



Hong Kong courts begin use of video conferencing

15 April 2020

Introduction

Given the extended general adjourned period (GAP), during which the courts in Hong Kong have been closed except for urgent and essential court business, the judiciary has adopted an incremental approach to the use of technology for remote hearings. The “Guidance Note for Remote Hearings for Civil Business in the High Court” (the Guidance Note) was issued on 2 April 2020 and came into effect the following day. Set against the background of the coronavirus public health emergency, the Guidance Note represents Phase 1 of the courts’ adoption of IT initiatives for civil proceedings in Hong Kong.

Background

The GAP started on 29 January 2020. It had been hoped that the GAP would end on 13 April 2020 but that was not possible given the increased number of infections as a result of the coronavirus. The GAP has been extended to 3 May 2020 (for further details, please see “[Litigation in the time of the coronavirus \(brief update\)](#)”).

As at March 2020, about 20% of the courts’ annual caseload had been affected by the GAP. A detailed account of the background

to the GAP and the measures taken by the judiciary (at the time) to alleviate some of its impact are set out in an information note prepared for the Legislative Council Panel on Administration of Justice and Legal Services.¹

The seriousness of the situation for court users has been acknowledged by the judiciary, as is demonstrated by a statement by the Chief Justice of the Court of Final Appeal on 25 March 2020.² In that statement the Chief Justice commented:

Further, as far as hearings are concerned, the judiciary is actively considering expanding the scope of hearings (beyond just urgent or essential matters) by hearing submissions by telephone, by video-conferencing or similar means of visual aid and generally making use of technology. The greater use of technology has been urged on the Judiciary and generally I agree with this approach. The only qualifications that I would wish to make here is that the use of such means to facilitate hearings must not only be logistically feasible but also legal in terms of being permitted by applicable court rules and procedures. Additionally, information technology security issues must be addressed.

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1. Information Note, prepared by the Judiciary, March 2020.
2. Statement by the Chief Justice, 25 March 2020.

Guidance note for remote civil hearings

Introduction

For now, the Guidance Note relates to remote hearings for civil cases in the High Court ie, Court of First Instance and the Court of Appeal.³ The Guidance Note makes it clear that it applies in the context of the exceptional circumstances arising out of the public health emergency and while the duration of the GAP is uncertain.

As with all things to do with the GAP so far, the Guidance Note also makes it clear that public health concerns are paramount – hence, the closure of the courts and registries for general court business.

Phase 1 of the Guidance Note relates to video conferencing facilities (VCF); it is envisaged that there will be subsequent use of other electronic technology insofar as is permitted by legislation and the court rules.

During the GAP, disposal of court applications on the papers continues (for now) to be the preferred mode of dealing with applications in civil cases that do not involve live witnesses. Paper disposals are stated to have been generally successful and to be “the first alternative mode of hearing as far as possible during GAP”.⁴

The Guidance Note goes on to acknowledge that there are civil cases where oral advocacy is necessary and, therefore, there is a need for remote hearings given that much of the courts’ business is not urgent but still needs to be dealt with while the GAP remains in place and its duration is unknown.

Two key themes in the Guidance Note are the need for flexibility (together with the patience of the parties and their legal representatives) and the need to replicate as closely as practically possible the requirements for court hearings attended in person.

The Guidance Note is to be used in conjunction with the electronic submission of court documents with the court or with any particular judge by use of ‘one-way no reply’ email addresses.

Phase 1

The Guidance Note (as revised from time to time) applies to hearings conducted by video conferencing – therefore, High Court Practice Direction 29 (“Use of Technology Court”) does not apply to remote hearings conducted pursuant to the Guidance Note.⁵

Highlights of Phase 1 include:

- a remote hearing will be conducted from any available court room which has VCF
- the parties and their legal representatives must use IT equipment that is compatible with the court’s VCF and fit for purpose. The Guidance Note comes with “Technical Specifications”
- for the time being, the decision to use VCF for a remote hearing is the court’s alone and not the subject matter of an application by any of the parties. However, this is a temporary restriction given the limited available technological resources (for now) and could be lifted eventually
- if the court is minded to order a remote hearing using VCF, it will give any parties that disagree an opportunity to be heard in writing and will then decide
- once a remote hearing has been directed and suitable VCF are available, the court will give directions for the parties’ cooperation and their legal representatives can liaise with the court clerks regarding any technical matters and necessary equipment tests. Typical directions are set out in Appendix A to the Guidance Note
- the types of civil hearing that may be conducted by VCF are wide-ranging. They include interlocutory applications

3. Guidance Note, 2 April 2020.

4. *Supra* note 3, at para. 3.

5. The “Technology Court” is Court No. 7 of the High Court Building and has had its own comprehensive Practice Direction since December 2008 (as revised in October 2015).

and appeals and final hearings without live oral evidence. The working assumption for now appears to be that applications in civil cases that require oral submissions which can be concluded within two hours should be suitable for remote hearing using VCF. Trials are not considered suitable for remote hearings

- there is an emphasis on the parties' responsibility to make all necessary arrangements to ensure that VCF proceed effectively
- legal representatives are expected to be properly attired and normal court etiquette applies
- the court will record VCF proceedings as normal using the courts' audio recording-system, but no other electronic recording of the proceedings is permitted (save for, where applicable, an authorised transcription service)
- if the court hearing would have been "open to the public" had it proceeded as normal by means of a physical hearing in court, then the working assumption is that the remote hearing will be open to the public (where possible), subject to overriding public health considerations (as determined by the court), and
- it is for each party to make their own arrangements to ensure that their VCF are compatible with those of the courts. The costs involved in doing so form part of the costs of the proceedings and are stated to be "subject to such costs orders as the court thinks fit".⁶

Comment

Early indications are that the VCF arrangements have worked satisfactorily. They will present a significant change of culture for the parties, their lawyers and the courts.

The parties and their lawyers should not underestimate the amount of preparation that goes into arranging compliant and successful VCF for remote court hearings. Many law firms will need to call on the services of their IT personnel and tech-savvy lawyers. Those lawyers with robust IT facilities may be at an advantage but they will be expected to cooperate with the other parties' lawyers. The working assumption (for now) appears to be that cases involving litigants in person may not generally be suitable for hearings by VCF.

Hearings by VCF are likely to place a greater premium on the parties' written submissions and the need for clarity, albeit this is a trend that started some years ago. Learning to interact with VCF monitors/screens, the judge and the electronic court bundle is an art form – solicitors or barristers presenting legal submissions have rarely (if ever) had to pay as much attention to managing the process and making sure that they are understood.

Practical application of the Guidance Note is in its infancy and further developments will no doubt be announced, in addition to any further extension or modification of the GAP.⁷

6. Supra note 3, at para. 30.

7. See "Notification for Stakeholders about General Adjournment of Court Proceedings from 14 April 2020 to 3 May 2020".

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