



**THE STANDING INTERNATIONAL FORUM OF
COMMERCIAL COURTS**

**Delivering justice during the Covid-19 pandemic and the future
use of technology**

Annex A

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Australia

Federal Court of Australia

The issues that courts in Australia have faced are numerous. Each court has grappled with the challenges before it. There has been very little time for complete co-ordination of approach.

Nevertheless some matters are becoming clear. First, there has been an active and energetic adoption of hearings by remote technology. This has been surprisingly effective, except in criminal cases requiring a jury. There are various technical and practical issues that are being worked through most of which are eminently surmountable.

There are issues, however, which need to be thought about deeply. The use of what might be called meeting technology is an effective stop gap or emergency technique to keep cases moving. Providers of technology will no doubt develop much more sophisticated applications to mimic, as far as possible, the courtroom, including its geographically attendant meeting rooms for confidential discussion, the interpretation of witnesses and the engagement by experts in conclaves. We can expect the technology industry to provide courts, in the not too distant future, with various sophisticated tools for remote hearings.

It is important to recognise that these are real hearings (not “virtual” hearings). As real hearings, however, they have characteristics which must be recognised and considered. Those characteristics have a common feature: the removal or draining of a sense of reality from the human engagement, in a space. The exercise of a form of power such as the judicial power exercised by courts to some degree (varying in relation to the society and the particular problem being dealt with) depends on a sense of trust, consent and commitment by all concerned, the public generally and the particular litigants. That trust, consent and commitment is given by many in the process, in particular litigants, because they can see what is happening; because they can recognise the humanity and reality of the experience; because they are physically part of it. These are difficult matters both to express and appreciate unless one has been in a courtroom as a litigant or as counsel. It is the importance of the physical presence or engagement with the occasion that is recognised by people. In a remotely conducted hearing, with opponents and a judge or judges whom one has never seen and who is not before you except as a technical image and does not have the physical presence of a human engagement, there may be an undermining of the sense of reality and of the sense of trust.

The confidence in the judiciary and in the judicial process may, to a degree, be undermined by these kinds of factors which may detract from a sense of reality from what is occurring.

This is not to be overstated. In many cases, such as appeals or case management hearings the technology of remote hearings is very effective and does not truly undermine any sense of reality.

Nor are these issues really ones with which to be overly concerned during the course of an emergency. They are matters, however, to which real consideration will have to be given when questions of permanency of establishment of technology is suggested.

The great challenge will be how courts integrate all that has been learned and adopted from this massive investment in technology and remote hearings and avoid the kind of alienation or loss of confidence to which I refer above.

Questions of cost, efficiency, proportionality arise, but the need for real human engagement of judicial power where necessary will remain. Technology enables, but it should not drain a sense of reality to the exercise of power. The shaping of the exercise of judicial power in that technological environment is the coming challenge.

Supreme Court of Victoria

In response to the COVID-19 pandemic, the Supreme Court of Victoria (including the Commercial Court) has implemented a range of measures designed to protect the health and wellbeing of staff, judicial officers and court users. Interim measures included:

- the initial staggering of court times to prevent crowds at entrance points and the strict use of social distancing within courtrooms;
- evaluating and prioritising cases with the presumption that existing trials and shorter trials would be given priority; and
- increasing the capacity for video conferencing and electronic hearings.

Within the space of a fortnight, the Supreme Court significantly changed its operations with the effect that:

- most Judges and judicial officers are exclusively working remotely and hearing matters without in-person appearances by utilising Zoom video conferencing for directions hearings and interlocutory matters and determining some applications “on the papers”;
- almost all new trials have been conducted electronically without in-person appearances by utilising electronic courtbooks and Zoom or WebEx video conferencing (noting the Court has been limited to conducting nine WebEx electronic trials simultaneously due to a finite number of codecs);
- existing part-heard trials have been converted into electronic trials utilising WebEx videoconferencing or, in a limited number of cases, continued under strict social distancing guidelines eg: one member of counsel at the bar table at a time with no instructing solicitors;
- electronic courtbooks are generally in the form of a fully text-searchable, paginated pdf bundle;
- judicial mediations have been conducted utilising Zoom video conferencing and / or telephone conferences; and
- staff have been required to work remotely, where possible.

There has also been ongoing communication with the legal profession to obtain feedback about the new operating model and to advise about interim arrangements in respect of certain processes. For example, as a consequence of changes to the *Oaths and Affirmations Act 2018* (Vic), affidavits may sworn / affirmed electronically, including through the use of audio or audio-visual links and the Court is able to admit unsworn affidavits with the sworn or affirmed copy to follow. Documents produced under subpoena may be produced electronically by the provision of an operable link to a cloud-based storage service such as SharePoint, Dropbox or GoogleDrive.

Brazil

Federal Supreme Court

1. THE COVID-19 PANDEMIC IN BRAZIL

The World Health Organization (WHO) declared on January 30, 2020 that the outbreak of the disease caused by the new coronavirus (Covid-19) constitutes a Public Health Emergency of International Concern– the Organization’s highest level of alert, as provided for in the International Health Regulations.

On March 11, 2020, Covid-19 was characterized by WHO as a pandemic.

In Brazil, the Ministry of Health declared national state of emergency due to Covid-19 on February 4, 2020, through Portaria n° 188/GMS/MS.

In order to deal with the public health emergency resulting from Covid-19, the National Congress passed federal Law n° 13.979/2020 (Quarantine Law), enacted on February 6, 2020, with measures aimed at protecting the community including isolation; quarantine; compulsory notification; epidemiological study or investigation; exhumation, necropsy, cremation and corpse management; exceptional and temporary restriction on entering and leaving the country; requisition of goods and services from natural and legal persons, in which case the subsequent payment of fair compensation will be guaranteed. However, these measures can only be determined based on scientific evidence and analysis of strategic health information.

2. THE PERFORMANCE OF THE BRAZILIAN JUDICIARY DURING THE COVID-19 PANDEMIC

In this moment of history when we face the Covid-19 pandemic, The Brazilian Judiciary remains in full operation, aware of its high importance for the regular functioning of the Democratic Rule of Law.

The National Council of Justice (CNJ), which is the central control and strategic body of the Brazilian Judiciary, is following and supervising the contagion prevention measures by Covid-19 that have been adopted by the Brazilian Courts since March 16, 2020, through the Committee established by Portaria n° 53/2020.

The CNJ is monitoring the judicialization of the pandemic in the Courts, with the scope of providing subsidies for the definition of strategies aimed at reducing the impacts of the resulting social and economic crisis.

Technology has been an important tool. We have used use data science, data mining and artificial intelligence resources to improve the work processes of the Judiciary.

Consolidated statistics on the activities of the courts are released weekly, in accordance with the principles of transparency, accountability and efficiency. Courts productivity data are available on the National Council of Justice website and can be accessed by segments of justice and by each individual court. The update is periodic and done, in an automated way, by Microsoft Power BI.

In the last two months (from March 16 to May 17, 2020), since the first social isolation measures started to be adopted in Brazil, the judging bodies produced:

- 4.4 million judgements, monocratic decisions and rulings

- 6.9 million decisions rendered in the course of proceedings;
- 11 million orders.

In the same period, R\$ 333 million was allocated by the Judiciary to combat the pandemic. These funds came from the fulfilment of monetary fines, criminal transaction and conditional suspension of process in criminal lawsuits.

The numbers demonstrate the expressive productivity of the Brazilian Judiciary in fulfilling its noble mission of resolving conflicts and, thus, promoting social pacification and legal security.

3. RESOLUTIONS OF THE NATIONAL COUNCIL OF JUSTICE CONCERNING PUBLIC HEALTH DURING COVID-19 PANDEMIC.

Resolutions are normative and must be observed by all 91 Courts existing in the national territory. The National Council of Justice passed 5 Resolutions with rules on measures to be adopted by Brazilian courts during the COVID-19 pandemic :

- Resolution No. 312, of March 19, 2020;
- Resolution No. 313, of March 19, 2020;
- Resolution No. 314, of April 20, 2020;
- Resolution No. 317, of April 30, 2020;
- Resolution No. 318, of May 7, 2020.

The Resolutions established rules about:

- extraordinary duty in the Judiciary (CNJ Resolution No. 313/2020);
- continuity of essential activities (CNJ Resolution No. 313/2020);
- remote assistance for parties and lawyers (CNJ Resolution No. 313/2020);
- remote work for magistrates, civil servants and collaborators (CNJ Resolution No. 313/2020);
- suspension of procedural deadlines (CNJ Resolution No. 313/2020);
- suspension of face-to-face tests in public examinations for selection and appointment of judges (Resolution No. 313/2020);
- virtual sessions for judgment by videoconference, ensuring the participation of lawyers (CNJ Resolution nº 314/2020);
- return of deadlines in electronic proceedings (Resolution CNJ nº 314/2020);
- Forensics can be performed by electronic means in assistance proceedings (CNJ Resolution nº 317/2020).
- suspension of deadlines in case of lockdown (CNJ Resolution 318/2020);
- determination that the amounts received by parties from Government as emergency aid must be protected from judicial constriction (Resolution No. 318/2020);

4. RECOMMENDATIONS FOR COURTS WHEN RULING DEMANDS CONCERNING PUBLIC HEALTH DURING COVID-19 PANDEMIC:

The National Council of Justice (CNJ) approved a series of recommendations concerning the judgement of cases concerning public health during the Covid-19 pandemic. The objective of the Recommendation nº 66/2020 is to promote judicial decisions that preserve the welfare and security of health professionals, public agents and users of the Unified Health System of Brazil (SUS).

The CNJ also recommended that the Courts adopt measures to prevent the spread of Covid-19 and guarantee the rights of vulnerable groups, such as women, children, indigenous people, lactating women, among others.

5. USAGE OF ELECTRONIC PROCESSING OF JUDICIAL CASES:

The Brazilian Electronic Judicial Process (PJe) is a system for processing legal proceedings whose objective is to meet the needs of the various segments of the Brazilian Judiciary. The main objective is to maintain a structure capable of allowing the practice of procedural acts by magistrates, civil servants and other participants of the procedural relationship directly in the system, as well as the monitoring of this judicial process, regardless of whether the process is going through the Court Federal, State Courts, Military States Courts and Labor Courts. The technology consists in an open and free solution available for Brazilian Courts, attending to security and interoperability requirements, rationalizing expenses with software development and maintenance, and allowing the use of these resources to the institutional purpose of Judiciary: the resolution of conflicts.

6. PROVIDING LEGAL BINDING TO ELECTRONIC SIGNATURES IN JUDICIARY:

In a context of pandemic and the increasing use of digital tools, it is crucial that the electronic documents have legal binding to provide certainty and predictability to the agreements and documents created in a digital environment. Since 2001, the MP 2.200-2 (a Nationwide Executive order) provides legal binding to electronic signatures based in a Public Keys Structure, which provides authenticity, integrity, and legal validity of electronic documents. This is an example of the importance of cryptography technologies to Courts.

7. OPEN JUSTICE AND VIDEOCONFERENCING IN SUPREME COURT PROCEEDINGS:

The Federal Supreme Court of Brazil (STF) passed the Resolution nº 672/2020, that allows the use of videoconferencing in the sessions of the Court to maintain the jurisdiction during the Covid-19 pandemic and the state of public calamity.

The first historical session of the Court made by videoconference was held on April 14th, 2020. It was broadcasted in real time through the STF channel on YouTube. The online transmission was an unprecedented measure and aimed to compensate entry restrictions in the Court headquarters during the pandemic, guaranteeing the intervention on the processes by parties and lawyers. The enhanced use of the online sessions by the plenary of the Brazilian Federal Supreme Court (STF) has had a positive impact on the productivity of the Court. From March 12 to May 15, the online platform enabled the plenary to issue 1,065 rulings.

8. VIDEOCONFERENCE IN COMMERCIAL AND CIVIL HEARINGS:

The Civil Procedure Act of Brazil (CPC) allows the practice of procedural acts through videoconference or other technological resource that transmit sounds and images in real time. This is a useful feature to improve the time of judgement of these demands and is a contemporary measure that comply with the restrictions created due to the pandemic.

9. EMERGENCY VIDEOCONFERENCING PLATFORM FOR PROCEDURAL ACTS - CISCO WEBEX :

The National Council of Justice (CNJ) provided for magistrates and Courts an Emergency Videoconferencing Platform for Procedural Acts – Cisco Webex. The project stems from a Technical Cooperation Agreement signed with Cisco Brasil Ltda and does not imply any costs or financial commitments by the CNJ.

The Platform can also be used by parties and lawyers and will be available during all the Covid-19 pandemic. The use of the Platform is optional, therefore Courts can use other similar technological solutions, provided they achieve the same objective.

Since April 1st 2020, more than 65,600 videoconferences have been held on the Cisco-Webex Platform, which currently has 11,758 users.

10. REMOTE WORKING IN COURTS:

The remote working during the pandemic is an effective step gone into keeping Justice system functioning. The current state-of-art technology is sufficient to ensure that many cases can continue. This will help ensure the continuity of the Justice services in all jurisdictions whilst safeguarding the well-being of all those who work within the courts. Several courts can already count with remote working, like Justice Court of the State of Paraná, Sao Paulo, Minas Gerais, Rio de Janeiro, the National Council of Justice (CNJ) and the National Council of Prosecution Services (CNMP).

Currently, most judges and civil servants work remotely in compliance with Resolution CNJ n° 313/2020. The aim is to maintain social isolation and prevent the spread of Covid-19.

11. VIRTUAL CONCILIATION IN SMALL CLAIMS COURTS:

Through an agreement signed with the Paraná Court of Justice (TJ-PR) , the parties in a civil dispute can discuss issues related to rights and duties in relation to services and contracts through a real-time videoconference using a device portable (tablet) provided by companies that are commonly demanded by the Justice. Also, there is a Technical Cooperation Term to provide auto service kiosks that allows direct contact with operators of the defendants to reach a beneficial outcome to the conflict.

11. ARTIFICIAL INTELLIGENCE AT THE SERVICE OF COURTS:

In May 2018, the Brazilian Supreme Court of Justice (STF) announced that the artificial intelligence tool called Victor will help the ruling of appeals. The AI will act primarily in the assessment of formal and procedural requirements for judicial appeals. This is an initial step to future usages of the

technology, whose potential can impact many areas, like classification of demands, pattern recognition of judicial requirements and repetitive cases processing.

On May 25, 2020, the CNJ launched another innovation: Datajud - National Database of the Judiciary. This is a new information management and statistics production system for the Judiciary. With DATAJUD, all relevant data from the country's judicial proceedings will be centralized on a single basis, allowing the use of data science and mining resources as central subsidies in the definition of judicial policies.

The use of AI is also providing a relevant space for wider dialogue and collaboration among the different actors of the Brazilian System of Justice.

Since March 20, 2020, with the issue of Portaria CNJ nº 57/2020, the monitoring of the Covid-19 pandemic has also been carried out by the National Observatory on Environmental, Economic and Social Issues of High Complexity and Great Impact and Repercussion.

The National Observatory on Environmental, Economic and Social Issues of High Complexity and Great Impact and Repercussion, established in January 2019, is a joint initiative of the National Council of Justice (CNJ) and the National Council of Prosecution Services (CNMP) that aims to improve the performance of institutions in events of great impact and repercussions, including the implementation of routines, priorities, organization, specialization and structuring of the competent bodies of action of the Judiciary and the Public Ministry.

The Observatory, which has a national and permanent character, is also responsible for promoting institutional integration, preparing studies and proposing concrete measures to improve the national justice system, in extrajudicial and judicial ways, to face concrete situations of high complexity, great impact and high social, economic and environmental repercussion.

Within the Observatory, the following measures have already been adopted:

- Panel with survey of normative acts issued by Courts and Justice system bodies through a panel;
- Classification of demands by inclusion of the code Covid-19 in the unified procedural table (code 12612);
- Monitoring of preliminary Court decisions related to Covid-19 issued by Courts;
- Panel of lawsuits related to Covid-19 made available by the Office of the General Counsel for the Federal Government (AGU);
- Panel with daily number of deaths registered in the Registry Offices – Transparency Portal of the Registry Offices;
- Replication of the Panel with Supreme Federal Court's proceedings and rulings related to Covid-19;
- Support to the Humanitarian Aid Center created by Associations of Magistrates and Associations of Extrajudicial Notary Offices to help people in need;
- Articulation with Federal Government in order to promote the rights of vulnerable: migrants and refugees, indigenous people, emergency aid for the homeless, among others.

The role of the Judiciary in applying justice during the Covid-19 pandemic is detailed on the website of the National Council of Justice:

<https://observatorionacional.cnj.jus.br/observatorionacional/>

Data are available about: lawsuits, public data and normative acts, timeline, judicial decisions of the Supreme Federal Court, communiqués, civil registry, federal legislation, indigenous health.

Information is also available on the work of the Office of Prosecution Services, the Office of General Counsel of Federal Government and the Ministry of Health, such as: research bank for demands produced by the Public Prosecution Services, decisions obtained by the Attorney General's Office and input distribution maps about strategic health services (eg. alcohol gel, medications and hospital beds available by federation units).

Courts' productivity data can be accessed by segments of justice and by each individual court.

The update is periodic and done automatically by Microsoft Power BI.

Cayman Islands

1. The courts in the Cayman Islands responded rapidly to the Covid-19 pandemic by making arrangements for the continuation of the administration of justice in essential areas while minimising risk to the health of court staff and court users.
2. From mid-March, press releases were issued by the Chief Justice to explain the action being taken by the courts and practice directions were issued to establish new protocols for the conduct of court business and hearings. Critical administrative services were continued by establishing dedicated teams and new methods of communication involving email, telephone and video link facilities. New procedures were established for each of the separate divisions and jurisdictions. Procedures for hearings by video link were generally adopted including in the Family Division and General Court. The various Practice Directions, Protocols and press releases developed for the COVID-19 situation (and beyond) may be seen at www.judicial.ky/covid-19
3. As regards commercial, financial, corporate and trust proceedings heard by the Financial Services Division of the Grand Court, the well-established practice for holding hearings by video link for interlocutory matters was immediately extended. Judges had, before the crisis, frequently presided over interlocutory proceedings in Court from the UK (and other places) by video-link. The use of such hearings for all interlocutory matters was encouraged and implemented where possible. In addition, the use of video link hearings was extended to substantive trials, where that was appropriate and consistent with the interests of justice. The UK's Secretary of State for Foreign Affairs confirmed, through the Office of the Governor, that consent was given to Grand Court judges presiding from the UK over trials in Cayman by way of video-link. The judges using the video link technology, even for hearings lasting a number of days, have found that it works well and has facilitated "real hearings" in which all parties have been able to participate. Wherever possible, a Court marshal has been in court and joined the video calls.
4. Video-link arrangements were also made to allow the Court of Appeal to be convened with the President and Justices presiding from the United Kingdom for the April-May 2020 session.

5. In the Criminal Division, jury trials were initially suspended but judge alone trials continued by video link. In person judge alone criminal trials have recently recommenced while jury trials will recommence on 1 July.

China, People's Republic of

Supreme People's Court

In recent years, Chinese courts are following the trend of the Internet era and accelerating the development of the Internet-based justice. The China Mobile Micro Court Electronic Litigation Platform has been launched. Internet courts have been established successively in Hangzhou, Beijing, and Guangzhou. The scope of online litigation services keeps expanding. Online litigation rules are gradually developing. The network-based, transparent and intelligent Internet judicial framework has been established. Amid the pandemic, China's Internet-based justice has stood the test, and has been delivering safe, convenient, smart, targeted, fair and just judicial services to the society in a full-time, full-process and all-dimensional manner. The smart courts effectively safeguard the normal operation of trying cases, and meet the needs of litigants to seek relief, resolve disputes and protect rights and interests to the greatest extent.

I. Online litigation services are delivered in good order. On 14 February 2020, the Supreme People's Court of China (hereinafter referred to as "the SPC") issued "Notice by the Supreme People's Court of Strengthening and Regulating Online Litigation during the Period of Prevention and Control of the COVID-19", which clarifies the fundamental principle of strictly abiding by due process and safeguarding the rights of litigants, and provides clear guidelines and regulations on litigation processes such as authentication of identity, online filing, online court hearing, submission of materials and service by electronic methods. Courts in various places make full use of platforms such as the China Mobile Micro Court to carry out online litigation activities in an orderly manner; guide litigants to file cases with cross-regional jurisdictions and deal with litigation matters remotely through online filing, litigation, mediation and petition; and provide convenience for litigants and attorneys to participate in litigation to the greatest extent. Courts in various places have issued online litigation notices, process guides and instructions to online litigation. Some courts designated personnel for online judicial service timely, and published contact details of staff responsible for online filing, mediation and consultation to facilitate litigants to consult and solve problems. Some courts offer "green channels" for pandemic-related commercial proceedings; make prompt responses to the needs of commercial entities for filing, mediation, service, and preservation (of evidence or assets), and provide judicial services and an enabling environment for resumption of work and production. Since early February, there have been more than 1,470,000 online filings and 260,000 online hearings, 3,880,000 online evidence exchanges, 4,710,000 electronic services, and 630,000 cases of online mediation nationwide.

II. Multi-party participated and coordinated online mediation service. Courts across the state rely on the one-stop diversified dispute resolution platform and one-stop litigation service system launched by the SPC to provide online mediation and online litigation services. In 2018, the SPC developed the "People's Court Mediation Platform" (website: [www://tiaojie.court.gov.cn](http://tiaojie.court.gov.cn)). As of 18 May 2020, the Mediation Platform has assembled 2,821 courts across the state, and consolidated 32,390 professional mediation organizations and 126,398 professional mediators on the platform. The Mediation Platform has multiple functions such as application for mediation, push of similar cases, mediation method guidance, online mediation, online making of mediation agreements and online judicial authentication, etc., and can recommend disputing parties with appropriate mediation

agencies and mediation plans. The whole process of mediation can be carried out online. Since the launch of the Platform on 28 February 2018, it has accepted 6,116,262 mediation cases.

III. The popularization of online court hearings across the country. Chinese courts have strengthened pre-trial guidance and technical support, and specified operation procedures to adopt online court hearing mode. Based on the features of disputes during the pandemic, courts in various places are handling criminal, civil and commercial proceedings online by remote video interrogation system and online court hearing system, promptly and strictly punishing criminal acts which disrupted medical order, pandemic containment order, market order, and social order by law, and have fairly and efficiently resolved a large number of disputes related to pandemic prevention and control, economic operation, and the resumption of work and production. In litigation processes, the courts are utilizing face recognition technology, ID card database and practicing lawyer database to verify the identity of litigants and attorneys. The courts are optimizing technical support such as real-time transmission of video and audio, synchronous audio and video recording, and online signatures, strictly implementing statutory procedures, protecting the rights of defendants, defense counsels and other participants in the proceedings by law, to enable them to defense, provide and cross-examine evidence online, etc. In this way, the courts effectively solved problems such as absence of litigants or attorneys in the courtroom due to the impact of the pandemic, and enabled litigants to participate in trials online whenever and wherever possible. The courts are recording court hearings by automatic voice recognition technology to improve court hearing efficiency. In the meantime, courts in various places rely on remote video interrogation system and online court hearing system to provide live streaming of court hearings on the precondition of sufficiently respecting litigants' right to privacy, thus realized the openness, fairness and educational value of court hearings and safeguarded public right of supervision.

IV. Transparent and just online enforcement. Chinese courts are changing their mindset of enforcement, innovating ways and means of enforcement, and continuously advancing online enforcement. Taking the integrated management platform of the enforcement command center as the core, and the four-level court case enforcement and openness system as the engine, the courts have established the "1+2+N" IT-based enforcement system, which is supplemented by systems such as online investigation and control, evaluation and auction, credit punishment and entrustment of enforcement, to carry out online court hearings, online settlements, advice-seeking from the litigants before conclusion of enforcement cases, online property investigation, online collection of payments by applicants of enforcement and other work. They are fully utilizing the online investigation and control system, strengthening the online enforcement in collaboration with authorities of real estate management, banking, market supervision, etc., and striving to clear obstacles towards the final step of law enforcement, so that the prompt realization of the legitimate rights and interests of the winning party in the proceedings are guaranteed. Since 3 February 2020, the Chinese courts have utilized the online enforcement investigation and control system to investigate more than 2,478,000 cases. They have utilized the enquiry and evaluation system for 1,785 cases to conduct online enquiries, the total amount of which has reached 2.46 billion RMB. By utilizing the online judicial auction system, the courts have conducted auctions which involved a total transaction amount of 57.2 billion RMB and saved commissions of 1.7 billion RMB.

V. Innovation and development of new mode of Internet justice. During the special period of the pandemic, Internet courts in Hangzhou, Beijing and Guangzhou, as pathfinders for the construction of Internet justice, have been insisting on the principle of "online cases are heard online", and have accumulated beneficial experience in areas such as case hearing, construction of platforms, procedure rules, application of technology and governance of the Internet. Internet courts in Hangzhou and

Beijing are actively exploring the hearing mode in which judges stay at home while presiding over trials online to mitigate the impact of the pandemic on judicial work. The Beijing Internet Court has launched a “virtual court”, where real-time surroundings of the judge can be replaced by court background with the national emblem, and the electronic gavels can be displayed on the computer screen. The “virtual court” is equipped with all court functions but only covers an area of 3 square meters. The “virtual court” promotes the formation of a new construction and operation mode for Internet court. The Guangzhou Internet Court relies on blockchain technology to construct the “credible electronic evidence platform” and the “co-governance platform for judicial credit”. These two platforms, based on features of blockchain technology, such as non-manipulation of information, data transmission, and secured access, have the functions of electronic data storage, retrieval and sharing of credit data by all parties on the platform, therefore, they have facilitated resolution of disputes from the source, prevented upsurge of cases, and reduced social conflicts and disputes. The Hangzhou Internet Court explores the asynchronous hearing mode in simple cases related to the Internet. Judges, plaintiffs, defendants and other participants of the proceeding log onto the platform at the time of their choice within the prescribed time limit to complete their part of litigation in an asynchronous manner, so as to meet the diverse needs of the public in the Internet era and improve quality and efficacy of the trial.

Hong Kong, SAR

Introduction

1. Hong Kong was hit by the COVID-19 pandemic in late January 2020. To ensure social distancing and prevent the gathering of people in court buildings, the Hong Kong Judiciary directed a general adjournment period (“GAP”) for court proceedings with effect from 29 January 2020. During the GAP, only urgent and essential hearings take place. Initially, there were plans to resume normal activities in the courts in March 2020 or April 2020. However, in view of the development of the crisis, the GAP is extended to 3 May 2020. As at late March 2020, this GAP affected 18% of the courts’ annual caseload and posed unprecedented challenges for the Hong Kong Judiciary.
2. During the GAP, although the paramount consideration is to safeguard public health and safety, this has to be balanced against the effective administration of justice. Legal practitioners and members of the Legislative Council have expressed concerns about the impact of the prolonged GAP on access to justice by litigants. In response, Hong Kong courts have explored the possibility of using technology to conduct remote hearings, which do not require the physical presence of the parties, but replicate as closely as possible the core requirements of physical hearings. This note describes the Hong Kong experience in conducting remote hearings during the GAP and analyzes the considerations involved in this novel development.

Remote hearings during the GAP

3. On 25 February 2020, Hong Kong’s first telephone hearing took place. It was a case management hearing directed by the Court of First Instance in *Cyberworks Audio Video Technology Limited v Mei Ah (HK) Company Limited*. During the hearing, the judge sat physically in his own courtroom, while legal representatives of both sides dialled into the call. The judge used a speakerphone so that the entire conversation was recorded on the Court’s Digital Audio Recording & Transcription Services system. No technical difficulties arose and the judge was able to give case management directions as to how evidence was to be taken at trial in that case.
4. On 2 April 2020, the Chief Judge of the High Court issued the “Guidance Note for Remote Hearings for Civil Business in the High Court (Phase 1 – Video-Conferencing Facilities)” (the “Guidance Note”). The Chief Judge directed that with effect from 3 April 2020, certain types of hearings in civil cases can be conducted remotely using the Court’s video-conferencing facilities (“VCF”). Suitable hearings may include interlocutory applications, appeals and applications for judicial review. In general, cases suitable for VCF hearings are those where oral submissions can be concluded within two hours. At present, trials will not be considered.
5. Soon after the Guidance Note was released, Hong Kong’s first VCF hearing took place on 6 April 2020. In the matrimonial case of *CSFK v HWH*, the petitioner appealed against a Financial Dispute Resolution Order. The Court of Appeal conducted a VCF hearing to deal with the

parties' interlocutory applications and also one of the grounds in the substantive appeal. The Court held that it is permissible and lawful to conduct remote hearings through VCF.

6. The second VCF hearing took place the next day on 7 April 2020 in the Court of First Instance, in the case of *Lui Chi Hang Hendrick v Independent Police Complaints Council*. This was the substantive hearing of an application for judicial review. The judge, a dozen reporters and members of the public attended the court hearing physically. Lawyers wearing masks, wigs and gowns gathered in their chambers to make oral submissions, which was broadcast live onto screens set up inside the courtroom where the judge sat and at two lift lobbies outside the courtroom.

Considerations involved

7. Under the current law of Hong Kong, there is no provision which explicitly legalizes or prohibits VCF hearings. However, since the Civil Justice Reform in 2009, the spirit of the law has been to ensure that cases are dealt with expeditiously. The Court should give effect to this objective when exercising its powers and interpreting procedural rules. In particular, Order 1A Rules 4(1) and (2) of the Rules of the High Court (Cap. 4A) imposes a duty on the Court to actively manage cases by "dealing with the case without the parties needing to attend at court" and "making use of technology". Furthermore, Order 1B Rule 1(2)(I) states that the Court may take any step to manage the case and further the objective of dealing with the case expeditiously. Thus, VCF hearings are implicitly permissible and consistent with the existing law of Hong Kong.
8. While it is important to administer justice expeditiously, it is equally important to ensure that VCF hearings are conducted in a fair and public manner. Article 10 of the Hong Kong Bill of Rights provides that "... In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. ..." Thus, insofar as practicable, Hong Kong courts have strived to ensure that the public and the press can physically attend the courtroom to observe VCF hearings. This has been possible in Hong Kong during the GAP because the Government has not imposed a total lockdown of the city. Should there be a total lockdown, it remains to be determined what alternative measures can be adopted to ensure fairness and open justice.
9. Another consideration is the technological feasibility and security of remote hearings. According to the Guidance Note, at this stage, a remote hearing can be conducted in any courtroom with VCF available. The VCF system is a point to point connection and so there is no risk of disruption occasioned by outside parties. In this context, while other means of facilitating remote hearings have been considered and will further be looked into (such as the use of Zoom), it is important to be alive to the security risks that may be posed and the need for adequate precautions; these facets must be carefully considered. VCF hearings require the use of equipment at remote locations which meet specific technical requirements. Yet, VCF may not be widely enjoyed by law firms and barristers' chambers in Hong Kong. Thus, on 8 April 2020, the Hong Kong Government announced that a LawTech Fund will be set up to assist around 700 small and medium-sized law firms or barristers' chambers to procure and

upgrade their VCF systems. Each firm or set of chambers will be eligible for a reimbursement of HKD\$50,000. The fund will be open for application in May 2020.

Way forward

10. Whilst the COVID-19 pandemic prompted initial attempts to conduct remote hearings in Hong Kong, it is envisaged that remote hearings will become a permanent feature of the Hong Kong legal system. As stated in the Guidance Note, remote hearings at this stage will be conducted using the Court's existing VCF, while other video and electronic technology may be used in the subsequent stages. The tentative plan is to introduce a bill into the Legislative Council later this year, which will provide a comprehensive legislative framework to govern the conduct of remote hearings, covering the aspects of technical feasibility, security, fairness and open justice.

England and Wales

1. Before the pandemic:
 - On-line filing (CE-file) was used throughout the Commercial Court.
 - Simpler case management decisions were made by Judges considering written materials on-line.
 - Live oral factual and expert evidence in trials was occasionally given through video link, where the court permitted and for the relevant part of a hearing only.
2. All hearings and trials in the Commercial Court are by judge alone and do not involve juries.
3. During the pandemic all forms of hearing in the Commercial Court, including trials, have been available and carried out using video platforms (and sometimes telephone for shorter matters).
4. Court staff (including listing staff and judges' clerks) are available by telephone and by email. Mobile phones have been made available more widely to clerks to facilitate liaison with the parties and their representatives.
5. Some features of particular note include the following:
 - Careful consideration has been given to requests for adjournment and to any reservations about the suitability of proceeding by video link in the particular case or stage in a case.
 - For more straightforward hearings, telephone or Skype for Business has been used. For more substantial cases the parties have agreed and arranged appropriate technology, subject to the court's approval. In due course a bespoke platform (Cloud Video Platform, used in some other parts of the system, may also be available).
 - Hearings are publicly listed as before.
 - Public and press access to hearings intended to be hearings in public is available on request made in advance. This facility has been taken up in practice, and contributed to maintaining open justice.
 - Reasonable adjustments can be made on request, including for a party without legal representation. There are relatively few parties without legal representation in the Commercial Court but the number has increased more recently.

- Judges' clerks have assisted parties to familiarise themselves with the workings of video hearings.
 - All hearings are recorded by or on behalf of the court. The parties may not record any hearing without the express permission of the court.
6. At present if a hearing can suitably proceed using a video platform, that is the preferred medium. However this can be discussed between the parties and the court. Where all or part of a hearing requires to take place in a physical court room, arrangements can be made for this and will include social distancing. The Rolls Building of the Royal Courts of Justice (where the Commercial Court is based) is open where required. Only larger courtrooms will be used, and if necessary more than one will be used for a particular case.
 7. Reserved judgments are handed down in public by advance notice in the court's published lists and sending the judgment itself to the free of charge public database www.bailii.org.
 8. Access to key case documents filed on-line is available to the press and public, either without application or on application depending on the circumstances (governed by the applicable rules).
 9. Some particular points from experience so far:
 - Judicial case management continues to play an important part.
 - Earlier involvement of judges and judges' clerks can be key.
 - For many of the more substantial hearings a preparatory hearing can be particularly valuable – this might range from sometimes there being a short hearing the day before to check and agree operational ground rules (start and finish times, breaks, “time out” for instructions, e-bundles etc) and to see what the signal quality is like), through to a full pre-trial review some weeks ahead of a trial.
 - Cooperation between the parties and their lawyers is expected and important.
 - Close attention is required to ensure high quality e-bundles and that these are limited to necessary documents. Easily navigable pdf files are required.
 - Breaks in the course of longer hearings are important.
 - The facility for a party and its representatives to consult between themselves in the course of a hearing requires particular attention, both on-line and in a socially distanced courtroom.

10. An overall weekly update of information, directions and guidance is published by the judiciary and includes material of application to the Commercial Court.

France

In France, use of videoconferencing is governed by the Code of Judicial Organisation (CJO). With the Covid-19 crisis, provisions were adopted to facilitate the use of videoconferencing (1).

Certain points are the subject of particular attention (2).

1. Legal framework for the use of videoconferencing
 - 1.1. General rules on videoconferencing
 - a) Article L. 111-12 of the CJO provides that hearings before the judicial courts may, by decision of the judge, at his own initiative or at the request of a party, take place in several courtrooms directly linked by an audio-visual telecommunication means guaranteeing the confidentiality of the transmission.
 - b) Four conditions are thus required:
 - the consent of all the parties,
 - the taking place in courtrooms,
 - a decision made by the judge,
 - the reliability and confidentiality of the means of communication used.
 - 1.2. Videoconferencing in times of health emergencies
 - a) The COVID crisis led the legislator to adopt special provisions to make the rules allowing the use of videoconferencing more flexible.
 - b) The Order No. 2020-304 of 25 March 2020 (Article 7) thus provides that the judge may, by a decision not subject to appeal, decide that the hearing shall be held using an audio-visual means of telecommunication that makes it possible to ascertain the identity of the parties and guarantees the quality of the transmission and the confidentiality of exchanges between the parties and their lawyers.
 - c) These provisions therefore do not make the use of videoconferencing subject to the agreement of the parties and do not require for it to take place in courtrooms.
 - d) Furthermore, counsel and interpreter assisting a party are not required to be physically present with the party.
2. Points of attention
 - 2.1. The security of technological tools
 - a) The technical characteristics of the audio-visual means of telecommunication used must ensure faithful, fair and confidential transmission with regard to third parties. They are set up in France by Order of the Minister of Justice.
 - b) Photographs and sound recordings may not be recorded or fixed, with certain exceptions (e.g. the historical interest of the trial).

2.2. Issues and good practice

- a) With regard to the equipment used, it must be specified who is responsible for its installation and for ensuring its correct operation. This presupposes that the person responsible has had practical training in the use of the device.
- b) The framing. Which parties to the hearing should be included in the field? When the court is sitting in collegial panel, it is recommended that the framing should provide a view of the entire court and not just its president. On the other hand, the Clerk is not necessarily always in the field although he/she is present.
- c) The names of the speakers shall appear clearly on the screen.
- d) Public hearings or the choice of proceedings in closed hearing The use of videoconferencing does not preclude a case from being heard in the absence of the public. Safeguards must be implemented when proceedings are held in closed hearings.
- e) Effects of videoconferencing on individuals. Need to consider the on-screen relationship of people, as some people are more comfortable speaking in front of a camera than others; it should not be to the detriment of their case.
- f) Effects on the conduct of the hearing. It is the responsibility of the judge to ensure the smooth running of the exchanges between the parties and that the rights of the defence and the adversarial nature of the proceedings are complied with.
 - Particular vigilance must be observed by the judge in the management of the parties' public speaking.
 - It is necessary to learn to manage the inevitable technical hazards and their consequences, such as untimely interruptions leading de facto to the suspension of the hearing (how to react to this interruption, and how to resume afterwards).
 - it is necessary to ensure the confidentiality of exchanges between a party and its lawyer. This means the possibility for the parties to interrupt the sound for asides.
 - Equal access for all participants to the exhibits presented at the hearing should be verified. To this end, the electronic filing of documents before the hearing and the monitoring on a laptop computer connected to WIFI allow the court to take note of the documents in real time.

Republic of Ireland

Introduction

1. The Commercial Court in Ireland is a division of the High Court. Five High Court judges are assigned to hear cases in the Commercial List, one of whom is the judge in charge of that list.
2. This short summary sets out the position, as it has applied to the Commercial Court, since the first effects of the Covid-19 pandemic in Ireland emerged.

Covid-19 Pandemic Effect on Courts in Ireland

Initial Restrictions on Court Business in the High Court

3. As with almost all courts around the world, the Covid-19 pandemic has had a very serious disruptive effect on the operation of the Irish courts, in general, and of the Commercial Court, in particular.
4. Shortly after the closure of all schools in Ireland on 12th March, 2020 and the introduction of safe distancing, severe restrictions were announced on the operation of the courts. With effect from 16th March, 2020, the High Court was permitted to hear urgent matters in only a limited range of cases, including injunctions and their enforcement and urgent judicial review applications (those with a commercial dimension could be heard in the Commercial List).
5. To put these restrictions in context, in the criminal area, bail applications and extradition hearings were directed to be conducted by way of video link. The only criminal trials which were permitted to continue in the Central Criminal Court (the criminal division of the High Court) were those which were already at hearing.
6. In the general civil area, apart from those limited areas of business referred to above, no new actions or applications in the High Court (whether they involved oral testimony or not) were permitted to commence or to continue, even if already at hearing, between then and the end of the legal term, 3rd April, 2020. All such actions (including actions and applications in the Commercial List) were to be adjourned generally with liberty to re-enter. All motion lists (including the Commercial Motion List) were similarly adjourned generally with liberty to re-enter.
7. Arrangements were made to ensure that a number of High Court judges were available each day to deal with urgent applications. At that stage, such applications were heard physically and not remotely. Developments in relation to remote hearings came a few weeks later.

Effect of Restrictions on Court Business in the Commercial Court

8. In the Commercial Court, it was possible, despite the ongoing restrictions, to continue to hear urgent applications physically, provided that Government requirements, including safe distancing and other public health requirements were complied with. This meant that injunctions, urgent corporate restructuring applications, insurance transfer scheme

applications, European cross border merger applications and other applications which may have been advertised internationally could proceed by way of physical hearing.

9. Some other applications in the Commercial List could be dealt with on the papers, such as ex parte applications and cases where all the parties were agreeable that the case or application could be dealt with on that basis. This meant that a certain level of business in the Commercial List could continue (albeit at a greatly reduced level). However, it was not possible to conduct the Commercial Motion Lists during that period of the pandemic restrictions due to the numbers of parties who would be required physically to attend in court.

Use of Remote Hearings in the Commercial Court and Other Courts

10. In the meantime, the Courts Service, under the supervision and direction of the Chief Justice and the Presidents of the various court jurisdictions, initiated a pilot remote hearing programme in response to the ongoing Covid-19 restrictions. The Courts Service developed a virtual meeting room application using a video streaming app called PEXIP, which the Courts Service was already using for video link evidence. Mock remote hearings were conducted with the assistance of members of the judiciary in the Supreme Court, the Court of Appeal and in the High Court (Commercial Court), with the assistance of practitioners and the Courts Service.
11. Since mid-April 2020, all appeals in the Supreme Court have been conducted remotely using the PEXIP platform, as have most of the appeals in the Court of Appeal. The Commercial Court and some other divisions of the High Court are also conducting hearings remotely using that platform. There are, however, some capacity constraints in relation to the availability of that technology. Three physical courts in the main Four Courts complex in Dublin are fitted out with the required technology to enable those courts to be used for remote hearings (with the judge and registrar physically present in court and the parties appearing remotely). A further court room in that complex is used specifically for the remote hearing of cases and applications in the Commercial Court (where the registrar is present in the court room, the judge participates remotely from chambers and the parties participate remotely from their various locations).
12. The introduction of remote hearings in the Commercial Court has enabled the Commercial Motion List to recommence with effect from 25th May, 2020. Remote hearings, using the PEXIP platform, are now regularly taking place in the Commercial Court and in some other divisions of the High Court (subject to the capacity constraints referred earlier).
13. Not surprisingly there have been some teething issues and some issues have been raised in relation to the functionality of the platform used to conduct the remote hearings. Discussions are ongoing with the Courts Service, the judiciary and practitioners to see whether it will be possible to use other platforms to conduct remote hearings. The view has been expressed by practitioners that the PEXIP platform is not ideal for cases involving witness testimony. Consideration is being given to upgrading that platform and potentially to using other platforms, such as those used in commercial courts in other jurisdictions. Those discussions are ongoing.

Expansion of Cases Being Heard Post 18th May 2020

14. The Commercial Court and all other divisions of the High Court have not yet resumed cases involving oral testimony (whether remotely or otherwise). With effect from 18th May, 2020, following the piloting of remote hearings and the physical adaptation of court rooms to enable their use in conformity with Covid-19 health restrictions, it has been possible to expand the type and number of cases to be heard, both physically and remotely. However, it was announced by the President of the High Court that, until further notice, it would not be possible to hear cases involving oral testimony.
15. It has nonetheless been possible to hear a wider range of cases since 18th May, 2020. They include insolvency matters, both corporate and personal, Chancery List cases and Commercial List cases. Priority has been given to cases which were listed for hearing and had to be adjourned because of the Covid-19 pandemic. It was decided that the Whit vacation would not be observed this year and that the High Court would sit throughout that vacation because of the emergency situation.

The Position in the Medium Term

16. Physical changes to courthouses and court rooms have had to be made, such as the installation of Perspex screens and physical markings to ensure social distancing, and strict limits have been placed on the numbers of persons who may physically attend in courtrooms. However, as pointed out by the Chief Justice on 8th May, 2020, it is unrealistic to anticipate that all courtrooms in all courthouses will be able to operate at, or near, the level which existed prior to the commencement of the crisis. For that reason, the greater use of remote hearings for cases in which they are suitable, remains an important part of the medium term solution for the Irish courts. It is acknowledged that remote hearings are not optimal, but are suitable in certain types of cases and their use has enabled greater numbers of cases to be heard and has the potential to ensure a significant increase in those numbers.
17. As also announced by the Chief Justice, it is the overall policy of the Chief Justice, the Presidents of the court jurisdictions and the Courts Service to ensure that the inevitable reduction in the throughput of business through the courts should be minimised to the greatest extent possible. Physical and remote hearings both form part of that strategy. It is anticipated that further statements will be issued by the Chief Justice and the Presidents from time to time to reflect changes in the public health situation generally and experience in the conduct of hearings, both remotely and physically, in light of current and developing public health requirements.

Kazakhstan

In March 2020, Kazakhstan's courts began operating under a state of Emergency declared by the Law Decree. Courts, like all organizations, have switched to remote work.

The process of digitalization of justice that was started earlier and the available public E-services: "Court office", mobile application for e-court session, video conferencing links between courts, police, Prosecutor's office and court users allowed us to move to large-scale remote access to justice.

In total, from March 16 to April 30, 2020, 78 722 applications and materials were submitted to the courts of the Republic, including 71,258 (90.5%) in electronic form.

All courts of the Republic are recommended to consider court cases remotely using videoconferencing (VCS): stationary (with the police, Prosecutor's office, places of detention), and mobile (via smartphone, tablet, PC via Whats App, Skype, etc.).

Court proceedings in a small number of cases where the parties insisted on personal presence in the courtroom were suspended (excluding cases on violations of the state of Emergency and restrictions on personal freedom).

The growth in the number of daily remotely reviewed court cases ranged from 1 thousand (50% of all court sessions) to 4.5 thousand cases in April 2020.

From the total number of court sessions, 12% were held via fixed VCS and mobile VCS: via TrueConf-37%, via WhatsApp and Skype-41%.

The number of additional servers has been significantly increased in order to improve the quality of communication and overcome failures due to load.

Court staff and judges, with the exception of a small staff, were also transferred to remote access with the ability to work with the internal corporate Electronic system "Presidency" with access to all state databases.

In addition to technical measures, the courts have made extensive efforts in information work. Courts actively providing explanation regarding through mass media and social networks about:

- requirements of the state of emergency and quarantine;
- how courts work in the state of emergency;
- advantages and opportunities of electronic court proceedings;
- instructions for working with IT services;
- statutory regulations regarding the extension and restoration of procedural terms, including the limitation period and the appeal period.

In total, more than 2 thousand articles were published in print media and about 300 speeches were reported on TV.

The courts held 50 online conferences and produced 10 thematic videos. More than 5,000 posts and infographic materials were shared by judges and court press secretaries in social networks.

Top information portals publish messages about certain cases.

South Korea

The below are not a general overview on Korean judiciary's systems, but key examples of practical measures on judicial procedures during the Covid-19 pandemic in South Korea. Our judiciary has been facing various challenges in many areas of judicial procedures due to Covid-19 situation, and has been actively dealing with them, but, out of all those many instances, we would like to comment on the recent changes of a new reform bill for Civil Procedural Rule for video conferencing and a new standard for bankruptcy court practices as outstanding examples.

1. Common situation

- Because of Covid-19, lots of hearings and trials were adjourned.
- To solve the delay of case resolution, we also increased the usage of conference call or video conference for judicial process.

2. Concerns

- To support those active usage of new tools for judicial process, we found the needs to reform the Civil Procedural Rule and to have secure measures to ensure the security of the on-line process.
- There are legal needs to change practice within judge's discretion while especially handling the bankruptcy cases. Because, according to a statistics, there has been a rapid increase of rehabilitation case and bankruptcy case for 1 month after Covid-19.: 7.5% increase in personal rehabilitation case, 21.2% increase in corporation rehabilitation case ; 15.1% increase in personal bankruptcy case, 26.3% increase in corporation bankruptcy case.

3. Measures

- Supreme Court of Korea made a new reform bill for Civil Procedural Rule for video conferencing, which legally supports the video conference and hearing. For security and integrity issues which are especially crucial for judicial process, it limits the scope of video conference only to the pre-trial conference and pre-trial hearing.

Parties may utilize the internet video conference devices, on condition that every party to the case consents to such use, when there are special circumstances that make any party difficult to appear in court in person.

For your reference, we already allow the witness testimony through video-conference, but do not do the whole trial through video or phone in general. For the video-conference, Korean judiciary uses special video-conferencing program which is highly secured by the organization. In 2016, Korean judiciary purchased a video-conferencing program from VIDYO(www.vidyo.com), a manufacturer of video conference program in the US, and installed it in the internal server of the organization after adapting it for the Court's particular use instead of using general commercial programs, such as Skype. In this way, as it does not require connecting through any outside vendor's server, the level of security has been improved. In addition, it is far superior in terms of the transmission speed and connection

stability. Some other necessary functions for the Courts can also be achieved through customizing the program.

- The judges in the Seoul Bankruptcy Court decided to change their practice about the rehabilitation and bankruptcy case during the judge's meeting. Originally the rehabilitation plan cannot go through if they do not keep their payment plan for more than 3 months and they should go to bankruptcy process. However, according to the new standard, the judges will take a look at the reason for the delay, and if it was caused by Covid-19 situation, they will not automatically send the case to bankruptcy process, but still give them more opportunity to keep the rehabilitation and immunity process.

Please kindly note that above comments shall not be deemed as official opinions of Korea's judicial branch but are opinions of the members of delegation for the Supreme Court of Korea, who are scheduled to attend the 3rd meeting of SIFoCC as observers: Judge S.K. Yoon (Presiding Judge of Seoul High Court) and myself, Junhyeon Yi (Judge of the Seoul Central District Court).

Malaysia

The onset of the coronavirus pandemic put Malaysia into a reluctant hiatus of sorts. A movement control order was declared from 18 March 2020 onwards and continues presently in conditional form until 9 June 2020. It is likely to be extended indefinitely.

Access to justice was not exempt from the impact of the virus. The operation of the Courts was necessarily severely impacted and courts throughout the country were closed. Proceedings were adjourned, save for selected criminal proceedings such as remand proceedings, prosecution of new criminal charges and bail applications. Civil matters were similarly adjourned save for urgent hearings, which continued to be heard via video conferencing platforms, with the consent of parties and the judge.

The Commercial Court in Kuala Lumpur in particular remained on alert to accommodate urgent hearings such as injunctions and admiralty matters. Several injunctive hearings were conducted via vide-conferencing facilities successfully. The Admiralty Court continued to issue and execute warrants of arrest during the term of the movement control order. Again all hearings in relation to these matters were heard via video conferencing platforms, either Zoom or Skype Business, with the consent of the parties and the judge.

Existing Technology

The majority of courts throughout Malaysia are equipped with an “e-court” system. As a consequence, routine matters such as the filing of cause papers, e-review or case management by judicial officers, undisputed procedural applications and simple disputed claims were conducted during the term of the movement control order. However the reality was that the number of disposed matters remained low as the majority of lawyers chose not to operate during this period.

Lack of Temporary “Covid-19” Legislation

Save for the Movement Control Order, no interim Covid legislation was enacted as was the case, for example in Singapore and the United Kingdom. This meant that judicial proceedings utilising emerging technologies had to be undertaken within the context of Malaysia’s existing law.

The Judiciary took the initiative to enable hearings to continue with the use of video conferencing. However the efforts made by the Judiciary to provide for hearings on line, particularly in respect of interlocutory matters and appeals met with resistance from the Bar. The primary concern articulated was that it was necessary to continue with the physical presence of counsel in a physical courtroom under the provisions of our existing relevant law. The merits of this contention remain to be adjudicated.

The practical result however was that only hearings with the consent of parties continued vide online platforms. The preferred choice of the Malaysian Judiciary at present is Skype for Business. While the efficacy and popularity of Zoom was acknowledged, security concerns resulted in a preference at present for Skype for Business.

Re-opening of the Courts

On 13 May 2020, the courts including the Commercial Courts in Malaysia resumed their operations in stages. Stringent operating procedures have been put in place. Given the need for compliance with these procedures, the number of cases that can be disposed of physically is very low. This emphasises the need for the use of emerging technologies. However, until the relevant legislation and amendment to the rules of court are effected, the use of video-conferencing for hearings is limited to matters where parties and the court consent to the use of the same.

To this end, the relevant legislation is being drafted. The rules of court are currently being updated to expressly accommodate, inter alia, video-conferencing.

From our experience during the term of the movement control order, it has become even clearer that technology is an essential tool of the future for the Malaysian courts. It can and has to be harnessed in significant parts of the Commercial courts in Malaysia, both during and in the aftermath of the pandemic.

The pandemic has accelerated and made possible our long-standing objective of making the Judiciary adapt and incorporate emerging technology in the administration of justice. In doing so, it is vital that the gravitas and function of the judicial process be maintained.

New Zealand

As essential services, the Courts are exempt from the provisions of the Health Act 1956 and the Epidemic Preparedness Act 2006.

New Zealand operates four levels of alert. At Level 4, even though the Court is an essential service, it was limited to dealing with priority proceedings involving liberty, safety and well-being and time critical cases/applications.

At Level 2, which New Zealand is now at, the High Court is carrying out all scheduled work which can be safely supported (with the exception of criminal jury trials which are postponed until 3 August 2020).

Judges review cases they are scheduled to hear to determine how they can be appropriately heard (in person, by VMR AVL or otherwise). Zoom is used and MS Teams is being trialled.

While the Court remains paper based, documents can be filed in either in hard copy or electronically. Counsel are encouraged to file electronic case books.

Where parties attend court physical distancing of 1 metre is required between all participants. Witnesses attend by appointment. PPE may be worn but is not compulsory.

The Chief Justice has established an Open Justice committee to ensure public access to the work of the Court.

Singapore

I. Introduction

1. The world is going through unprecedented times as a result of the COVID-19 pandemic. Courts, like all other organisations, have had to react quickly to overcome various challenges that are thrown up by the pandemic and to work within the safe distancing measures and other constraints that have been imposed to try to minimise the spread of the infection.
2. Since mandatory safe-distancing measures have started being imposed and around two weeks into “circuit breaker”¹ measures further imposed by the Singapore Government, the Singapore courts’ reflections arising from this period can be categorised into the following broad categories, which will hopefully be relevant to the Standing International Forum of Commercial Courts (“SIFoCC”) and its members:
 - (a) maintaining access to justice for essential and urgent matters;
 - (b) harnessing technology to meet justice needs;
 - (c) guarding against online and data security breaches in the increased use of technology; and
 - (d) preparing to address the medium to long term impact of the pandemic including the build up in the backlog of cases.
3. These are set out in Section II below.
4. In addition, some thoughts that we have on how the SIFoCC may engage and assist smaller or developing jurisdictions within the membership, during and after the pandemic, are set out in Section III below.

II. Reflections arising from the pandemic period

- A. Maintaining access to justice for essential and urgent matters
5. Lockdowns and stringent safe-distancing measures imposed across the world have severely restricted court users’ access to courts. While there is a pressing need to contain the spread of the virus, administration of justice should not grind to a total halt, as access to justice must continue to be available for essential and urgent cases during such times.
6. The Singapore courts have prescribed a list of “essential and urgent” matters which will continue to be heard, ensuring that the most critical and pressing justice needs continue to be served during the pandemic period.²

¹ This comprises an elevated set of safe-distancing measures as a circuit breaker, including the closure of most physical workplace premises, to pre-empt the trend of increasing local transmission of COVID-19, and with the aim of reducing much more significantly movements and interactions in public and private places. See <https://www.moh.gov.sg/news-highlights/details/circuit-breaker-to-minimise-further-spread-of-covid-19>.

² “Essential and urgent” civil matters include: (a) an application for urgent injunction or search order (including an application for the setting aside thereof); (b) an application for the arrest or release of a vessel (including an application for the discharge of dangerous or perishable cargo, and an application for the judicial sale of a

7. Safeguards are prescribed to balance such justice needs with the need to adhere to the spirit of the stricter measures employed nationwide in Singapore. For example, parties are required to ensure that the preparation, presentation and conduct of any hearing will not entail the breach of safe-distancing measures (e.g. if lawyers will have to come into close physical proximity with one another, their staff or their clients). Parties are required to satisfy the Court that measures are in place to avoid this.
 8. Further, hearings of essential and urgent matters are, by default, conducted remotely instead of in a physical courtroom (e.g. through the video conferencing application Zoom).
- B. Harnessing technology to meet justice needs
9. Technology, which might previously be regarded as only a good-to-have, has by force of circumstance become a must-have for courts to guarantee continuity in their mission to uphold the rule of law and, amongst other things, maintain basic levels of commercial stability in the face of a bruising economy. Remote hearings, such as those conducted through video conference or telephone conference, have been used as substitutes for traditional physical hearings in a bid to ensure safe-distancing during the pandemic. Technological capabilities enabling electronic filing and service of court documents, including the extraction of authentic court orders verifiable by online electronic means,³ have similarly become even more critical in ensuring that both courts and legal practitioners continue to operate smoothly during the pandemic period.
 10. However, some jurisdictions may lack sufficient know-how and experience to readily assimilate the use of technology in their processes. The variety of platforms and service providers available may to some extent also be daunting to these jurisdictions. SIFoCC members which have implemented various forms of technology in their processes during this period would have gone through the process of considering the available platforms and selecting the ones best suited for their needs. They would have also considered the challenges posed by the different modes of technology and how to address them. These SIFoCC members would therefore be in a good position to reach out to the other members to share knowledge and experiences and provide guidance as appropriate, to help them cross certain technical barriers to entry with greater ease.
- C. Guarding against online and data security breaches in the increased use of technology
11. One of the biggest challenges posed by the increased use of technology is the risk of online and data security breaches.
 12. Technology platforms, not least the readily available ones, are susceptible to such breaches. The increased reports of privacy and online security breaches following the huge surge in the use of the video conferencing application Zoom during the pandemic period is a prominent

vessel where the safety of the crew is a concern); (c) an application for recourse in respect of adjudication determinations in construction disputes; (d) certain applications for extension of time or variation of court orders relating to insolvency and restructuring matters; and (e) an application for stay of execution of a civil judgment. See Registrar's Circular No 4 of 2020, available online at

[https://www.supremecourt.gov.sg/docs/default-source/module-document/registrarcircular/rc-4-2020---updates-on-measures-relating-to-covid-19-\(coronavirus-disease-2019\)-from-7-april-to-4-may-2020.pdf](https://www.supremecourt.gov.sg/docs/default-source/module-document/registrarcircular/rc-4-2020---updates-on-measures-relating-to-covid-19-(coronavirus-disease-2019)-from-7-april-to-4-may-2020.pdf).

³ See, for example, the Authentic Court Order (ACO) system implemented by the Singapore Supreme Court with effect from 2 January 2020: <https://www.supremecourt.gov.sg/services/court-services/authentic-court-orders>.

example.⁴ There is also the risk of unauthorised recording of hearings that are conducted by remote communication technology.

13. Courts must therefore invest in the necessary resources to help guard against online and data security breaches, and stay well equipped to address the various risks arising from the use of technology, while embracing new technology in their processes. In this regard, SIFoCC members will benefit from sharing their experiences across the membership to build collective vigilance and resilience against potential breaches.
- D. Preparing to address the medium to long term impact of the pandemic
14. Even as courts around the world struggle to meet the more immediate challenges posed by the pandemic, they must not overlook the medium to long term impact that the pandemic will have, in particular the build up of their case backlog. It is critical that courts start preparing to address this impact and start thinking how best to stimulate the return to normalcy in their justice systems after the pandemic crisis is over.
15. In particular, courts must be prepared for how severely the commercial and dispute resolution landscape and ecosystem will be altered in the aftermath of the pandemic, and rebuild their justice systems accordingly.
16. While short term measures such as the utilisation of court vacation time to make up for lost hearing opportunities during the pandemic period may alleviate some of the backlog of cases, innovative dispute systems design thinking and the use of alternative dispute resolution mechanisms involving 'upstream' dispute avoidance and containment are likely to be the more effective strategies to help courts address their backlog of cases in the medium to longer term. Best practices adopted during the time of pandemic should, where appropriate, also be retained and streamlined further, to reap long term benefits for the justice system.
- III. SIFoCC's outreach efforts to engage and assist smaller or developing jurisdictions within the membership
17. A good starting point in this endeavour may be for the SIFoCC Steering Group to first determine a few areas of focus which may be particularly relevant and useful to the membership during and in the aftermath of the pandemic crisis. Two possible areas for consideration are:
 - (a) Adoption of technology in court processes. This is related to Sections II(B) and (C) above, and should encompass other considerations, including access to justice, open justice and the need to reduce outmoded formalities wherever possible in the justice system.
 - (b) Tackling the backlog of cases for long term sustainability. This is related to Section II(D) above, and may require sub-focus group consultations in order to take into account the unique challenges and cultural circumstances that the various vulnerable SIFoCC members face.
18. The mode of the outreach could take the form of the establishment of Working Groups (including sub-focus groups, where appropriate) each dedicated to look into a substantive

⁴ See <https://www.forbes.com/sites/kateoflahertyuk/2020/04/10/zoom-security-heres-what-zoom-is-doing-to-make-its-service-safer/#446555a030fc>

area of focus, organised into two parts – first, guidance on measures that may be adopted in the immediate term during the pandemic crisis, and second, learning points and strategies geared towards longer term implementation. Platforms for dialogue within the membership and the respective Working Groups can be set up, for example, by way of a forum page on the SIFoCC website where members may post queries and comments on the respective areas of focus, and the relevant Working Group can consider and respond to these queries and comments.

19. The reports eventually produced by the Working Group may, where appropriate, also collate references to useful practice guidelines that have been developed and promulgated in some jurisdictions,⁵ and serve as a one-stop resource guide for the SIFoCC membership at large.
20. In addition, the SIFoCC Steering Group may wish to also consider promoting greater cooperation and knowledge-sharing amongst the SIFoCC members in the area of judicial education on international commercial law and commercial litigation. For a start, a judicial education calendar in the SIFoCC website setting out a forecast of relevant courses and seminars offered by the judicial colleges of SIFoCC members can be considered. In the longer term, the SIFoCC could further explore collaborative efforts amongst the judicial colleges of selected SIFoCC members to co-design and jointly offer a series of SIFoCC judicial education programmes to the membership and beyond.

⁵ In the Singapore Supreme Court, there have been two Registrar's Circulars (i.e. Registrar's Circular No 3 of 2020 (<https://www.supremecourt.gov.sg/docs/default-source/module-document/registrar/circular/rc-3-2020---information-on-measures-and-other-matters-relating-to-covid-19-for-court-users-and-visitors-to-the-supreme-court.pdf>) and Registrar's Circular No 4 of 2020 ([https://www.supremecourt.gov.sg/docs/default-source/module-document/registrar/circular/rc-4-2020---updates-on-measures-relating-to-covid-19-\(coronavirus-disease-2019\)-from-7-april-to-4-may-2020.pdf](https://www.supremecourt.gov.sg/docs/default-source/module-document/registrar/circular/rc-4-2020---updates-on-measures-relating-to-covid-19-(coronavirus-disease-2019)-from-7-april-to-4-may-2020.pdf))) and a *Guide on the use of video conferencing and telephone conference & video conferencing for hearings before the Duty Registrar* issued since the COVID-19 pandemic outbreak (<https://www.supremecourt.gov.sg/docs/default-source/default-document-library/2020-03-27---guide-to-telephone-conferencing-and-video-conferencing.pdf>).

Qatar

Qatar International Court

The Qatar International Court ('the Court') was established with technology and remote access in mind. This has been especially fortunate in light of the international health crisis that has arisen as a result of Covid-19. In particular, it has meant that case management and hearings before the Court have been able to proceed much in the same way as they have hitherto. That is not to say, however, that there has been no change in the way the Court has operated as a result of the Covid-19 situation. First, on a day-to-day basis, the majority of Court staff are working from home. Secondly, physical trials (i.e. with all participants appearing physically in the courtroom) are no longer taking place; instead, all trials (and other hearings) are taking place remotely. Whilst, over the years, there have been many hearings where some participants have appeared remotely, there had never been, until recently, a hearing where all participants had appeared remotely from different locations. What follows is essentially a review of the Court's recent experience of a fully remote hearing and an identification of the various issues that were considered both prior to and following the hearing. It is hoped that the below will highlight not only that it is perfectly possible for a court to remain fully operational during a health crisis such as the present, but also that the experiences will assist other courts around the world in their delivery of justice.

The Legislative / Procedural Framework

It is of paramount importance that the procedure employed before any particular court allows for flexible ways of working. A number of courts around the world have not been able to act in ways that they would like to because their underlying regulations or rules either do not provide for flexibility in procedure or, worse, prohibit particular practices (such as the use of video hearings in certain specified circumstances). The Court's procedure is governed by its Regulations and Procedural Rules which were enacted in 2010. Of note, for present purposes, are the following provisions:

- The overriding objective of the Court is to deal with all cases justly (Article 4.1)
- Dealing with all cases justly includes, so far as practicable...making appropriate use of information technology (Article 4.3.4)
- The Court has the power to take all steps that are necessary or expedient for the proper determination of a case (Article 10.1)
- The Court shall manage cases in accordance with the overriding objective (Article 15.1)
- If the Court so directs there will be a directions hearing which may take place by telephone or by video link if the Court considers it appropriate (Article 22.2)
- The Court may give direction as to...the manner in which any witness evidence is to be given (Article 27.1.6)

- The Court shall conduct all hearings in such manner as it considers most suitable, given the issues raised by the dispute and in order to facilitate the just, expeditious and economical determination of the dispute (Article 28.4)
- If the Court considers it appropriate, it may direct that any hearing takes place by video link or telephone. (Article 28.7)

It will be noted that the above are drawn in such a way so as to give the Court considerable flexibility in the way it manages cases and conducts hearings. This has always been of considerable importance to the Court but is particularly critical at the present time. The Court must, of course, always act in accordance with the overriding objective. The appropriate use of technology will help to ensure that it does so.

Case Management- eCourt

Whilst a lot of courts are understandably focusing on how to facilitate hearings during the Covid-19 pandemic, continuing active case management is of equal importance, if not greater given that, during the lifecycle of any case, more time will be spent on case management than on the actual hearing itself.

Since 2018, case management at the Court has taken place with the assistance of eCourt, a specialist electronic case management system designed in conjunction with Singaporean tech company Crimson Logic.

eCourt has been tailored to the requirements of the Regulations and Procedural Rules of the Court and has numerous benefits, including:

- eCourt is available in both English and Arabic.
- It is free to use.
- eCourt is accessible via a variety of devices including tablets and mobile phones.
- It is available 24 hours a day from anywhere in the world (providing the user has access to the internet).
- eCourt is safe and secure to use.
- It allows parties to file and access case papers and communications with the Court.
- eCourt has an easy to use interface, customised for litigants in person and legal practitioners to ensure streamlined navigation.
- It provides email and SMS notifications to alert users of tasks and communications thereby ensuring that users are kept up to date with how their case is progressing and what actions, if any, are required from them.
- eCourt is integrated with the Court's video and telephone conferencing facilities, allowing parties to appear at hearings remotely.
- It has an in-built help function to assist users who may have queries in relation to eCourt's functionality.

There are a variety of user roles. Internally, the Court's judges all have individual accounts, as do Court staff. Externally, accounts can be created for legal practitioners as well as litigants in person. Creating an account is simple and can be done via the Court's website. Importantly, the appearance and functionality of a user's eCourt account varies depending upon the user's role. This ensures that only those tasks which need to be performed by a particular user are available to him or her.

At the time of writing, the physical Registry at the Court remains open. However, the Court is advising all parties and lawyers to use the eCourt system, not only for the reasons given above, but to ensure that health risks are minimised.

As parties, lawyers, judges and Court staff can all access eCourt remotely, active case management can continue without anyone needing to be physically present at the Court. This has been the case for the last two years but the benefits in light of the current health situation are obvious.

Case Example

On 7 and 8 April 2020, the Court held its first fully remote hearing. The hearing concerned an application for summary judgment in the context of a dispute over demands said to have been made under a Performance Bond (in sum of QAR 19,800,000) and an Advance Payment Guarantee (in the sum of QAR 9,900,000).

The case had been listed for a two-day hearing with all parties, lawyers, judges and court staff due to physically convene in the courtroom in Qatar. However, as a result of the Covid-19 situation, a different approach was called for. The options available were essentially either (i) to continue with the scheduled hearing, but with all parties appearing remotely, (ii) determine the matter on the basis of written submissions alone, or (iii) adjourn to some unspecified point in the future. The latter was not considered an appropriate option given that there remains no certainty as to when matters will return to normal. The case did not lend itself to a determination on the papers, without the assistance of oral submissions. Accordingly, the Court directed that the hearing would go ahead but with all participants appearing remotely.

The three judges who were hearing the case appeared remotely from their respective homes in Scotland, England and South Africa. The lawyers appeared remotely from England and Qatar. The Registrar of the Court appeared remotely from within the courtroom itself. Thus, all six participants in the proceedings appeared from different locations and the entire two-day hearing was conducted using the Court's video-link technology (which, as mentioned above, is integrated with eCourt).

Procedure

In terms of procedure, the hearing proceeded in much the same way as if everyone had been present. However, to ensure the smooth running of proceedings, the Registrar circulated 'ground rules' to all participants in advance of the hearing. The ground rules covered the following matters:

1. Commencement of the Hearing

Participants were advised that the hearing would commence with the Registrar announcing the case and identifying all those who were appearing via the video-link. The next person to speak would be the presiding judge who would explain how the hearing was to proceed.

2. Etiquette

Anyone who has appeared over a video-link will be acutely aware of the risk of talking over one another. To avoid this (and the associated disruption), participants were advised that they should generally only speak when invited to do so by the presiding judge. Interjections were to be kept to a minimum and only when absolutely necessary. When a participant wished to interject, they were advised to raise their hand to signify to others that they wished to do so. When a participant had finished speaking, they were to state that they have concluded. The presiding judge then indicated who was to speak next.

3. Court Dress

Participants were advised that judges, court staff and advocates were not required to wear robes when participating in the remote hearing. Business attire / national dress was sufficient.

4. Equipment Tests

Equipment tests, which were managed by the Court's IT staff, were vital to the smooth running of the hearings. Video-link participants were advised to ensure that they made themselves available, as required by the Court IT staff, to conduct any necessary tests to ensure that the participants could access the remote hearing. In the present case, this involved a preparatory test a week before the hearing and a follow up test an hour or so prior to the commencement of the hearing.

5. Recording

The video-link system used by the Court had an inbuilt record function, operated and managed by Court staff. Participants were advised that they should not separately record proceedings without the permission of the Court.

6. Audio / Video quality

The quality of each participant's audio / video was assessed as part of the pre-hearing test(s). Participants were advised of the following general points to consider:

- A 4G connection may be preferable to a Wi-Fi one depending upon the signal strength and bandwidth. This should be checked as part of the pre-hearing test.
- Using headphones (with built-in microphone) is usually desirable.
- If a participant is not speaking, it is helpful if they mute their microphone.
- Other applications which may interfere with the remote hearing (such as multiple open browsers on the participant's laptop etc.) should be closed or otherwise kept to a minimum.
- The room which the participant is in should be free from external distractions. Smaller rooms are preferable to larger ones. Doors should remain closed. Participants should also be mindful of what can be seen by others who are observing the proceedings. Backgrounds should, where possible, be inoffensive and not a distraction. The participant should be mindful of their privacy and not broadcast areas of their home or office that they do not want other people to see.
- Mobile phones and other electronic devices should be switched off or turned to silent.

7. Breaks / Adjournments

The presiding judge determined when breaks were to occur. If any of the participants had specific needs for breaks, these were to be canvassed with the Registrar in advance of the hearing or, if this

had not been done, with the presiding judge at the commencement of the hearing. During breaks, the video-link was closed, and participants re-joined the hearing at the designated time.

8. Technical Difficulties

If any participant suffered technical difficulties during the course of the hearing (for example, loss of audio or video) they were advised to alert the other participants by raising their hand and explaining the nature of the difficulty. If this was not possible (because, for example, the video was no longer working), the participant was advised to immediately contact the Registrar by email. The presiding judge would then stop the proceedings until the matter had been resolved.

Other Matters

- Livestreaming

As the entire hearing was conducted remotely, it was important to ensure that members of the public could still observe proceedings, it being a public hearing. Accordingly, proceedings were livestreamed with details of how to access the livestream being made available on the Court's website. The Court's IT staff managed the livestream and ensured that it was activated and deactivated at appropriate times.

- Judicial Deliberations

As the three judges were appearing from three different locations (indeed, three different countries), a separate, private, video-link was established for the purpose of judicial deliberations.

- Technical Difficulties

For the most part, the hearing ran smoothly and was completed within the original time estimate. There were, on occasions, technical difficulties whereby some participants lost, temporarily, video functionality owing to personal connectivity issues. However, such matters were resolved quickly, with the assistance of the Court's IT staff, to ensure that proceedings were able to resume promptly, with minimal disruption.

Concluding Thoughts

The above is by no means an exhaustive list of considerations. It is, however, a reflection on the Court's recent experiences during these challenging times. Maintaining access to justice is of critical importance, but the quality of the justice system should not be diminished in an effort to keep courts open and operational. The measures put in place by the Court so far have ensured that people have been able to access the Court safely and securely. There has been no dilution of quality of service provided. The Court will continue to keep the situation under review and will update and amend its practices and procedures, if considered appropriate, as the Covid-19 situation develops. It is hoped that by sharing experiences on a platform such as this one, other courts may be able to gain insights that will help them with the administration of justice. More information about the Court is available online at www.qicdrc.gov.qa

Uganda

Introduction

In March 2020 the World Health Organisation (WHO) declared the Novel Corona Virus (Covid-19) as a pandemic, and calling for special emergency measures by countries to not only control its spread but also mitigate deaths arising from the disease which had no cure. These measures were largely five.

These are:

- i. The maintenance of reasonable social distance between oneself and others of at least two metres;
- ii. Avoiding contact with people who are visibly sick with flu-like symptoms (fever, cough, sneezing);
- iii. Avoiding the touching of one's eyes, nose and mouth with one's hands since hands touch many surfaces which can be contaminated with the virus and thus can be transferred via those body parts;
- iv. Regularly washing one's hands with soap and running water for at least 20 seconds or using an alcohol based (at least 60% alcohol) hand rub or sanitiser; and
- v. Self-isolation by staying at home.

Uganda adopted measures and added more such as the avoidance of large public gatherings. Schools were closed and open Court hearings had to be suspended. Public transport as well as use of private cars was suspended. Public officers were told to work from home or on-line.

The above measures notwithstanding, there was a clear need to keep some Judicial services functioning since people have to be able to receive protection against infringement of their rights from various state actors.

Similarly, people who had pending matters in the courts before the lockdown continued to look forward to receiving the requisite Orders, Rulings and Judgments.

To ameliorate the situation, the Chief Justice responded by putting in place strategic and standard operating procedures (SOPs) to ensure continued service delivery during the lockdown period.

Furthermore, given that there is no certainty as to when the situation will get back to the previous normal, it was imperative that the Judiciary readies itself for a 'new normal' which may become the norm in near future.

The Uganda Judiciary Strategic interventions

The strategic interventions that were put in place and issued by the Uganda Judiciary were as follows:

1. Administrative Circular by the Chief Justice

On 19th March 2020, the Chief Justice of Uganda issued an Administrative Circular (under reference CJ/C.7) containing directions and guidelines on the prevention and mitigation of the spread of Covid-

19. This was in line with the national directives issued by H.E The President of the Republic of Uganda. Among others, the Circular provided for suspension of court hearings and appearances except for pleas in serious criminal offences and bail applications. Urgent civil cases were to be handled upon issuance of certificates of urgency by the courts. Written submissions and on-line delivery of judgments was recommended. Personal Protective Equipment (PPEs) like sanitizers, gloves, masks and digital thermometers, etc. were directed to be procured and used. The judicial officers and court staff were to continue on duty but without open court appearances.

2. Second Administrative Circular by the Chief Justice

On 26th March 2020, following additional national lockdown measures, the Chief Justice issued additional directives regarding the operations of the courts. Each court was to maintain a skeletal staff on duty for crucial operations to work on rotational basis as determined by each court. The staff and the few expected court users were directed to observe social distancing measures.

3. Guidelines for On-line hearing of cases

On 29th April, 2020 the Chief Justice vide Office Instruction No. 2 of 2020 (hereinafter called the Instrument), issued Guidelines to enable and facilitate on-line hearing of cases in a bid to allow for business continuity in the Uganda Judiciary during and after the Covid-19 lockdown. The measure was also in furtherance of the advice by the Government of Uganda for institutions to use on-line services in their work processes.

The Instrument provided for application of the existing laws, court rules and directions on the use of ICT in court processes, which include:

- a) The Constitution of the Republic of Uganda, 1995 (as amended).
- b) The Data Protection and Privacy Act, 2019
- c) The Computer Misuse Act, 2011
- d) The Electronic Transactions Act, 2011
- e) The Electronic Signatures Act, 2011
- f) The Judicature (Visual – Audio Link) Rules, 2016
- g) The Constitution (Integration of ICT into Adjudication Processes for Courts of Judicature) (Practice) Directions, 2019.

Each of the above laws, rules and directions introduce use of various aspects of ICT in the delivery of judicial services.

The Instrument was envisaged to be applied for on-line hearings such as:

- Delivery of judgments and Rulings
 - Hearing of applications in criminal and civil cases
 - Mentioning of cases
 - Conduct of official meetings
- B. Interventions Specific to the Commercial Court

To ensure continued business processes at the Commercial Division of the High Court and in line with the national directives and measures and the standard operations practice directions issued by the Chief Justice as enumerated above, the management of the Commercial Court put in place the following internal interventions:

- (i) The placing of hand washing systems and sanitizers at the court entrance, at the main reception at the court, at the reception office of each Chamber of the Judge or Registrar, and inside each Chamber of the Judge or Registrar.
- (ii) Closing all other entry points into the court premises and maintaining only one main entrance for the control human traffic flow.
- (iii) The restricting of filing of matters and court hearings only to matters certified as urgent.
- (iv) Ensuring the presence of a Registrar and some skeletal staff on each working day to serve court users.
- (v) Ensuring availability of at least one Judge on a routine and rotational basis.
- (vi) Encouraging parties and Counsel to use written submissions in matters that require urgent attention and those pending final submissions and judgments/rulings.
- (vii) The use of online delivery of Rulings and Judgments via email or Zoom technology.

Conclusion

The Judiciary generally and the Commercial Court in particular have ensured continuity of essential or critical business processes within the courts during the Covid-19 pandemic lockdown. The realisation of these actions is, in fact, made more pertinent by the possibility that the interventions put in place may indeed become the 'new normal' in the administration of justice going forward.

There is no doubt however that the disruption of normal Court Proceedings has contributed to the worsening of the case backlog problem. Nonetheless the acceptance of the technological interventions by both the Judicial officers and Lawyers has boosted our on-going programme for the introduction of the Electronic Case Management Information System.

United States of America

Southern District of New York, Federal Court

Because of the availability of the Electronic Case Filing System, remote accessing by judges and court personnel and telephonic and video conferencing, the federal courts throughout the United States have been functioning throughout the pandemic, except that public access to courthouses has been restricted based upon local conditions. Appellate courts have continued to hear oral argument in some courts telephonically and in others via videoconference. The Supreme Court conducts oral argument telephonically.

The federal court in Manhattan (Southern District of New York) suspended jury trials and public access to the courthouses but has remained continuously functioning. At all times at least one judge is physically present at the courthouse for emergency applications, while other judges and clerks work from home. For example, during the month of April 2020, a time when the courthouses were physically closed to the public, Judges the Southern District of New York issued 11,962 orders in civil cases, which was only 598 fewer than the same period the year before. The number of full opinions actually increased during the month of April over the year before, a by-product of Judges inability to conduct trials. Judges routinely conduct telephonic conferences in civil cases.

Courts have begun to open their doors to the public. Manhattan, which has been an epicenter for the virus, expects to do so in the relatively near future. The largest challenge will be the resumption of jury trials which requires the summoning of citizen jurors and reconfiguring courtrooms and jury rooms to allow for social distancing and other protective measures. Planning is actively underway.

The guidance document for the reopening of the federal judiciary may be found at -

<https://www.fedbar.org/wp-content/uploads/2020/04/Federal-Judiciary-COVID-19-Recovery-Guidelines.pdf>

Philadelphia Court of Commerce

The Philadelphia Commerce Court has been slowly attempting to resume some degree of normal operation with limited success, recognizing the massive disruption caused by the shutdown due to the pandemic.

- a) The Civil Division of the Court of Common Pleas, including the Commerce Court, has adopted protocols for the expedited resolution of discovery disputes that are either withdrawn, entered by agreement, uncontested or contested. It is too early to tell whether these protocols have been successful or even embraced by the Bar.
- b) Commercial Court judges have continued to resolve any and all contested motions on the papers, issue judgments and opinions working from court facilities or remotely and, in specific instances such as class action settlements or emergency matters, hold limited telephonic hearings.
- c) The Philadelphia Courts in general and the Commerce Court in particular, have serious technology deficits due to historically insufficient IT funding and a massively destructive hacking incident in May 2019 from which the courts never fully recovered. As a result, the Commerce Court has been unable, thus far, to achieve a quick and tidy adaptation of court proceedings to technological tools. Notwithstanding the foregoing, the Philadelphia courts have made significant strides, in rapid order, in upgrading its IT infrastructure and staff and should be prepared to move forward with remote proceedings via Zoom (the preferred alternative) relatively soon. While the past technological wherewithal was quite bleak, the future looks infinitely brighter.
- d) The court has suspended all trials until September 8, 2020. How and when jury trials will proceed is an open question at this time. The status of non-jury trials is equally uncertain at this time, although such proceedings pose much fewer logistical issues than jury trials. When and how the court can undertake remote hearings for matters such as settlement conferences, requests for injunctive relief, pretrial conferences, etc., is dependent upon the status of anticipated technology upgrades which is an ongoing process.
- e) The Commerce Court judges will be hosting a virtual town meeting for the Philadelphia Commercial bar on May 27, 2020, to field questions, allay concerns, assuage fears and generally attempt to engage in helpful dialogue, with hopefully some positive results.

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