hearing might be conducted.

13. Decision as to use of VCF: In view of the competition for the use of VCF resources, Judges and Judicial Officers (“JJO”) 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 be led by the court. However, JJOs will also entertain applications by parties for the use of VCF. For cases in which the use of VCF is ordered, the courts will seek to ensure a fair and effective distribution of the available VCF to cases which in the court’s view warrant remote hearings.
14. 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 (Cap. 4A) and the Rules of the District Court (Cap. 336H) shall apply. It is a case management question within the discretion of the JJO concerned as to which hearings, or any part of hearings, should be conducted as remote hearings.
15. In practice, unless the parties make an application for a remote hearing, 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.
16. In making the case management decision as to which hearings will be dealt with remotely, the court will take into account the views of the parties, the availability of VCF equipment, the subject-matter of the proceedings or relevant part of the proceedings and all other material circumstances, including in particular whether the proposed use of VCF is likely to promote the fair and efficient disposal of proceedings (including through the avoidance or reduction of delay) and/or to save costs.
17. It should be noted that in light of the varying public health situation, what might or might not have been considered appropriate at one time may come to be seen as inappropriate at a later date, or vice versa. Each case is different and the decision as to the form of the

hearing will be determined in the light of each case's own specific mixture of factors.

18. In addition to those general matters mentioned above, those factors may include (but are not necessarily limited to): (a) the importance and nature of the issue to be determined; (b) whether there is a special need for urgency, or whether the decision could await a later hearing without causing significant disadvantage to the parties; (c) whether the parties are legally represented; (d) the ability of the parties to engage with and follow remote proceedings meaningfully; (e) whether evidence is to be heard (and, if so, the nature of that evidence) or whether the case will proceed on the basis of submissions only; (f) the proposed length of the remote hearing; and (g) whether there are other alternatives consistent with public health concerns and the need for safety, such as for some or all of the participants to take part in the court hearing by physical attendance in a court room before the JJO.
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 JJO 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, the District Court and the Family Court, 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.

23. In this Phase 2, some trials or parts of trials may also be considered suitable for remote hearings.
24. 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 will only be considered suitable for hearing remotely by VCF if the Court of Appeal thinks focused oral submissions can be concluded within 1 day.
25. 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.
26. 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.
27. Where the remote hearing involves taking evidence from a witness outside Hong Kong, the party calling that witness who is to be examined via VCF will be responsible for ensuring that the witness will be at a suitable and appropriate remote site and will be at the remote site in good time for such examination to take place, having duly been supplied with copies of any documents or exhibits relevant to such examination (whether in paper or electronic form) and for the witness to be provided with an interpreter, if necessary, and so forth. As it may be anticipated that there will be greater use of e-documents, parties must ensure the uniformity of e-bundles used (including, for example, matching the e-pagination with that appearing on the page by excluding the index from the e-pagination).
28. 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).

29. 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.
30. Subject to the direction of the court, 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 court conducting the hearing.
31. 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.
32. The costs of and incidental to 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.

Telephone Hearings

33. General: A remote hearing by telephone can be conducted in and from any court room equipped with telephone conferencing facilities. Such hearings will require the use of equipment at the remote locations which is compatible with the court's telephone system and meets the operational requirements of court hearings.
34. Decision as to use of Telephone: JJOs will consider which of their cases or lists (for which future dates have been fixed) might be

suitable for disposal by a remote hearing using telephone. In other words, the initiative will be led by the court.

35. Use: Once a telephone hearing has been directed, the parties shall liaise with the court (with the clerk to the JJO 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.
36. The court shall give the necessary and appropriate directions for that purpose. A draft of typical directions is attached for guidance at Appendix B.
37. Types of hearing suitable to be conducted remotely: In the Court of First Instance, the District Court and the Family Court, all short directions hearings may be considered for hearing remotely.
38. For Masters, it is at present likely to be only the 3-minute list which is considered suitable for telephone hearing.
39. The court can of its own motion order a telephone hearing. It is a case management question within the discretion of the Master or Judge concerned as to which hearings, or any part of hearings, should be conducted as remote hearings.
40. The aim for telephone hearings will be to have suitable hearings conducted by telephone on dates and at times as originally fixed.
41. Listing: Hearings fixed for remote hearing by use of telephone will be listed on the daily cause list, with an indication that the hearing will be dealt with remotely by telephone.
42. At the hearing: It will generally be the responsibility of any person participating in a remote telephone hearing to make all arrangements necessary for or incidental to ensuring that the use of telephone proceeds smoothly and effectively. For example, all such persons should ensure attending the remote site and linking with the court's telephone conferencing facilities 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.

43. Advocates conducting remote hearings by telephone must, by 4pm the working day before the hearing date, provide to the court an attendance sheet in form at Appendix C containing the name of the advocate, the party represented, and a primary landline number for use to connect to the hearing, as well as an alternate number for use in case of technical difficulties arising. Parties shall also provide to the court their respective proposed directions to be made at the hearing.
44. If Counsel is instructed, the court will only connect the telephone of the Counsel to the hearing. The instructing solicitor has to make arrangement with the Counsel to join in the hearing at his/her remote location.
45. Unless otherwise directed in advance, all connections to the parties will be made by court staff, who will then connect the Master or Judge to the telephone hearing before it can begin.
46. 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).
47. 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.
48. Subject to the direction of the court, 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 court conducting the hearing.
49. Costs: The costs of and incidental to the use of telephone for a remote hearing will form part of the costs of the proceedings, and will be subject to such costs orders as the court thinks fit.

Effective Date

50. This Guidance Note will take effect on 15 June 2020. It may be subject to amendment and will continue until further notice.

Dated this 8th of June 2020.

(Jeremy Poon)
Chief Judge of the High Court

[Case Heading]

UPON the Court determining that this matter is suitable for remote hearing by means of the Court's video-conferencing facilities.

[ON ITS OWN MOTION] / [BY CONSENT]

IT IS ORDERED THAT:

1. The hearing of [summons dated xxx] / [application dated xxx] / [the trial] / [specified part(s) of the trial] 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 [Court of Final Appeal Building] / [High Court Building] / [District Court 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 following witnesses shall give evidence via video-conferencing facilities and shall do so from the place identified:
 - (1) [name] for [plaintiff] / [defendant] from [place]
 - (2) [name] for [plaintiff] / [defendant] from [place]]
8. The [applicant] / [respondent] / [other party] shall be responsible for arranging with the Judge's clerk / Master'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.

9. [The above paragraph shall apply to the party calling the witness for any witnesses giving evidence via video-conferencing facilities.]
10. 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].
11. 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-Lodgement Platform]
12. [Any other necessary directions]
13. [Provision for costs]

[Case Heading] / [List Heading]

UPON the Court determining that this [matter] / [list] is suitable for remote hearing by means of the telephone.

[ON ITS OWN MOTION] / [BY CONSENT]

IT IS ORDERED THAT:

1. The hearing of [summons dated xxx] / [application dated xxx] / [3-minute list] 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 telephone.
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 [Court of Final Appeal Building] / [High Court Building] / [District Court Building].
6. All applicable Court rules or practice 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 parties shall be responsible for arranging with the Judge's clerk / Master'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 names and contact details for the parties and the representatives necessary for the conduct of the remote hearing together with any proposed directions, if any, shall be provided to the Court by [4pm on the day before the hearing] / [time and date] by completing the Attendance Sheet at Appendix C.

8. [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-Lodgement Platform]]
9. [Any other necessary directions]
10. [Provision for costs]

Attendance Sheet

Action Number:	
Date of hearing:	
Time of hearing:	
Name of solicitor firm:	
Name of Counsel:	
Telephone number for conference call (direct landline):	
Alternate phone number:	
Name of the solicitor/trainee/legal executive and the party acting for:	_____ (solicitor/trainee/legal executive) for _____
Telephone number for conference call (direct landline):	
Alternate phone number:	

Proposed directions (if any):