

Consultation Document

Remote Hearing: Draft Courts (Remote Hearing) Bill, Practice Directions and Operational Guidelines

June 2022

TABLE OF CONTENTS

	Page
CHAPTER 1 INTRODUCTION	p.1-2
CHAPTER 2 GENERAL POLICY ON REMOTE HEARING	p.3-5
CHAPTER 3 MAJOR FEATURES OF THE PROPOSED LEGISLATION	p.5-13
CHAPTER 4 IMPLEMENTATION FRAMEWORK	p.13
CHAPTER 5 DRAFT PRACTICE DIRECTIONS AND OPERATIONAL GUIDELINES	p.14
CHAPTER 6 INVITATION OF VIEWS	p.15-16

CHAPTER 1: INTRODUCTION

Purpose

- 1.1 The Judiciary is consulting the public on the draft Courts (Remote Hearing) Bill (“the Bill”) at **Annex A**. The Bill seeks to provide a comprehensive legal framework concerning the application, operation and effect of remote hearings for court proceedings.
- 1.2 To illustrate how the Bill will operate upon enactment, the Judiciary has prepared the draft Practice Directions (“PDs”) at **Annex B** and the draft Operational Guidelines at **Annex C**. They provide the operational and administrative details for the conduct of remote hearings.

Background

- 1.3 The use of remote hearings is one of the Judiciary’s major initiatives in the use of technology. It is also part of the Judiciary’s on-going efforts to enhance the efficiency of court operations. The Bill seeks to meet the rising expectations of court users and the community for an increased use of technology in the conduct of court business, and more convenient and efficient communications between the courts and court users. This would also better enable the courts to tackle unforeseen and complicated situations such as pandemics.
- 1.4 For civil proceedings, as made clear by the Court of Appeal in its decision in *CSFK v HWH* [2020] HKCA 207, there is nothing in the existing statutory framework that restricts the power of the High Court to adopt the mode of remote hearings, provided that such power may be exercised when the dual requirements of open justice and fair hearing are satisfied. Hence, the Judiciary has been conducting remote hearings for civil proceedings at different levels of court where appropriate since April 2020. Four guidance notes have been issued to set out the relevant arrangements. As at the April 2022, over 1 000

remote hearings have been conducted and the experience has been positive.

Need for legislative amendments

- 1.5 At present, owing to legal impediments, most criminal cases cannot be heard remotely. For instance, the existing law generally requires the defendant to be physically present at different stages such as arraignment and trial. For civil proceedings, where remote hearings may already be permitted under the current law, there are no express provisions setting out how matters are to be handled in a remote mode.
- 1.6 The Judiciary intends to introduce legislative amendments to provide a clear legal basis for Judges and Judicial Officers (“JJOs”) to order remote hearings at various levels of courts and tribunals where appropriate, having regard to all relevant circumstances, as well as the dual requirements of open justice and fair hearing. This flexibility is particularly important when it is undesirable, if not impossible, to conduct a physical hearing, either because of the peculiar features of a case, or because of special circumstances like public health condition or other emergency situations. For civil proceedings, the present legislative exercise seeks to include express provisions on handling matters in a remote mode, so as to put the matters beyond doubt.

CHAPTER 2: GENERAL POLICY ON REMOTE HEARING

- 2.1 As a matter of policy, unless the Court directs otherwise, the default mode of hearings remains to be physical hearings, meaning that the Court, the parties or their legal representatives, and the other relevant parties, such as witnesses, shall be physically present in the proceedings conducted in the courtroom. The Court will direct the use of remote hearings only if it is fair and just to do so, having regard to a host of relevant considerations (see paragraph 3.5 below). Whether to direct the use of remote hearings is a case management decision of the Court. The Court has the discretion to direct the use of remote hearings on its own motion. Parties may make an application for remote hearing to the Court.
- 2.2 “Remote hearing” refers to the mode of a hearing where a JJO (or one or more of the members of a panel of judges) may conduct; and/or a party and/or his legal representative may appear in; and/or a person may attend that hearing via live audio (i.e. telephone) or live audio-visual link (i.e. video), or via other means of real-time communications as directed by the Court.
- 2.3 The use of remote hearings does not necessarily mean that the entire proceeding must be conducted remotely. It may be confined to part(s) of the hearing process, for example the taking of evidence from one or more witnesses (whether within or outside the jurisdiction), or that only some of the concerned parties are participating remotely.

Exceptions to the use of remote hearings

- 2.4 Whilst the Court may only order remote hearings if it considers fair and just to do so, the Judiciary observes that there are limitations, in terms of principle and practice, in adopting remote hearings for all criminal proceedings. In some cases and specific stages of the proceedings, physical presence of the defendant in court is of actual

significance and remote hearings will be only ordered in exceptional circumstances as directed by the Court.

- 2.5 It is considered that the use of remote hearings is generally inappropriate for a defendant's **first appearance before a Magistrate**. The Magistrate should have the opportunity to see the defendant physically in court, particularly when there are complaints about improper treatment by the law enforcement agencies during his remand, and when hearing for the first time any bail application of the defendant. Further, to ensure that the interests of justice would not be defeated by the physical absence of the defendant, the Judiciary proposes that whilst remote hearings may be adopted, a defendant should be physically present in court at the time of his **plea, verdict and sentence** unless the JJO directs otherwise, having considered the relevant factors.
- 2.6 Other circumstances may also render remote hearing of criminal proceedings inappropriate unless in exceptional circumstances as directed by the Court. They include –
- (a) where the personal safety of the defendant (and/or others) and the nature of the evidence adduced renders remote hearing inappropriate (*Sivan* proceedings is an example¹); and
 - (b) where the nature of the allegations made by the defendant renders it difficult for the defendant to give evidence freely if remote hearing is adopted.
- 2.7 While the same definition of remote hearings applies to both criminal and civil proceedings, the Judiciary is of the view that live audio link should not be adopted for certain criminal proceedings. For instance,

¹ In these proceedings, the assistance offered to the authority by a defendant is disclosed and assessed. It is not appropriate to conduct remote hearing for these proceedings because of the very sensitive information involved. Such hearings are invariably unlisted hearings and are held in chambers without any automatic recording on the courtroom's build-in recording system. Instead, there will be manual recording on a USB.

for bail applications, which relate to the detainees' liberty of person, the court would jealously guard the proceedings so as to ensure that the applicant is not subjected to any pressure or influence or the use of force, etc. in relation to his bail application. Live audio link may not be viable.

CHAPTER 3:

MAJOR FEATURES OF THE PROPOSED LEGISLATION

Application

- 3.1 The Bill shall apply to all levels of courts and tribunals, including the Court of Final Appeal, the Court of Appeal, the Court of First Instance, the District Court, the Magistrates' Courts (including the Juvenile Court), the Competition Tribunal, the Lands Tribunal, the Labour Tribunal, the Small Claims Tribunal, the Obscene Articles Tribunal, the Coroner's Court, as well as the Court of Committal.

Making of a remote hearing order

- 3.2 Part 2 of the Bill sets out the details of a remote hearing order.
- 3.3 The making of a remote hearing order is considered a case management decision of the Court and the Court's existing case management powers shall apply. The Court may make a remote hearing order on its own motion, or on application by any party to the proceeding. If a remote hearing order is made on the Court's own motion, the Court may invite parties to the proceedings to make submissions regarding the mode of conducting the proceedings and take into account parties' views before making the order. If the Court does not invite parties to make submissions prior to the making of the remote hearing order, or if any of the parties to the proceedings is dissatisfied with the remote hearing order, the party may make

representation to set aside or vary the Court's order within a reasonable period as specified by the Court. After considering the representations (if any), the Court may affirm, vary or revoke the order as it thinks fit, and will notify the parties of its decision. If no such application is made by the parties within the period specified by the Court, the order becomes absolute.

3.4 Further, upon a material change in circumstances of the case and if the Court is satisfied that it is in the interests of justice to vary or revoke the order, the Court may, on its own motion or on application by any party to a proceeding, vary or revoke a remote hearing order.

3.5 With the interests of justice as the over-arching guiding principle, the Judiciary proposes that the Court must consider the following factors as appropriate in deciding whether to make a remote hearing order:

- (a) the nature, complexity and urgency of the proceeding;
- (b) the nature of the evidence intended to be adduced;
- (c) the views of the parties;
- (d) the ability of the parties to engage with and follow the proceeding (if conducted through a remote medium);
- (e) the personal or special circumstances of the parties, including any visual or auditory impairment, cognitive difference and mental or psychological health issue;
- (f) the maintenance of the rights of the parties;
- (g) whether the parties are legally represented;
- (h) whether the privileged communication between the parties and their respective legal representatives may be affected;
- (i) whether the parties and the parties' legal representatives can conduct their cases effectively;
- (j) the measures to be taken to ensure that evidence is given freely without coercion or other influence;

- (k) the potential impact of the order on the assessment of the credibility of witnesses and the reliability of the evidence presented;
- (l) whether the use of remote medium is likely to promote the fair and efficient disposal of the proceeding;
- (m) whether the right to a fair trial can be effectively maintained;
- (n) the quality and security of the remote hearing facilities and their availability to the parties;
- (o) whether there is any public order, security, public health or emergency concern which makes it undesirable or impracticable for the parties to attend the proceeding in person; and
- (p) any other relevant considerations.

Operation of Remote Hearings

3.6 Part 3 of the Bill concerns the operation of remote hearings.

3.7 Having studied the experiences in other jurisdictions, the Judiciary proposes to introduce general overarching/enabling provisions such that a remote hearing may be regarded as the same as a hearing in a physical setting in all relevant aspects including but not limited to -

- (a) A JJO conducting a remote hearing is deemed to have satisfied the requirement under any rule of law to sit in the court physically. The JJO is also deemed to have all the powers he would have as if the remote hearing were a physical hearing;
- (b) A participant who is directed by the court to attend a remote hearing is deemed to be present at the place of hearing at the proceedings, and to have complied with any relevant requirements for appearing in the proceeding physically. The law in force in Hong Kong relating to evidence, procedure, contempt of court and perjury applies to a participant who attends a remote hearing at a place outside Hong Kong;

- (c) An oath to be sworn or an affirmation to be made by a participant may be administered by way of a live audio-visual link; and
 - (d) Where it is necessary for a party in a remote hearing to send or sign a document, or present an object, such an action may be completed via electronic means as directed by the Court.
- 3.8 It should be noted that for witnesses, in the context of criminal proceeding, live television link may currently be used for the giving of evidence by (a) vulnerable witnesses under Part IIIA of the Criminal Procedure Ordinance, Cap. 221; and (b) witnesses outside Hong Kong under section 79I of Cap. 221. As regards overseas witnesses, the Judiciary considers that the new Bill should provide a legal framework for them to give evidence from outside Hong Kong. Hence, the existing part IIIB of Cap. 221, as well as Live Television Link (Witnesses outside Hong Kong) Rules (Cap. 221L), are proposed to be repealed, while the Bill will not affect the operation of Part IIIA of Cap. 221 regarding vulnerable witnesses.

Open Justice

- 3.9 Part 4 of the Bill concerns safeguards for open justice.
- 3.10 Generally speaking, remote hearings which are open to the public will be broadcast in Judiciary premises such as open court rooms and other venues as specified by the Judiciary Administrator (“JA”), unless the the Court, for any of the reasons stated in Article 10 of the Hong Kong Bill of Rights set out in Part II of the Hong Kong Bill of Rights Ordinance (Cap. 383), otherwise directs. The public will be able to obtain information (e.g. date and time) of the remote hearing, as well as the broadcasting venue, from the Daily Cause List.
- 3.11 The Judiciary anticipates that there may be exceptional situations where the general public may be excluded from the court buildings, where a remote hearing is not conducted in a court building, or when

there are extraordinary restrictions imposed on the size of audience permitted to be physically present in court premises due to special circumstances such as public health concern. The requirement of open justice entails the need to make available the means by which the public may gain access to such proceedings conducted by way of a remote hearing. The Judiciary proposes that under such exceptional circumstances as declared by the Court, the Court may allow the public real time remote access to both civil and criminal remote hearings. By making reference to practices in other jurisdictions, people who wish to observe the proceedings will be required to make an application to the Court in advance. Once approved by the Court, they will be provided with remote access (with necessary security measures) and be able to observe the proceedings through a specified means. Observers of remote hearing are required to undertake to remain silent (mute their microphones) and hidden (keep their camera turned off), and not record or publish the proceedings without authorization.

- 3.12 For criminal proceedings, there are, at present, reporting restrictions concerning certain proceedings e.g. bail and committal proceedings. These restrictions are proposed to be applied when granting the public access.

Proposed offences for the recording and publishing of remote hearings, physical hearings, and broadcast of such hearings

- 3.13 Part 5 of the Bill concerns new offences and penalties created to safeguard the integrity of both physical and remote hearings.
- 3.14 For remote hearings, the lack of a physical setting may render remote hearing more susceptible to unauthorised recording and publishing of court proceedings. The Judiciary considers it necessary to criminalise such conduct in order to achieve a strong deterrent effect. It can also send a clear message to the general public that the fairness and integrity of court proceedings must be preserved even in a remote

setting. To enhance the deterrent effect and to maintain parity between physical and remote hearings, the Judiciary proposes the introduction of two new offences to criminalise unauthorised recording and publishing of **both** physical and remote hearings, as well as the broadcast of such hearings.

- 3.15 In determining the level of penalty, the mischief which the proposed new offences is intended to address entails more severe consequences than that of existing offences. The reason is that the unauthorised recording and publishing may disrupt or interrupt court proceedings. The prohibited acts may also cause serious security concern or psychological unease among witnesses, thereby leading to concerns of their personal safety. This will very likely prejudice or interfere with the due administration of justice. Moreover, if recorded or transmitted images or sound are misused, it would constitute a serious blow to the integrity of the criminal justice system. In the worst case, the subject trial may need to be aborted and a retrial may be ordered.

- 3.16 The proposed new offences are set out below:

Offence of recording of court hearings

- 3.17 A person commits an offence if the person, without lawful authority or reasonable excuse, intentionally records, or attempts to record a hearing or a protected subject. In relation to a physical hearing, the scope of the offence covers unauthorised recording of the courtroom where the hearing is conducted, or any person appearing in the courtroom. In relation to a remote hearing, the scope of the offence covers unauthorised recording during the period when the participants are **connected** to the Judiciary's remote hearing system. This includes the period when the formal court session has yet to begin/adjourn/end but participants are connected to the Judiciary's remote hearing system. For the avoidance of doubt, note-taking is presently permitted and will continue to be allowed. For example, lawyers and reporters

who take notes of the proceedings and disseminate such information for their respective legitimate purposes should be allowed.

- 3.18 A person who commits this offence is liable on summary conviction to a fine at level 5 (\$50,000) and to imprisonment for 6 months. The prosecution deadline for this offence is 2 years beginning on the date on which the offence is committed, and 12 months beginning on the date on which the offence is discovered by the prosecutor (which includes the Department of Justice and law enforcement agencies), whichever is earlier.

Offence of publishing unauthorised recording of court hearings

- 3.19 A person commits an offence if the person, without lawful authority or reasonable excuse, intentionally publishes the unauthorised recording. It is the Judiciary's intention to discourage the publishing of unauthorised recordings of court hearings at any time. Hence, not only will the publishing of an unauthorised recording during a formal court session (i.e. live streaming) be caught under the proposed offence, it also covers the publishing of such recording when the court is not in session and from a place outside court buildings. For example, if a person uploads photos/videos of a hearing (which was taken by someone else without authorisation) at his home at a time when the court is not in session, such act will be caught by the proposed offence.

- 3.20 A person who commits this offence is liable on conviction on indictment to a fine at level 6 (\$100,000) and to imprisonment for 5 years.

Offence of recording and publishing of broadcast

- 3.21 Broadcast refers to a hearing that is broadcast in real-time in Judiciary premises and other venues as specified by JA. The scope of the

offence, details of the prohibited acts and the penalty are the same as the offences set out in paragraphs 3.17 – 3.20

Amendments to the Summary Offences Ordinance (Cap. 228) on prohibition of recording on court premises

3.22 At present, section 7 of the Summary Offences Ordinance (Cap. 228) covers the taking of photos of specified persons inside the court premises. Considering its interplay with the new proposed offence under the Bill as set out in paragraphs 3.17 – 3.21, the Judiciary proposes to make a slight amendment to this offence such that in so far as the unauthorised recording and publishing is concerned, this offence will target at prohibited acts if they take place **outside** physical court rooms but inside court premises (e.g. the lobby area of a court building). It is intended that this offence will continue to target unauthorised recording of specified person only, which includes a judge, a juror, a witness, a party, a party's authorised representative/legal representative to any proceedings. The penalty for the revised offence under Cap. 228 is proposed to be maintained at a summary conviction of fine level 1.

Related amendments

3.23 The Bill also proposes to make the following related amendments –

- (a) For enhancing the efficiency of administration of justice, to amend the Criminal Procedures Ordinance (Cap. 221) and the Hong Kong Court of Final Appeal Ordinance (Cap. 484) such that the attendance of a defendant is to be dispensed with where the appeal is on some grounds involving a question of law alone, on an application for leave to appeal or any proceedings preliminary or incidental to an appeal, unless the Court gives him leave to be present;
- (b) To standardise the means (i.e. mechanical, digital, electronic or

- optical) of recording to be used in different courts; and
- (c) To make consequential amendments to various Ordinances to replace the references of “live television link” by the “live audio-visual link” as defined under the Bill.

CHAPTER 4: IMPLEMENTATION FRAMEWORK

- 4.1 The Judiciary has implemented remote hearings by phases in civil proceedings. A similar approach will be adopted for criminal proceedings so as to allow time for stakeholders to gradually adjust to the mode of remote hearings.
- 4.2 Whilst the Bill will provide a general framework to enable the use of remote hearings for all types of proceedings, we intend to adopt an incremental approach in implementation by **excluding** certain proceedings and persons from the application of the Bill at the initial stage. Such excluded proceedings include –
- (a) Hearings before the Juvenile Court; and
 - (b) Criminal trials, except those parts in which evidence is given by -
 - (i) vulnerable witnesses as permitted under Part IIIA of the Criminal Procedure Ordinance (Cap. 221); or
 - (ii) other witnesses as directed under a remote hearing order.

As for excluded persons, we intend to exclude jurors in trials and death inquests from appearing remotely.

- 4.3 The excluded proceedings are set out in the Schedule of the Bill. As for jurors, they are currently not included in the definition of “participant” in clause 2 of the Bill. Hence, they are excluded from the application of the Bill.

CHAPTER 5: DRAFT PRACTICE DIRECTIONS AND OPERATIONAL GUIDELINES

- 5.1 Under the Bill, CJ is given the power to make rules and give directions on matters which are necessary for the administration and carrying out of provisions of the primary legislation. Such may include the procedures and practice to be followed in remote hearings in different courts, the application for a remote hearing order, and the giving of evidence remotely etc. CJ may also specify operational details in the PDs. In addition, JA may issue instructions of an administrative nature relating to remote hearings, such as the technical details and standards of remote medium, the hardware, software, equipment and other technical requirements for participating in a remote hearing.
- 5.2 For the purpose of this consultation, draft PDs for both civil and criminal proceedings and a set of Operational Guidelines are included at **Annexes B and C** to facilitate court users' consideration on how remote hearings will be conducted upon enactment of the Bill. They cover details which include but are not limited to the application for a remote hearing, the remote hearing facilities required, as well as the conduct of pre-hearing briefings and connection tests before the actual hearing. They also provide a set of guidelines to unrepresented litigants/defendants, which set out in simpler terms the important points to note and the expected conduct of participants during a remote hearing.

CHAPTER 6: INVITATION OF VIEWS

6.1 The proposed primary legislation underpins the application and operation of remote hearings for all types of proceedings at various levels of court in Hong Kong. The Judiciary invites the public to give views on the draft Bill, draft PDs and draft Operational Guidelines.

6.2 Respondents are invited to give us their views on or before 15 September 2022 by the following means –

By email : remote_hearing_bill@judiciary.hk

By fax : 2501 4636

By post : Planning and Development Division,
Judiciary,
Room 802-808, 8/F, High Block,
Queensway Government Offices,
66 Queensway, Hong Kong

6.3 It is voluntary for any respondent to supply his or her personal data upon providing comments. Any personal data provided with a response will only be used for the purpose of this consultation exercise. Unless otherwise specified, all responses will be treated as public information and may be published in future, in whole or in part, in any form without seeking permission or providing acknowledgement of the respondent.

6.4 The Judiciary may, either in discussion with others, whether privately or publicly, or in any subsequent report, refer to and attribute comments in response to this consultation paper. The Judiciary will respect the wish of respondents to remain anonymous and/or keep the views confidential in part or in whole. If the respondents do not request anonymity or confidentiality in their responses, the Judiciary will assume that the responses can be published in their entirety.

6.5 Respondents' comments and personal data collected may be passed to other relevant bodies for purposes related to this consultation exercise. The bodies receiving any personal data are bound by the purposes in their subsequent use of such data.

6.6 Any respondent providing personal data to the Judiciary in the response will have the right of access and correction with respect to such personal data. Any request for data access or correction of personal data should be made in writing to:

By email : aio@judiciary.hk

By fax : 2530 5102

By post : Access to Information Officer,
High Court Building,
38 Queensway, Hong Kong

Judiciary Administration
June 2022

Courts (Remote Hearing) Bill
Contents

Clause	Page
Part 1	
Preliminary	
1. Short title	1
2. Interpretation	1
3. Application to Government	5
4. Provisions not affected by this Ordinance	5
Part 2	
Remote Hearing Order	
5. Court may make remote hearing order	6
6. Court may invite submissions	7
7. Court may vary or revoke remote hearing order	7
8. Factors to be considered	8
Part 3	
Operation of Remote Hearing	
Division 1—Judges and Judicial Officers	
9. Sitting by JJOs	10
10. Location of JJOs in remote hearings	10

Clause	Page
11. Powers of JJOs	10

Division 2—Participants

12. Attendance at remote hearing	10
13. Consequences of failure to attend remote hearing.....	11
14. Attendance at remote hearing deemed to be physical presence.....	11
15. Law in force in Hong Kong applies to overseas participants	11
16. Administration of oaths and affirmations	11

**Division 3—Transmission of Documents, Presentation of Objects, etc. in
Remote Hearing**

17. Interpretation and application.....	12
18. Transmission of documents	12
19. Presentation of objects.....	12
20. Signing of, writing on and return of documents	13

Part 4

Public Access to Open Proceeding

21. Meaning of <i>open proceeding</i>	14
22. Direction for public access	14
23. Broadcast of open proceeding	14

Part 5

Offences and Penalties

Clause	Page
24.	Interpretation for Part 5 15
25.	Offences of recording and publishing hearings and protected subjects 16
26.	Offences of recording and publishing broadcast 17
27.	Prosecution deadline for offence under sections 25(1)(a) and 26(1)(a)..... 17

Part 6

Miscellaneous

28.	Power to amend Schedule 19
29.	Chief Justice may make rules or give directions 19
30.	Judiciary Administrator may issue administrative instructions 20

Part 7

Related Amendments

Division 1—Enactments Amended

31.	Enactments amended..... 21
-----	----------------------------

Division 2—Amendments to Summary Offences Ordinance (Cap. 228) on Prohibition of Recording

32.	Section 7 substituted..... 21
7.	Prohibition on recording etc. on court premises..... 21

Division 3—Presence of Defendant

Clause	Page
Subdivision 1—Criminal Procedure Ordinance (Cap. 221)	
33.	Section 83U substituted..... 23
	83U. Right of defendant to be present..... 23
34.	Section 122 amended (power to exclude public from criminal courts)..... 23
35.	Section 123 amended (criminal proceedings may be held in camera and non-disclosure of identity of witnesses in certain cases)..... 24
Subdivision 2—Hong Kong Court of Final Appeal Ordinance (Cap. 484)	
36.	Section 36 substituted..... 25
	36. Right of defendant to be present..... 25
37.	Section 47 amended (sittings and business) 25
Division 4—Court Recording	
Subdivision 1—The Rules of the High Court (Cap. 4 sub. leg. A)	
38.	Order 48, rule 3 amended (record of judgment debtor’s evidence given at examination)..... 26
39.	Order 49B, rule 1AA amended (record of judgment debtor’s evidence given at examination)..... 26
40.	Order 68, rule 8 amended (mechanical recording) 26
Subdivision 2—Labour Tribunal Ordinance (Cap. 25)	
41.	Section 19 amended (keeping of summary of evidence, etc.) 27

Clause	Page
Subdivision 3—Labour Tribunal (General) Rules (Cap. 25 sub. leg. A)	
42.	Rule 4A amended (keeping of Register of Claims, etc.) 27
Subdivision 4—Criminal Procedure Ordinance (Cap. 221)	
43.	Section 79 amended (record of proceedings and inspection thereof) 27
Subdivision 5—Criminal Procedure (Record of Bail Proceedings) Rules (Cap. 221 sub. leg. I)	
44.	Rule 2 amended (record of bail proceedings)..... 27
Subdivision 6—Magistrates Ordinance (Cap. 227)	
45.	Section 34 amended (minutes of proceedings) 28
46.	Section 81 amended (taking of evidence at hearing) 28
Subdivision 7—Magistrates (Administrative) Rules (Cap. 227 sub. leg. A)	
47.	Rule 2 amended (case Register) 28
Subdivision 8—The Rules of the District Court (Cap. 336 sub. leg. H)	
48.	Order 48, rule 3 amended (record of judgment debtor’s evidence given at examination) 28
49.	Order 49B, rule 1AA amended (record of judgment debtor’s evidence given at examination) 29
50.	Order 68, rule 8 amended (mechanical recording) 29
Subdivision 9—Small Claims Tribunal Ordinance (Cap. 338)	
51.	Section 15 amended (keeping of summary of evidence, etc.) 29

Clause	Page
--------	------

Subdivision 10—Small Claims Tribunal (General) Rules (Cap. 338 sub. leg. A)

52.	Rule 4A amended (keeping of the Register of Claims, etc.)	29
-----	---	----

Subdivision 11—Coroners Rules (Cap. 504 sub. leg. B)

53.	Rule 14 amended (coroner to take notes of evidence, etc.)	30
-----	---	----

Part 8

Consequential Amendments

Division 1—Enactments Amended

54.	Enactments amended	31
-----	--------------------------	----

Division 2—The Rules of the High Court (Cap. 4 sub. leg. A)

55.	Order 70, rule 4 amended (person to take and manner of taking examination)	31
56.	Order 70, rule 5 amended (dealing with deposition)	31
57.	Order 70, rule 6 amended (claim to privilege)	31
58.	Order 70, rule 7 amended (minutes of examination taken by way of live television link)	32

Division 3—Evidence Ordinance (Cap. 8)

59.	Section 74 amended (interpretation)	32
60.	Section 76 amended (power of a court in Hong Kong to give effect to an application for assistance)	33
61.	Section 77 amended (privilege of witnesses)	33

Clause	Page
62.	Section 77E amended (issue of letter of request to obtain evidence in criminal proceedings)..... 33
Division 4—Criminal Procedure Ordinance (Cap. 221)	
63.	Section 79A amended (interpretation)..... 34
64.	Section 79B amended (evidence by live television link)..... 34
65.	Section 79D amended (Chief Judge to make rules)..... 35
66.	Section 79E amended (depositions) 35
67.	Part IIIB repealed (taking evidence from witnesses outside Hong Kong by live television link) 35
68.	Section 83V amended (evidence)..... 35
Division 5—Live Television Link and Video Recorded Evidence Rules (Cap. 221 sub. leg. J)	
69.	Title amended..... 35
70.	Rule 3 amended (evidence through live television link where witness is a vulnerable witness or is to be cross-examined after admission of a video recording) 36
71.	Schedule 1 amended..... 36
Division 6—Live Television Link (Witnesses outside Hong Kong) Rules (Cap. 221 sub. leg. L)	
72.	Live Television Link (Witnesses outside Hong Kong) Rules repealed 37
Division 7—Magistrates Ordinance (Cap. 227)	

Clause	Page
73. Section 81 amended (taking of evidence at hearing).....	37
74. Section 118 amended (procedure on hearing appeal).....	38
Division 8—Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525)	
75. Section 9 amended (requests by Hong Kong for taking of evidence, etc.).....	38
76. Section 10 amended (requests to Hong Kong for taking of evidence, etc.).....	39
Schedule Excluded Proceedings	40

A BILL

To

Provide for the application for, and the operation and effect of, remote hearings; to provide for fair disposal of, and public access to, remote hearings; to provide for offences to protect the integrity of certain proceedings; and to provide for related matters.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title

This Ordinance may be cited as the Courts (Remote Hearing) Ordinance.

2. Interpretation

In this Ordinance—

court (法院) means—

- (a) the Court of Final Appeal;
- (b) the Court of Appeal;
- (c) the Court of First Instance;
- (d) the Competition Tribunal;
- (e) the District Court;
- (f) a Magistrates' Court (including the Juvenile Court);

- (g) the court of committal as defined by section 2(1) of the Fugitive Offenders Ordinance (Cap. 503);
 - (h) the Lands Tribunal;
 - (i) the Labour Tribunal;
 - (j) the Small Claims Tribunal;
 - (k) the Obscene Articles Tribunal; or
 - (l) the Coroner's Court,
- and includes a JJO;

JJO (法官或司法人員)—

- (a) means a judicial officer as defined by section 2 of the Judicial Officers Recommendation Commission Ordinance (Cap. 92); and
- (b) includes—
 - (i) a person who is appointed as a deputy or temporary judicial officer—
 - (A) to perform the duties of a judicial office as defined by that section; or
 - (B) to act otherwise in the office of a judicial office so defined; and
 - (ii) a person who is appointed to a specified Tribunal to perform adjudicating functions;

legal representative (法律代表) includes—

- (a) a legal officer as defined by section 2 of the Legal Officers Ordinance (Cap. 87);
- (b) a solicitor or a barrister as defined by section 2(1) of the Legal Practitioners Ordinance (Cap. 159);
- (c) an official prosecutor who is appointed under section 13 of the Magistrates Ordinance (Cap. 227); and

- (d) any other person who has a right of audience before the court under—
- (i) an Ordinance; or
 - (ii) a practice direction issued by the court;

live audio link (語音直播聯繫), in relation to a proceeding, means facilities that enable real time audio communication among the JJOs and the participants during the proceeding;

live audio-visual link (音視直播聯繫), in relation to a proceeding, means facilities that enable real time audio and visual communication among the JJOs and the participants during the proceeding;

participant (參與者), in relation to a proceeding, means a person who, in that proceeding, is—

- (a) a party;
- (b) an authorized representative of a party;
- (c) a legal representative of a party;
- (d) a witness; or
- (e) an officer or individual who—
 - (i) is appointed to advise, or is involved in advising, on any matter in relation to the proceeding;
 - (ii) is appointed to assist, or is involved in assisting, the JJO presiding at the proceeding; or
 - (iii) is appointed to assist, or is involved in otherwise facilitating, the conduct of the proceeding,

and includes any other person who is allowed by the court to be involved in that proceeding;

party (訴訟方), in relation to a proceeding, means—

- (a) the person who initiates the proceeding;
- (b) the person against whom the proceeding is initiated; or

- (c) any other person who is entitled to be heard in the proceeding;

physical hearing (實體聆訊) means a proceeding that is not subject to a remote hearing order;

proceeding (法律程序) means a proceeding (except for those listed in the Schedule) before a court, and includes part of such a proceeding;

remote hearing (遙距聆訊) means a proceeding that is subject to a remote hearing order;

remote hearing order (遙距聆訊令) means an order made under section 5(1) and (if applicable) varied under section 7(1);

remote medium (遙距媒介) includes—

- (a) a live audio link;
- (b) a live audio-visual link; and
- (c) any other real time communication facility as the Chief Justice may designate by rules made, or in a direction given, under section 29;

rule of law (法律規則) means—

- (a) an Ordinance;
- (b) a rule of common law or a rule of equity; or
- (c) customary law;

specified Tribunal (指明審裁處) means—

- (a) the Competition Tribunal;
- (b) the Lands Tribunal;
- (c) the Labour Tribunal;
- (d) the Small Claims Tribunal; or
- (e) the Obscene Articles Tribunal.

3. Application to Government

This Ordinance applies to the Government.

4. Provisions not affected by this Ordinance

Nothing in this Ordinance affects the operation of—

- (a) Part IIIA (special procedures for vulnerable witnesses) of the Criminal Procedure Ordinance (Cap. 221); or
 - (b) section 23 of the Fugitive Offenders Ordinance (Cap. 503).
-

Part 2

Remote Hearing Order

5. Court may make remote hearing order

- (1) The court may, on its own motion or on application by any party to a proceeding, make an order for the proceeding to be conducted through a remote medium.
- (2) The court may, in the order, specify—
 - (a) in relation to the proceeding—
 - (i) the remote medium to be used for the proceeding;
 - (ii) the date and time for the hearing of the proceeding; and
 - (iii) the place or virtual space, or both, for the hearing of the proceeding;
 - (b) in relation to the participants of the proceeding—
 - (i) the participants who are to attend the proceeding through a remote medium (*remote participants*); and
 - (ii) the place (whether within or outside Hong Kong) from which the remote participants are to attend the proceeding; and
 - (c) any other conditions that the court considers expedient for the conduct of the proceeding.
- (3) An order may only be made under subsection (1) if the court, after considering the factors under section 8, is satisfied that in the circumstances of the case, it is in the interests of justice to make the order.

6. Court may invite submissions

- (1) The court may, before making a remote hearing order for a proceeding, invite the parties to the proceeding to make submissions.
- (2) If the court does not invite the parties to make submissions under subsection (1) before making a remote hearing order, any party to the proceeding who is dissatisfied with the order may apply to the court within a period as specified by the court to vary or revoke the order.
- (3) After hearing an application under subsection (2), the court may affirm, vary or revoke the order, and may impose any condition that the court considers appropriate.
- (4) The court must inform the parties to the proceeding of a decision under subsection (3).

7. Court may vary or revoke remote hearing order

- (1) The court may, on its own motion or on application by any party to a proceeding, vary or revoke a remote hearing order for the proceeding.
- (2) An order may only be varied or revoked under subsection (1) if the court, after considering the factors under section 8, is satisfied that in the circumstances of the case, it is in the interests of justice to vary or revoke the order.
- (3) This section applies if there has been a material change of circumstances since—
 - (a) the making of a remote hearing order under section 5 and (if applicable) the variation of the order under section 6; or
 - (b) the variation of a remote hearing order under this section.

8. Factors to be considered

In deciding whether to make, vary or revoke a remote hearing order for a proceeding under section 5 or 7, the court must consider—

- (a) the nature, complexity and urgency of the proceeding;
- (b) the nature of the evidence intended to be adduced;
- (c) the views of the parties;
- (d) the ability of the parties to engage with and follow the proceeding (if conducted through a remote medium);
- (e) the personal or special circumstances of the parties, including any visual or auditory impairment, cognitive difference and mental or psychological health issue;
- (f) the maintenance of the rights of the parties;
- (g) whether the parties are legally represented;
- (h) whether the privileged communication between the parties and their respective legal representatives may be affected;
- (i) whether the parties and the parties' legal representatives can conduct their cases effectively;
- (j) the measures to be taken to ensure that evidence is given freely without coercion or other influence;
- (k) the potential impact of the order on the assessment of the credibility of witnesses and the reliability of the evidence presented;
- (l) whether the use of remote medium is likely to promote fair and efficient disposal of the proceeding;
- (m) whether the right to a fair trial can be effectively maintained;
- (n) the quality and security of the remote hearing facilities and their availability to the parties;

Courts (Remote Hearing) Bill
(Draft for Public Consultation)

Part 2

Clause 8

9

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- (o) whether there is any public order, security, public health or emergency concern which makes it undesirable or impracticable for the parties to attend the proceeding in person; and
 - (p) any other relevant considerations.
-

Part 3

Operation of Remote Hearing

Division 1—Judges and Judicial Officers

9. Sitting by JJOs

Where a JJO conducts a remote hearing under this Ordinance, the JJO is deemed, for all effects and purposes, to have satisfied the requirement under any rule of law to be physically present at the proceeding.

10. Location of JJOs in remote hearings

A JJO may conduct a remote hearing in—

- (a) a court building; or
- (b) any other place as directed by the Chief Justice.

11. Powers of JJOs

A JJO conducting a remote hearing under this Ordinance has all the powers that the JJO would have if the remote hearing were a physical hearing, and the participants attended the proceeding in person.

Division 2—Participants

12. Attendance at remote hearing

Unless otherwise required by a rule of law or an order of the court, a participant may attend a remote hearing at a place within or outside Hong Kong.

13. Consequences of failure to attend remote hearing

A participant who fails to attend a remote hearing on the date and time, and at the place or virtual space, in compliance with a remote hearing order is subject to the same consequences as if the remote hearing were a physical hearing.

14. Attendance at remote hearing deemed to be physical presence

A participant who attends a remote hearing through a remote medium in compliance with a remote hearing order is deemed, for all effects and purposes, to have satisfied the requirement under any rule of law, or any order or direction of the court, to be physically present at the proceeding.

15. Law in force in Hong Kong applies to overseas participants

The law in force in Hong Kong relating to evidence, procedure, contempt of court and perjury applies to a participant who attends a remote hearing in compliance with a remote hearing order at a place outside Hong Kong.

16. Administration of oaths and affirmations

An oath to be sworn or an affirmation to be made by a participant in a remote hearing may be administered—

- (a) by way of a live audio-visual link, as nearly as practicable in the same way as oaths or affirmations are physically administered in a court; or
- (b) by a person authorized by the court, acting at the direction of and on behalf of the court, at the place where the participant is to attend the proceeding.

Division 3—Transmission of Documents, Presentation of Objects, etc. in Remote Hearing

17. Interpretation and application

(1) In this Division—

document (文件) means anything in which information of any description is recorded;

object (物品) means anything other than a document, which may be in tangible or intangible form;

send (送交), in relation to a document, includes file, lodge, produce, give, notify, serve, deliver, submit, furnish or any other expression that signifies or suggests conveying the document.

(2) Nothing in this Division affects the operation of—

(a) the Electronic Transactions Ordinance (Cap. 553); or

(b) the Court Proceedings (Electronic Technology) Ordinance (Cap. 638).

18. Transmission of documents

(1) A document in relation to a remote hearing may be transmitted electronically as directed by the court.

(2) Where a document is transmitted in compliance with a direction under subsection (1), the transmission is deemed, for all effects and purposes, to have satisfied the requirement under any rule of law to send such a document for the purposes of a physical hearing.

19. Presentation of objects

An object in relation to a remote hearing may be presented electronically as directed by the court.

20. Signing of, writing on and return of documents

- (1) If a participant to a remote hearing is required to sign or write on a document under any rule of law or as directed by the court, the court may request the participant to—
 - (a) sign or write on the document; and
 - (b) return the document as directed by the court.
- (2) Where a document is signed or written, and returned, in compliance with a request under subsection (1), the signature or writing, and the return, are deemed, for all effects and purposes, to have satisfied the requirement under any rule of law to sign or write, and to send, such a document for the purposes of a physical hearing.
- (3) In this section—

write (填寫), in relation to a document, includes draw, shade, colour, circle, cross out, underline, highlight, annotate or any other expression that signifies or suggests marking on the document.

Part 4

Public Access to Open Proceeding

21. Meaning of *open proceeding*

In this Part—

open proceeding (公開法律程序) means a remote hearing that is not to be held in private.

22. Direction for public access

The court must, in relation to an open proceeding, give direction to allow access to the proceeding by the public unless the court, for any of the reasons stated in Article 10 of the Hong Kong Bill of Rights set out in Part II of the Hong Kong Bill of Rights Ordinance (Cap. 383), otherwise directs.

23. Broadcast of open proceeding

- (1) The court may cause an open proceeding to be broadcasted in real time.
 - (2) A real time broadcast of an open proceeding must be accessible by the public—
 - (a) in a place, and in a manner, as specified by the Judiciary Administrator; or
 - (b) through such other means as the court considers appropriate.
-

Part 5

Offences and Penalties

24. Interpretation for Part 5

In this Part—

broadcast (廣播) means a broadcast under section 23 or a broadcast of a physical hearing as designated by the Chief Justice by rules made, or a direction given, under section 29;

image (影像) means—

- (a) a portrait, drawing or sketch;
- (b) a photograph, video recording or film; or
- (c) a static or moving visual record;

publish (發布) includes send, transmit, distribute, circulate, upload, reproduce, make available and disseminate;

record (記錄)—

- (a) means—
 - (i) any act of creating or generating an image; or
 - (ii) any act of creating or generating an audio record; and
- (b) includes any act of making an audio, a visual, or an audio-visual record, that is transmitted in real time with or without retention or storage in—
 - (i) a physical form; or
 - (ii) an electronic form from which the record is capable of being reproduced with or without the aid of any device.

25. Offences of recording and publishing hearings and protected subjects

- (1) A person commits an offence if the person, without lawful authority or reasonable excuse—
 - (a) intentionally records, or attempts to record—
 - (i) a remote hearing;
 - (ii) the protected process in relation to a remote hearing;
 - (iii) a physical hearing; or
 - (iv) the protected subject in relation to a physical hearing; or
 - (b) intentionally publishes, or attempts to publish—
 - (i) a recording made in contravention of paragraph (a); or
 - (ii) a reproduction of the recording.
- (2) A person who commits an offence under subsection (1)(a) is liable on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (3) A person who commits an offence under subsection (1)(b) is liable on conviction on indictment to a fine at level 6 and to imprisonment for 5 years.
- (4) In this section—

courtroom (法庭) means the place where a proceeding is conducted;

protected process (受保護程序), in relation to a remote hearing, means the process (other than the hearing itself) relating to the proceeding that takes place within the period during which the participants of the proceeding are connected to the remote medium specified for the proceeding;

protected subject (保護對象), in relation to a physical hearing, means—

- (a) the courtroom; or
- (b) any person appearing in that courtroom.

26. Offences of recording and publishing broadcast

- (1) A person commits an offence if the person, without lawful authority or reasonable excuse—
 - (a) intentionally records, or attempts to record—
 - (i) a broadcast;
 - (ii) the place of the broadcast; or
 - (iii) the persons attending the broadcast; or
 - (b) intentionally publishes, or attempts to publish—
 - (i) a recording made in contravention of paragraph (a); or
 - (ii) a reproduction of the recording.
- (2) A person who commits an offence under subsection (1)(a) is liable on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (3) A person who commits an offence under subsection (1)(b) is liable on conviction on indictment to a fine at level 6 and to imprisonment for 5 years.

27. Prosecution deadline for offence under sections 25(1)(a) and 26(1)(a)

A prosecution for an offence under section 25(1)(a) or 26(1)(a) may only be started before the earlier of—

- (a) the end of 2 years after the date on which the offence is committed; and
- (b) the end of 12 months after the date on which the offence is discovered by the prosecutor.

Courts (Remote Hearing) Bill
(Draft for Public Consultation)

Part 5

Clause 27

18

Note—

This replaces the time limit under section 26 of the Magistrates Ordinance (Cap. 227).

Part 6

Miscellaneous

28. Power to amend Schedule

The Chief Justice may, by notice published in the Gazette, amend the Schedule.

29. Chief Justice may make rules or give directions

The Chief Justice may make rules or give directions regarding any or all of the following—

- (a) the application for a remote hearing order;
- (b) the application for variation or revocation of a remote hearing order under section 6 or 7;
- (c) the procedures and the practice to be followed by a court in conducting a remote hearing;
- (d) the giving of evidence through a remote medium;
- (e) the transmission of documents for the purposes of a remote hearing under section 18;
- (f) the presentation of objects for the purposes of a remote hearing under section 19;
- (g) the signing of, writing on, and return of, documents for the purposes of a remote hearing under section 20;
- (h) the broadcast of an open proceeding under section 23;
- (i) the lawful authority for the purposes of section 25 or 26;
- (j) a designation for the purposes of—
 - (i) the definition of *remote medium* in section 2; or
 - (ii) the definition of *broadcast* in section 24;

- (k) the better carrying into effect of the provisions and purposes of this Ordinance.

30. Judiciary Administrator may issue administrative instructions

The Judiciary Administrator may issue instructions of an administrative nature relating to any or all of the following—

- (a) the technical details and standards of a remote medium;
 - (b) the hardware, software, equipment and other technical requirements for participating in a remote hearing;
 - (c) the details of pretesting requirements and contingency measures;
 - (d) the details for the broadcast of an open proceeding;
 - (e) any other arrangements for facilitating the conduct of a remote hearing.
-

Part 7

Related Amendments

Division 1—Enactments Amended

31. Enactments amended

The enactments specified in Divisions 2, 3 and 4 are amended as set out in those Divisions.

Division 2—Amendments to Summary Offences Ordinance (Cap. 228) on Prohibition of Recording

32. Section 7 substituted

Section 7—

Repeal the section

Substitute

“7. Prohibition on recording etc. on court premises

- (1) A person commits an offence if the person, without lawful authority or reasonable excuse—
 - (a) intentionally records, or attempts to record, any specified person on court premises; or
 - (b) intentionally publishes, or attempts to publish—
 - (i) a recording made in contravention of paragraph (a); or
 - (ii) a reproduction of the recording.
- (2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine at level 1.

(3) In this section—

court premises (法院處所) means any place (other than a courtroom) in a court building;

courtroom (法庭) means the place where a proceeding is conducted;

image (影像) means—

- (a) a portrait, drawing or sketch;
- (b) a photograph, video recording or film; or
- (c) a static or moving visual record;

judge (法官) includes a registrar and a magistrate;

publish (發布) includes send, transmit, distribute, circulate, upload, reproduce, make available and disseminate;

record (記錄)—

- (a) means—
 - (i) any act of creating or generating an image; or
 - (ii) any act of creating or generating an audio record; and
- (b) includes any act of making an audio, a visual, or an audio-visual record, that is transmitted in real time with or without retention or storage in—
 - (i) a physical form; or
 - (ii) an electronic form from which the record is capable of being reproduced with or without the aid of any device;

specified person (指明人士) means a judge, a juror, a witness, a party, an authorized representative of a party or a legal representative of a party, to any proceedings.

Note—

Please also see Part 5 of the Courts (Remote Hearing) Ordinance (of 2022) for offences relating to recording and publishing of hearings and broadcasts etc.”.

Division 3—Presence of Defendant

Subdivision 1—Criminal Procedure Ordinance (Cap. 221)

33. Section 83U substituted

Section 83U—

Repeal the section

Substitute

“83U. Right of defendant to be present

- (1) Subject to subsection (2), a defendant is entitled to be present at the hearing of an appeal.
- (2) Unless with the leave of the Court of Appeal, a defendant is not entitled to be present—
 - (a) at the hearing of an application for leave to appeal;
 - (b) at the hearing of an appeal which is made on the ground of question of law alone; or
 - (c) in any proceedings preliminary or incidental to an appeal.
- (3) The Court of Appeal may exercise its power to pass sentence on a person although that person is for any reason not present.”.

34. Section 122 amended (power to exclude public from criminal courts)

Section 122(1) and (2)—

Repeal

“or public order or security”

Substitute

“, public order, security, public health or emergency”.

35. Section 123 amended (criminal proceedings may be held in camera and non-disclosure of identity of witnesses in certain cases)

- (1) Section 123(1)—

Repeal

“or public order or security”

Substitute

“, public order, security, public health or emergency”.

- (2) Section 123(1A)(b)—

Repeal

“or public order or security”

Substitute

“, public order, security, public health or emergency”.

- (3) Section 123(1B)(f)—

Repeal

“or public order or security”

Substitute

“, public order, security, public health or emergency”.

**Subdivision 2—Hong Kong Court of Final Appeal Ordinance
(Cap. 484)**

36. Section 36 substituted

Section 36—

Repeal the section

Substitute

“36. Right of defendant to be present

- (1) Subject to subsection (2), a defendant is entitled to be present at the hearing of an appeal.
- (2) Unless with the leave of the Court, a defendant is not entitled to be present—
 - (a) at the hearing of an application for leave to appeal;
 - (b) at the hearing of an appeal which is made on the ground of question of law alone; or
 - (c) in any proceedings preliminary or incidental to an appeal.”.

37. Section 47 amended (sittings and business)

Section 47(3)—

Repeal

“or public order or security”

Substitute

“, public order, security, public health or emergency”.

Division 4—Court Recording

Subdivision 1—The Rules of the High Court (Cap. 4 sub. leg. A)

38. Order 48, rule 3 amended (record of judgment debtor’s evidence given at examination)

Order 48, rule 3, after “mechanical,”—

Add

“digital,”.

39. Order 49B, rule 1AA amended (record of judgment debtor’s evidence given at examination)

Order 49B, rule 1AA, after “mechanical,”—

Add

“digital,”.

40. Order 68, rule 8 amended (mechanical recording)

(1) Order 68, rule 8, heading—

Repeal

“recording”

Substitute

“, digital, electronic or optical recording”.

(2) Order 68, rule 8, after “mechanical”—

Add

“, digital, electronic or optical”.

Subdivision 2—Labour Tribunal Ordinance (Cap. 25)

41. Section 19 amended (keeping of summary of evidence, etc.)

Section 19, after “mechanical,”—

Add

“digital,”.

Subdivision 3—Labour Tribunal (General) Rules (Cap. 25 sub. leg. A)

42. Rule 4A amended (keeping of Register of Claims, etc.)

Rule 4A(b), after “mechanical,”—

Add

“digital,”.

Subdivision 4—Criminal Procedure Ordinance (Cap. 221)

43. Section 79 amended (record of proceedings and inspection thereof)

Section 79(1), after “mechanical”—

Add

“, digital, electronic or optical”.

Subdivision 5—Criminal Procedure (Record of Bail Proceedings) Rules (Cap. 221 sub. leg. I)

44. Rule 2 amended (record of bail proceedings)

Rule 2(2)(b), after “mechanical,”—

Add

“digital,”.

Subdivision 6—Magistrates Ordinance (Cap. 227)

45. Section 34 amended (minutes of proceedings)

Section 34(1), after “mechanical”—

Add

“, digital, electronic or optical”.

46. Section 81 amended (taking of evidence at hearing)

Section 81(3)—

Repeal

“or electrical”

Substitute

“, digital, electronic or optical”.

**Subdivision 7—Magistrates (Administrative) Rules (Cap. 227
sub. leg. A)**

47. Rule 2 amended (case Register)

Rule 2(2)(b), after “mechanical,”—

Add

“digital,”.

**Subdivision 8—The Rules of the District Court (Cap. 336 sub.
leg. H)**

**48. Order 48, rule 3 amended (record of judgment debtor’s evidence
given at examination)**

Order 48, rule 3, after “mechanical,”—

Add

“digital,”.

49. Order 49B, rule 1AA amended (record of judgment debtor’s evidence given at examination)

Order 49B, rule 1AA, after “mechanical,”—

Add

“digital,”.

50. Order 68, rule 8 amended (mechanical recording)

(1) Order 68, rule 8, heading—

Repeal

“recording”

Substitute

“, digital, electronic or optical recording”.

(2) Order 68, rule 8, after “mechanical”—

Add

“, digital, electronic or optical”.

Subdivision 9—Small Claims Tribunal Ordinance (Cap. 338)

51. Section 15 amended (keeping of summary of evidence, etc.)

Section 15, after “mechanical,”—

Add

“digital,”.

Subdivision 10—Small Claims Tribunal (General) Rules (Cap. 338 sub. leg. A)

52. Rule 4A amended (keeping of the Register of Claims, etc.)

Rule 4A(b), after “mechanical,”—

Add

“digital,”.

Subdivision 11—Coroners Rules (Cap. 504 sub. leg. B)

53. Rule 14 amended (coroner to take notes of evidence, etc.)

Rule 14(1)(b)—

Repeal

“electronic or mechanical”

Substitute

“mechanical, digital, electronic or optical”.

Part 8

Consequential Amendments

Division 1—Enactments Amended

54. Enactments amended

The enactments specified in Divisions 2 to 8 are amended as set out in those Divisions.

Division 2—The Rules of the High Court (Cap. 4 sub. leg. A)

55. Order 70, rule 4 amended (person to take and manner of taking examination)

Order 70, rule 4(2), (2A) and (3)—

Repeal

“live television link”

Substitute

“live audio-visual link”.

56. Order 70, rule 5 amended (dealing with deposition)

Order 70, rule 5(2)—

Repeal

“live television link”

Substitute

“live audio-visual link”.

57. Order 70, rule 6 amended (claim to privilege)

Order 70, rule 6(1)—

Repeal

“live television link”

Substitute

“live audio-visual link”.

58. Order 70, rule 7 amended (minutes of examination taken by way of live television link)

- (1) Order 70, rule 7, heading—

Repeal

“live television link”

Substitute

“live audio-visual link”.

- (2) Order 70, rule 7(1)—

Repeal

“live television link”

Substitute

“live audio-visual link”.

Division 3—Evidence Ordinance (Cap. 8)

59. Section 74 amended (interpretation)

- (1) Section 74—

Repeal the definition of *live television link*.

- (2) Section 74—

Add in alphabetical order

“***live audio-visual link*** (音視直播聯繫) has the meaning given by section 2 of the Courts (Remote Hearing) Ordinance (of 2022);”.

60. Section 76 amended (power of a court in Hong Kong to give effect to an application for assistance)

Section 76(2)(a)—

Repeal

“live television link”

Substitute

“live audio-visual link”.

61. Section 77 amended (privilege of witnesses)

Section 77(2) and (2A)—

Repeal

“live television link” (wherever appearing)

Substitute

“live audio-visual link”.

62. Section 77E amended (issue of letter of request to obtain evidence in criminal proceedings)

(1) Section 77E(2)(a)—

Repeal

“live television link”

Substitute

“live audio-visual link”.

(2) Section 77E—

Repeal subsection (6A)

Substitute

“(6A) In subsection (2)—

live audio-visual link (音視直播聯繫) has the meaning given by section 2 of the Courts (Remote Hearing) Ordinance (of 2022).”.

Division 4—Criminal Procedure Ordinance (Cap. 221)

63. Section 79A amended (interpretation)

- (1) Section 79A—

Repeal the definition of *live television link*.

- (2) Section 79A—

Add in alphabetical order

“*live audio-visual link* (音視直播聯繫) has the meaning given by section 2 of the Courts (Remote Hearing) Ordinance (of 2022);”.

64. Section 79B amended (evidence by live television link)

- (1) Section 79B, heading—

Repeal

“live television link”

Substitute

“live audio-visual link”.

- (2) Section 79B(2), (3), (4), (4A) and (5)—

Repeal

“live television link”

Substitute

“live audio-visual link”.

- (3) Section 79B—

Repeal subsection (6).

65. Section 79D amended (Chief Judge to make rules)

Section 79D(a)—

Repeal

“live television link”

Substitute

“live audio-visual link”.

66. Section 79E amended (depositions)

Section 79E(9)—

Repeal

“live television link”

Substitute

“live audio-visual link”.

67. Part IIIB repealed (taking evidence from witnesses outside Hong Kong by live television link)

Part IIIB—

Repeal the Part.

68. Section 83V amended (evidence)

Section 83V—

Repeal subsections (14) and (16).

**Division 5—Live Television Link and Video Recorded
Evidence Rules (Cap. 221 sub. leg. J)**

69. Title amended

The title—

Repeal

“LIVE TELEVISION LINK”

Substitute

“LIVE AUDIO-VISUAL LINK”.

70. Rule 3 amended (evidence through live television link where witness is a vulnerable witness or is to be cross-examined after admission of a video recording)

(1) Rule 3, heading—

Repeal

“live television link”

Substitute

“live audio-visual link”.

(2) Rule 3(1)(a) and (b), (6) and (9)—

Repeal

“live television link”

Substitute

“live audio-visual link”.

71. Schedule 1 amended

(1) Schedule 1—

Repeal

“Television Link”

Substitute

“Live Audio-Visual Link”.

(2) Schedule 1, Note—

Repeal

“through live television link”

Substitute

“through live audio-visual link”.

- (3) Schedule 1—

Repeal

“given by television link”

Substitute

“given by live audio-visual link”.

- (4) Schedule 1—

Repeal

“use television link”

Substitute

“use live audio-visual link”.

Division 6—Live Television Link (Witnesses outside Hong Kong) Rules (Cap. 221 sub. leg. L)

72. Live Television Link (Witnesses outside Hong Kong) Rules repealed

The Live Television Link (Witnesses outside Hong Kong) Rules—

Repeal the Rules.

Division 7—Magistrates Ordinance (Cap. 227)

73. Section 81 amended (taking of evidence at hearing)

- (1) Section 81(4)—

Repeal

“live television link under Part IIIB of the Criminal Procedure Ordinance (Cap. 221)”

Substitute

“live audio-visual link under the Courts (Remote Hearing) Ordinance (of 2022)”.

- (2) Section 81(4)(a) and (b)—

Repeal

“live television link”

Substitute

“live audio-visual link”.

- (3) Section 81—

Repeal subsection (5)

Substitute

“(5) In subsection (4)—

live audio-visual link (音視直播聯繫) has the meaning given by section 2 of the Courts (Remote Hearing) Ordinance (of 2022).”.

74. Section 118 amended (procedure on hearing appeal)

Section 118(1)(b)—

Repeal

“and (6) to”

Substitute

“, (6) to (13A), (15) and”.

**Division 8—Mutual Legal Assistance in Criminal Matters
Ordinance (Cap. 525)**

75. Section 9 amended (requests by Hong Kong for taking of evidence, etc.)

- (1) Section 9(1)(aa)—

Repeal

“live television link”

Substitute

“live audio-visual link”.

- (2) Section 9(4)—

Repeal the definition of *live television link*

Substitute

“*live audio-visual link* (音視直播聯繫) has the meaning given by section 2 of the Courts (Remote Hearing) Ordinance (of 2022).”.

76. Section 10 amended (requests to Hong Kong for taking of evidence, etc.)

- (1) Section 10(1)—

Repeal

“live television link” (wherever appearing)

Substitute

“live audio-visual link”.

- (2) Section 10—

Repeal subsection (15)

Substitute

“(15) In this section—

live audio-visual link (音視直播聯繫) has the meaning given by section 2 of the Courts (Remote Hearing) Ordinance (of 2022).”.

Schedule

[ss. 2 & 28]

Excluded Proceedings

1. Hearings before the Juvenile Court
 2. Criminal trials, except those parts in which evidence is given by—
 - (a) vulnerable witnesses as permitted under Part IIIA of the Criminal Procedure Ordinance (Cap. 221); or
 - (b) other witnesses as directed under a remote hearing order
-

**PRACTICE DIRECTION -
REMOTE HEARING IN CIVIL PROCEEDINGS**

Introduction

1. This Practice Direction sets out the practice for remote hearing of civil proceedings. The provisions herein shall be read in conjunction with but without prejudice to the generality of the provisions under Courts (Remote Hearing) Ordinance (Cap. xxx).
2. “Remote hearing” means the conduct of proceedings via remote media under a remote hearing order. It may be conducted by the use of live audio, live audio-visual or any other means of real-time communication as specified by the Court.
3. A Court sitting in Hong Kong may conduct remote hearing of legal proceedings in the court building or any other place as the Court may direct.
4. Unless the context otherwise specifies, reference to the Court in this Practice Direction applies to a judge or master of the court or tribunal, as the case may be.

A. Scope of application

5. This Practice Direction is applicable to all civil proceedings conducted in the High Court, the Competition Tribunal, the District Court (including the Family Court), the Lands Tribunal, the Labour Tribunal, the Small Claims Tribunal, the Obscene Articles Tribunal and the Coroner’s Court.

B. Guiding principles

6. Under the over-arching guiding principle of safeguarding the interests of justice, the default mode remains that the Court, the parties or their legal representatives, and the other relevant persons such as witnesses,

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shall be physically present in the proceedings conducted in the courtroom, unless the Court directs otherwise.

7. The Court will direct remote hearing only if it is fair and just to do so. Whether a remote hearing will be conducted is a case management decision of the Court. The Court may order a hearing to be conducted remotely after taking into account the factors set out in section 8 of the Ordinance.
8. For the avoidance of doubt, remote hearing does not necessarily mean that the entire hearing must be conducted remotely. It may be restricted to part(s) of the hearing process, for example, the taking of evidence from one or more witnesses (whether within or outside the jurisdiction), or that only some of the concerned parties are participating remotely.
9. Unless the Court directs otherwise, live audio links will not be used for trials and cross-examination of witnesses (such as death inquest, contempt proceedings, examination of debtor).

C. Application for Remote Hearing Order

10. Unless it is taken out as part of a formal application for a matter to be heard, an application for remote hearing of a matter may be made in writing to the Court. In any event, the applying party(ies) must provide the following information to the Court:
 - (a) which party is applying, and in respect of what proceedings before the Court;
 - (b) whether the entire proceedings or part, and if so, which part, of the proceedings before the Court are sought to be conducted by way of remote hearing;
 - (c) in the case of a hearing already scheduled, whether it is requested that the hearing shall proceed as scheduled by way of remote hearing or the scheduled hearing be adjourned to remote hearing on another date;
 - (d) the identity of the party or person that is proposed to be heard by the use of remote hearing;

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- (e) the ground(s) on which such party or person is proposed to be heard by the use of remote hearing;
 - (f) the country, territory or place and time zone where the party or person is proposed to be heard by the use of remote hearing;
 - (g) the venue(s) (e.g. solicitors' office, counsel's chambers, conference centre or studio, etc) where the party or person is proposed to be heard by the use of remote hearing;
 - (h) the requested means of remote hearing;
 - (i) confirmation that the party or person will have access to the necessary equipment and facility at the remote location compatible with and will be able to access the remote hearing facilities of the Court;
 - (j) the draft order;
 - (k) any other relevant feature(s) of the case to which the attention of the Court ought to be drawn; and
 - (l) whether the application is consented to by the other parties.
11. Unless the application is lodged by consent of the parties, the parties served with the application shall thereafter lodge with the Court and serve on the other parties their written responses to the application within 7 days.
12. The application and responses may be lodged electronically.
13. Upon an application for remote hearing, the Court may:
- (a) decide that remote hearing is suitable, and allow the application in such terms as the Court sees fit¹;
 - (b) decide that remote hearing is not suitable, and direct an oral hearing of the proceedings to be conducted as scheduled or to be fixed in the normal way or, as the case may be, adjourn the scheduled oral hearing to be re-fixed; or
 - (c) give any other directions as the Court sees fit.

¹ This caters for proceedings where an oral hearing has been fixed, particularly in the case of a trial where only part of it needs to be conducted by remote hearing, such as live evidence from overseas witnesses. As to the proceedings where an oral hearing has not been fixed, it will primarily be for the Court to fix the date and time of the remote hearing.

14. Unless directed otherwise, the Court will decide an application for remote hearing on paper only.

D. The Court's own motion

15. The Court has the discretion to direct the use of remote hearing on its own motion. The same guiding principles mentioned above apply.
16. In exercising such discretion, the Court will either invite submissions from the parties before making the order or make a *nisi* order subject to submissions of the parties. Generally speaking, parties' views will be taken into account before the Court makes the order.
17. If the Court does not invite parties to make submissions prior to the making of the remote hearing order, any party who is dissatisfied with the remote hearing order may apply to the Court to set aside or vary the order within a period specified by the Court, or not more than 14 days after the date on which notice of the order is sent to the party making the application if the Court does not specify a period. The party needs to notify other parties of such application. After considering the representations (if any), the Court may affirm, vary or revoke the order as it thinks fit, and will notify the parties of its decision. If no such application is made by the parties within the period specified by the Court, the order becomes absolute.

E. The making of remote hearing orders

18. Whether upon an application or on its own motion, the Court will specify the details as set out in section 5 of the Ordinance.
19. Subject to the direction of the Court, the parties shall follow the detailed specifications in the "Guidance Note on the Preparation and Conduct of Remote Hearing" when preparing for remote hearing.
20. It shall be the duty of the parties to liaise with the Court (i.e. the clerk of the Court taking charge of the hearing) and to provide all the necessary information in connection with the preparation as well as the timely and efficient conduct of the remote hearing from the remote locations.
21. Delay that practically impacts on the necessary arrangement prior to the remote hearing may cause the Court to revisit and, if appropriate, set aside the direction for remote hearing.

F. Unrepresented litigants

22. The Court will order a remote hearing having regard to the list of factors set out at section 8 of the Ordinance, including whether the unrepresented litigant has the appropriate device and a reliable connection.
23. Early enquiries should be made by the Court in all cases involving unrepresented litigants. An unrepresented litigant will need to complete the “Form for the Use of Remote Hearing: Unrepresented Litigants” in “Guidance Note on the Preparation and Conduct of Remote Hearing” to facilitate the Court in making listing and format decisions. The form seeks to gather information regarding devices; connectivity; confidence levels on technology; literacy; and ability to receive, view and print documents.
24. After a remote hearing has been ordered, the Court will also provide the “Note to Unrepresented Litigants attending a Remote Hearing” in “Guidance Note on the Preparation and Conduct of Remote Hearing” with a view to assisting an unrepresented litigant to connect to a remote hearing by live link in simpler terms. By way of the above Note, the unrepresented litigants will also be reminded briefly of some important requirements and conduct of participants during the hearing.
25. If unrepresented litigants have difficulty in finding a suitable remote location, the Court may direct them to participate from designated rooms equipped with appropriate VCF facilities in the Judiciary.

G. Daily cause list

26. Unless it is an urgent application or otherwise directed by the Court, a hearing fixed to be conducted by remote hearing will be so indicated in the Daily Cause List.

H. Public access

27. Generally speaking, remote hearings which are open to the public will be broadcast in Judiciary premises such as open courtrooms and other venues as specified by the Judiciary Administrator, unless the Court, for any of the reasons stated in Article 10 of the Hong Kong Bill of Rights set out in Part II of the Hong Kong Bill of Rights Ordinance (Cap. 383), otherwise directs.

28. There may be exceptional situations where the general public may be excluded from the court buildings, where a remote hearing is not conducted in a court building, or when there are extraordinary restrictions imposed on the size of audience permitted to be physically present in court premises due to special circumstances such as public health concern. The Court will strike a balance between the different aspects of open justice and the other competing fundamental rights.
29. In such exceptional circumstances as declared by the Court, the Court may decide to allow the public real time remote access to the remote hearing. Members of the public may refer to the “Guidance Note on the Preparation and Conduct of Remote Hearing” for application to such remote access if the Court has so allowed. Generally, the application needs to be submitted no less than 3 days before the hearing. If the notification of the remote hearing is given less than 3 days before the hearing, the application should be submitted as early as possible before the hearing. Where appropriate, direction may be given for delivery of written reasoned judgment/decision after the hearing, making available to a media representative live remote access to the hearing or making available to the public access to the audio recording of the proceedings.

I. Urgent applications

30. Urgent applications to the Duty Judge or Duty Master will be handled in the normal manner. Urgency or secrecy alone is but one of the considerations for remote hearing of an urgent application. Request for remote hearing of an urgent application should be made as part of the application. It will be up to the Duty Judge or Duty Master to decide whether or not the application should be disposed of by remote hearing in accordance with the guiding principles mentioned above.

J. Time

31. The Court has a general discretion to dispense with, or extract undertaking from the parties in respect of, the compliance with the requirements or directions mentioned in this Practice Direction, and to extend or abridge time for such compliance, as the circumstances may require.

K. Costs

32. Where the Court's remote hearing facilities are to be used in conjunction with the services and/or materials provided by commercial entities (such as telecommunications carriers, telephone conferencing or video conferencing providers, real-time court reporting, transcription and interpretation service providers), it shall be the responsibility of each party wishing to avail himself of such services and/or materials to make appropriate contractual arrangements directly with such commercial entities and directly to meet their charges. Any such engagement through the Judiciary will be made only upon the parties' undertakings to pay the costs.
33. The costs of use of the remote hearing facilities and any other services and/or materials used in conjunction with them will form part of the costs of the proceedings, and will be subject to such costs orders as the Court thinks fit.

L. Commencement Date

34. This Practice Direction shall come into effect on [] and supersedes:
- (1) Practice Direction 29;
 - (2) the Guidance Note for Remote Hearings for Civil Business in the High Court (Phase 1: Video-Conferencing Facilities) on 2 April 2020;
 - (3) the Guidance Note for Remote Hearings for Civil Business in the High Court (Phase 2: Expanded Video-Conferencing Facilities and Telephone) on 8 June 2020; and
 - (4) the Guidance Note for Remote Hearings for Civil Business in the High Court (Phase 3: Wider Video-Conferencing Facilities and Telephone) on 20 December 2020.

Dated

(Andrew Cheung)

Chief Justice

PRACTICE DIRECTION
REMOTE HEARING IN CRIMINAL PROCEEDINGS

Introduction

1. This Practice Direction sets out the practice for remote hearing of criminal proceedings. The provisions herein shall be read in conjunction with but without prejudice to the generality of the provisions under the Courts (Remote Hearing) Ordinance (Cap. xxx).
2. “Remote hearing” means the conduct of proceedings via remote media under a remote hearing order. It may be conducted by the use of live audio, live audio-visual or any other means of real-time communication as specified by the Court.
3. A Court sitting in Hong Kong may conduct remote hearing of legal proceedings in the court building or any other place as the Court may direct.
4. Unless the context otherwise specifies, reference to the Court in this Practice Direction applies to a judge or judicial officer, as the case may be.

A. Scope of application

5. This Practice Direction is applicable to all criminal proceedings conducted in the High Court, the District Court (including the Family Court) and a Magistrates’ Court (including the Juvenile Court) and the Court of Committal as defined by section 2(1) of the Fugitive Offenders Ordinance (Cap. 503).

B. Guiding principles

6. Under the over-arching guiding principle of safeguarding the interests of justice, the default mode remains that the Court, the parties or their legal representatives, and the other relevant persons such as witnesses, shall be physically present in the proceedings conducted in the courtroom, unless the Court directs otherwise.
7. The Court will direct remote hearing only if it is fair and just to do so. Whether a remote hearing will be conducted is a case management decision of the Court. The Court may order a hearing to be conducted

remotely after taking into account the factors set out in section 8 of the Ordinance.

8. For the avoidance of doubt, remote hearing does not necessarily mean that the entire hearing must be conducted remotely. It may be restricted to part(s) of the hearing process, for example, the taking of evidence from one or more witnesses (whether within or outside the jurisdiction), or it may be that only some of the concerned parties participate remotely.
9. Unless the Court directs otherwise, live audio links will not be used for bail applications, trials and proceedings in the Juvenile Court.

C. Application for Remote Hearing Order

10. An application for remote hearing may be made in writing and the applying party(ies) must provide the following information to the Court:
 - (a) which party is applying, and in respect of what proceedings before the Court;
 - (b) whether the entire proceedings or part, and if so, which part, of the proceedings before the Court are sought to be conducted by way of remote hearing;
 - (c) in the case of a hearing already scheduled, whether it is requested that the hearing shall proceed as scheduled by way of remote hearing or the scheduled hearing be adjourned to remote hearing on another date;
 - (d) the identity of the party or person that is proposed to be heard by the use of remote hearing;
 - (e) the ground(s) on which such party or person is proposed to be heard by the use of remote hearing;
 - (f) the country, territory or place and time zone where the party or person is proposed to be heard by the use of remote hearing;
 - (g) the venue(s) (e.g. solicitors' office, counsel's chambers, conference centre or studio, etc) where the party or person is proposed to be heard by the use of remote hearing;
 - (h) the requested means of remote hearing;

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- (i) confirmation that the party or person will have access to the necessary equipment and facility at the remote location compatible with and will be able to access the remote hearing facilities of the Court;
 - (j) the draft order;
 - (k) any other relevant feature(s) of the case to which the attention of the Court ought to be drawn; and
 - (l) whether the application is consented to by the other parties.
11. Unless the application is lodged by consent of the parties, the parties served with the application shall thereafter lodge with the Court and serve on the other parties their written responses to the application within 7 days.
12. The application and responses may be lodged electronically.
13. Upon an application for remote hearing, the Court may:
- (a) decide that remote hearing is suitable, and allow the application in such terms as the Court sees fit²;
 - (b) decide that remote hearing is not suitable, and direct an oral hearing of the proceedings to be conducted as scheduled or to be fixed in the normal way or, as the case may be, adjourn the scheduled oral hearing to be re-fixed; or
 - (c) give any other directions as the Court sees fit.
14. Unless directed otherwise, the Court will decide an application for remote hearing on paper only.

D. The Court's own motion

15. The Court has the discretion to direct the use of remote hearing on its own motion. The same guiding principles mentioned above apply.
16. In exercising such discretion, the Court may invite submissions from the parties before making the order. Generally speaking, parties' views will be taken into account before the Court makes the order.

² This caters for proceedings where an oral hearing has been fixed, particularly in the case of a trial where only part of it needs to be conducted by remote hearing, such as live evidence from overseas witnesses. As to the proceedings where an oral hearing has not been fixed, it will primarily be for the Court to fix the date and time of the remote hearing.

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17. If the Court does not invite parties to make submissions prior to the making of the remote hearing order, any party who is dissatisfied with the remote hearing order may apply to the court to set aside or vary the order within a period specified by the Court, or not more than 14 days after the date on which notice of the order is sent to the party if the Court does not specify a period. The party needs to notify other parties of such application. After considering the representations (if any), the Court may affirm, vary or revoke the order as it thinks fit, and will notify the parties of its decision. If no such application is made by the parties within the period specified by the Court, the order becomes absolute.

E. The making of remote hearing orders

18. Whether upon an application or on its own motion, the Court will specify the details as set out in section 5 of the Ordinance.
19. Subject to the direction of the Court, the parties shall follow the detailed specifications in the “Guidance Note on the Preparation and Conduct of Remote Hearing” when preparing for remote hearing.
20. It shall be the duty of the parties to liaise with the Court (i.e. the clerk of the Court taking charge of the hearing) and to provide all the necessary information in connection with the preparation as well as the timely and efficient conduct of the remote hearing from the remote locations.
21. Delay that practically impacts on the necessary arrangement prior to the remote hearing may cause the Court to revisit and, if appropriate, set aside the direction for remote hearing.

F. Defendants in custody

22. Where a defendant in custody attends court by way of remote hearing, it is likely that he or she will need to communicate remotely with his or her legal representatives immediately before or after the hearing.
23. The defendant will be directed to a designated consultation room which is equipped with appropriate confidential communication facilities for unrecorded private communications between defendants in custody and legal representatives. The consultation room is to be booked in advance through the relevant correctional service institutions. Counsel are expected to familiarize themselves with the communication facilities so that they will be able to communicate in

private with the defendant smoothly, and show or view documents or reports to and from the defendants.

24. To assist with the progression of a case, other authorised parties may use the consultation room to communicate with a remote defendant in custody. Authorised parties include probation officers, police officers or other judicial clerks for the purpose of completing reports and assessments or taking statements.

G. Unrepresented defendants

25. The Court will order a remote hearing having regard to the list of factors set out at section 8 of the Ordinance, including whether the unrepresented litigant has the appropriate device and a reliable connection.
26. Early enquiries should be made by the Court in all cases involving an unrepresented defendant. An unrepresented defendant will need to complete the “Form for the Use of Remote Hearing: Unrepresented Litigants” in “Guidance Note on the Preparation and Conduct of Remote Hearing” to facilitate the Court in making listing and format decisions. The form seeks to gather information regarding devices; connectivity; confidence levels on technology; literacy; and ability to receive, view and print documents.
27. After a remote hearing has been ordered, the Court will also provide the “Note to Unrepresented Litigants attending a Remote Hearing” in “Guidance Note on the Preparation and Conduct of Remote Hearing” with a view to assisting an unrepresented defendant to connect to a remote hearing by live link in simpler terms. By way of the above Note, the unrepresented defendants will also be reminded briefly of some important requirements and conduct of participants during the hearing.
28. If unrepresented litigants have difficulty in finding a suitable remote location, the Court may direct them to participate from designated rooms equipped with appropriate VCF facilities in the Judiciary.

H. Daily cause list

29. Unless it is an urgent application or otherwise directed by the Court, a hearing fixed to be conducted by remote hearing will be so indicated in the Daily Cause List.

I. Public access

30. Generally speaking, remote hearings which are open to the public will be broadcast in Judiciary premises such as open courtrooms and other venues as specified by the Judiciary Administrator, unless the Court, for any of the reasons stated in Article 10 of the Hong Kong Bill of Rights set out in Part II of the Hong Kong Bill of Rights Ordinance (Cap. 383), otherwise directs.
31. There may be exceptional situations where the general public may be excluded from the court buildings, where a remote hearing is not conducted in a court building, or when there are extraordinary restrictions imposed on the size of audience permitted to be physically present in court premises due to special circumstances such as public health concern. The Court will strike a balance between open justice and other competing fundamental rights.
32. In such exceptional circumstances as declared by the Court, the Court may decide to allow the public real time remote access to the remote hearing. Members of the public may refer to the “Guidance Note on the Preparation and Conduct of Remote Hearing” for application to such remote access if the Court has so allowed. Generally, the application needs to be submitted no less than 3 days before the hearing. If the notification of the remote hearing is given less than 3 days before the hearing, the application should be submitted as early as possible before the hearing. Where appropriate, a direction may be given for delivery of written reasoned judgment/decision after the hearing, making available to a media representative live remote access to the hearing or making available to the public access to the audio recording of the proceedings.

J. Commencement Date

33. This Practice Direction shall come into effect on [] and supersedes:
- (1) Practice Direction 9.9;
 - (2) Practice Direction 29.

Dated

(Andrew Cheung)

Chief Justice

**Operational Guidelines:
Guidance Note on the Preparation and
Conduct of Remote Hearing**

Introduction

1. This Note should be read in conjunction with Practice Direction [].
2. This Note sets out the practical considerations required of the parties or their legal representatives, including government departments and authorities, as well as any other participants in the relevant court proceedings before the Court by way of remote hearing. Subject to the directions of the Court, this Note should be followed when the Court directs that the court proceedings, or any part of them, are to be conducted remotely.
3. Unless otherwise specified, remote hearing facilities in this Note refer to live audio-visual link (i.e. video) and live audio link (i.e. telephone) and any other real-time communications as directed by the Court; and remote location refers to a single or multiple venue(s) from which participants take part in the remote hearing.

A. Upon the direction for remote hearing

4. Once the Court has directed a remote hearing, it shall be the duty of the parties and their legal representatives to liaise promptly with the clerk to the judge in charge of the hearing for the necessary preparation for the remote hearing.
5. It shall be the duty of the parties to ensure that the remote hearing facilities and equipment proposed to be used at the remote location will be compatible with the current technical specifications of the remote hearing facilities of the Judiciary for establishing the link.
6. Please consult “The remote hearing facilities of the Judiciary” (**Appendix 1**) for the available options, technical requirements of the court users and the technical specifications of the remote hearing facilities of the Judiciary.

7. An unrepresented defendant will need to complete the form in **Appendix 2** to facilitate the Court in making listing and format decisions. Once the Court has directed a remote hearing, the party(ies) engaged in the remote hearing shall lodge a (their) submission form(s) (**Appendix 3**) with the clerk of the judge listed for the hearing, providing all the necessary information in connection with the arrangement for the remote hearing. An unrepresented litigant should also read “Note to Unrepresented Litigants attending a Remote Hearing” (**Appendix 4**) concerning the conduct of participants during remote hearing.
8. Parties should conduct pre-hearing briefing and connection tests with the Judiciary’s remote hearing technology team to ensure smooth and successful connections. Parties should demonstrate preparedness in all aspects in the trial connection scheduled with the remote hearing technology team.
9. The parties are expected to answer or react promptly to any requests by the remote hearing technology team of the Court conveyed through the clerk to the judge in charge of the hearing in respect of the compatibility, testing, connection, transmission, system security and operational requirements of the remote hearing in advance of the hearing.

B. Setting up the link

10. The setup of the venue at the remote location and the equipment in remote hearing should be private so that the proceedings will not be disrupted by noise from the surrounding or movement of people or objects in the vicinity of the venue that will be audible to the other remote location engaged and the Court during the hearing. If necessary, the venue should be properly secured and the doors should be closed.
11. In the case of live audio-visual link, the parties shall also ensure that the backdrop of the venue at the remote location that will be shown is decorated in a neutral manner and is adequately lit. The camera should be suitably positioned throughout the proceedings so that the image received by the Court and any other participating remote location is clear. If witness testimony is involved, the camera(s) must be well positioned to show the surroundings of the witness as well.

12. In the case of live audio link, unless otherwise directed, the Court will only connect with the party or person who will be addressing the court during the hearing. For instance, where counsel is instructed, the instructing solicitors will have to make their own arrangement to enable them to participate at the hearing either from the counsel's venue or from their own remote location.

C. Documents and exhibits

13. The parties shall ensure that the Court and all the parties participating in the remote hearing are provided with the hearing bundle, written submissions and authorities, as the case may require, to enable the same to be referred to during the hearing.
14. In the case of live audio-visual link, electronic version of the documents, pictures or videos ("electronic bundle") that need to be shown in the course of the remote hearing should also be available. Witnesses may also be requested to mark on documents or pictures and to produce them as exhibits in the course of oral evidence.
15. Please see "General Guidelines for Preparing Electronic Bundles in Portable Document Format ("EBPDF") in the Judiciary of HKSAR" for the format of electronic bundle¹. In addition, there are training videos which are available on the Judiciary's website at https://www.judiciary.hk/en/court_services_facilities/ebpdf.html#tech_cop11.
16. The parties should note that the undesirability, if not impracticability, of adducing entirely new document in the setting of a remote hearing may well be a ground sufficient for the Court to refuse leave to do so.
17. Where real exhibits are expected to be produced by the witness giving evidence from a remote location, the manner of their production should be raised during the preparation stage of the remote hearing. If necessary, specific direction of the Court should be sought. For instance, the actual real exhibit may be directed to be deposited with the Court prior to the remote hearing, pending its actual production in the course of oral evidence of the witness from the remote location during the hearing. If the exhibits are to be shown to the witness during the remote hearing, the defendant and legal representatives should be able

¹ Accessible at: https://www.judiciary.hk/en/court_services_facilities/ebpdf.html

to see the same materials at the same time and witness' reactions to exhibits should also be shown. Parties may consider the suitability of using a visualizer to facilitate witness testimony.

D. At the remote hearing

D1. Attendance and connection to the remote hearing

18. On the day of the hearing, it shall be the responsibility of the party or person participating in the remote hearing to attend the venue at the remote location and to link with the Court's remote hearing facilities in good time before the scheduled time (Hong Kong time) of commencement of the remote hearing.
19. In the case of live audio link, all connections to the parties will be made by court staff, before connecting to the Court to commence the hearing.
20. An attendance sheet (**Appendix 5**) should be provided to the Court by such time/date as directed. In the case of other participants, parties should make sure verification of their identities are completed prior to the commencement of the hearing.
21. No person other than those permitted by the Court shall be present at the venue at the remote location when the hearing is in progress². If appropriate, the Court may dictate the seating arrangement of the persons permitted to be present at the venue of the remote location during the hearing³. Where possible, all attending persons are to be seated within range of the camera. Any change in respect of that at any stage must be made known to and approved by the Court.
22. The parties and their legal representatives should be ready before the remote hearing commences. In case instruction needs to be taken, the Court should be alerted so that the hearing may be stood down and the transmission suspended so that the parties and their legal representatives may communicate in private and confidence.

² This is (i) to safeguard the integrity of the proceedings, particularly oral evidence, from outside interference; and (ii) to cater for the personnel responsible for manning the facilities at the remote location venue. However, the parties are expected to be allowed to be present.

³ Particularly when the party is also present at the venue.

D2. Dress and etiquette

23. Remote hearings are court hearings and the solemnity of the occasion should be observed as closely as it is in a courtroom with the judge present, notwithstanding the domestic location of some or all of the participants.
24. In the case of live audio-visual link, if the matter is listed to be heard in open court, albeit by way of remote hearing, the Court will sit fully robed and so are the barristers or solicitor advocates appearing expected to be. All the rules and practice on court etiquette shall be observed, save that standing while addressing the Court will not be expected.
25. In the case that the remote hearing is conducted by live audio-visual link, a person attending the remote hearing from a remote location should dress himself, and should in all cases conduct and behave himself, subject to the same restrictions as he would have been subject to under the relevant rules and regulations governing his presence in the physical court room.
26. Amongst other restrictions, no electronic communication device should be switched on without the permission of the Court in order not to interfere with the hearing or transmission.

D3. Giving of evidence by witness

27. The party calling a witness who is to be examined remotely will be responsible for ensuring that such witness will be at the remote location in good time for such examination to take place, having duly been supplied with copies of any documents or exhibits relevant to such examination and for the witness to be provided with an interpreter, if necessary, and so forth.
28. A witness giving evidence via live audio-visual link from a remote location must not bring along or place anything other than the hearing bundle within his or her vicinity without leave of the Court.
29. Subject to the circumstances of the case, where more than one witness will give evidence from the same venue at the remote location, arrangement should be made to ensure that no one outside the venue will be able to hear the witness in the course of his giving evidence inside the venue.

D4. Attending a remote hearing

30. Save as aforesaid, the person attending the hearing from the remote location via live audio-visual link should not move away from the camera without the Court's permission. He should have the documents for use in the hearing within convenient reach and without having to move away from the camera.
31. All persons participating in the hearing should speak slowly than a normal courtroom pace and as clearly as possible. Technically, there may be delay in the reception of sound in the course of transmission. Participants should mute their microphones when they are not speaking. To shield off noise and enhance sound quality and clarity, participants of the hearing are encouraged to use earphones with a build-in microphone, or an external microphone.
32. The parties should avoid interrupting or speaking over unfinished transmission of the sound. If a participant would like to speak when the other counsel is speaking (to clarify a point or to object), the participant should indicate so. Such interruptions should be kept to a minimum.
33. If any remote participant fails to comply with any direction, or is acting inappropriately, during the remote hearing, such misbehavior is punishable by the usual contempt of court proceedings. The judge may at appropriate time direct the link to be disconnected if necessary.

E. Interpretation

34. The Court would have given direction in relation to the arrangement of interpretation service and the location where such service will be provided.
35. When an interpreter has been arranged to assist a party who is not giving evidence at the remote location to understand the proceedings during the hearing, they should ensure that they will not create sound that will be audible by the Court and the other participating remote locations. A dedicated interpretation channel for the party may be available depending on the equipment of the requesting party. The requesting party should make such inquiry to the clerk of the judge in advance to facilitate preparation.

36. If a defendant requires an interpreter, he/she will be given access to a separate interpretation channel. He/she can view the court proceedings while the interpreter interprets the exchanges taking place in court. The interpreter will also provide interpretation on the defendant's questions and answers through the interpretation channel when he/she testifies.

F. Oath and affirmation

37. Unless the court otherwise directs, the witness before giving evidence will need to stand up when taking oath or affirming.
38. If a witness chooses to take an oath by a sacred book, he or she should provide his or her own copy of the relevant book. In any event, he or she should have the prescribed content of the oath or affirmation ready which, if necessary, should be requested from the Court prior to the hearing.

G. Public Access to remote hearing

39. Generally speaking, remote hearings that are required or directed by the Court to be conducted in a court open to the public will be broadcast in Judiciary premises such as open court rooms and other venues as specified by the Judiciary Administrator. The public will be able to obtain information (e.g. date and time) of the remote hearing, as well as the broadcasting venue, from the Daily Cause List.
40. In exceptional situations where the general public may be excluded from the court buildings, where remote hearing is not conducted in a court building, or when there are extraordinary restrictions imposed on the number of audience permitted to be physically present in Court due to special circumstances, e.g. public health concern, the Court may allow the public real time remote access to both civil and criminal remote hearing.
41. People who wish to obtain real time remote access to a remote hearing will be required to make an application (application form at **Appendix 6**) to the Court by contacting the judge's clerk in advance. In making the application, the applicant needs to undertake that he/she will abide by the Courts (Remote Hearing) Ordinance (in particular the prohibition on unauthorised recording and publishing of remote hearing), and any additional orders made by the Court.

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42. Once approved by the Court, applicants will have to provide their email address to the Court for the link to remote access. Observers of remote hearings are required to remain silent (mute their microphones) and hidden (keep their camera turned off).

H. Technical issues during remote hearing

43. Visual and audio quality can also be affected as a result of equipment or network failures or faults at any site or with a service provider (including the transmission provider) or by interference from environmental factors at any site or in transmission. This can lead to unexpected loss of connection to one or all sites or deterioration to an unaccepted level of picture or sound.
44. Participants should remain alert to any deterioration in picture and sound quality and inform the clerk of the judge in charge of the hearing immediately if this is impacting on their ability to participate fully.
45. If the Court considers that it is not possible for the hearing to continue due to technical difficulties, it may adjourn the matter and require in person attendance on an appointed date and time; or make any other direction that may be appropriate in the circumstances of the case.

I. Recording of proceedings

46. The proceedings in the remote hearing, as any hearing, will be recorded by the Court's authorized recording system, DARTS.
47. No person present at the remote location shall record, transmit or broadcast the proceedings during the remote hearing in any form whatsoever.

J. Inquiries

48. Inquiries related to the preparation and facilities of remote hearing should be directed to the [].

Effective date

49. This Guidance Note will take effect on [].

**The Remote Hearing Facilities
of the Judiciary**

1. Parties who wish to participate in remote hearings have to be equipped with the following items:
 - (a) video conferencing (“VC”) unit;
 - (b) laptop computer;
 - (c) display unit;
 - (d) camera;
 - (e) speaker system; and
 - (f) microphone.

(I) Options for VC unit

2. Court users may use any one of the following three alternatives in terms of VC units for connecting to the court’s VCF:
 - (a) hardware option;
 - (b) software option; or
 - (c) browser-based option.

(a) Hardware Option

3. For the hardware option, court users will continue to be connecting to the Judiciary’s VCF using some hardware VC units. Please refer to paragraph 7(a)(i) below for more information.

(b) Software Option

4. For the software option, court users will continue to be able to use normal desktop or laptop computer devices, with installation of appropriate software, to connect to the Judiciary’s VCF. Please refer to paragraph 7(a)(ii) below for more information.

(c) Browser-based Option

5. For the browser-based option, court users will be able to use common web browsers and normal desktop or laptop computer devices (but not mobile devices) to connect to the Judiciary's VCF. Please refer to paragraph 7(a)(iii) below for more information.
6. With this VCF solution, participant(s) will be informed of a unique meeting login ID and passcode for identity authentication. Only those connection requests associated with valid meeting login IDs and passcode pairs will be accepted by the Judiciary for the conduct of VCF hearings.

(II) Technical Requirements of Court Users

7. Connection to the Judiciary's VCF can be made by means of either the hardware, software or browser-based VC units. The technical requirements of these categories of VC units are as follows:

(a) VC Unit

- (i) Hardware VC Unit (i.e. hardware option)

Protocol	ITU H.323, H.320 and SIP compliant
Connection	Internet
Speed	Up to 6 Mbps
Video resolution	from 352x240 up to 1920x1080
Security	embedded encryption to support <ul style="list-style-type: none">➤ direct end-to-end encryption with the Judiciary's VCF ^[1]➤ encryption strength of at least 128-bit AES➤ encryption protocol:<ul style="list-style-type: none">- H.235 for H.323 connections or- TLS/SRTP for SIP connections

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(ii) Software VC Unit (i.e. software option)

Protocol	SIP compliant
Connection	Internet
Speed	at least 2 Mbps
Video resolution	from 352x240 up to 1920x1080
Security	embedded encryption to support <ul style="list-style-type: none">➤ direct end-to-end encryption with the Judiciary's VCF [1]➤ encryption strength of at least 128-bit AES➤ encryption protocols of SSL/TLS

(iii) Browser-based VC Unit (i.e. browser-based option)

Desktop or laptop computer	<ul style="list-style-type: none">➤ CPU :<ul style="list-style-type: none">– Intel Core i5 8th Generation or AMD Ryzen 5 Zen+ or equivalent– 1.6GHz or above;➤ Memory : 8GB or above
Operating system	<ul style="list-style-type: none">➤ Microsoft Windows 10 or above➤ MacOS version 10.15.6 or above
Browser software	<ul style="list-style-type: none">➤ Google Chrome version 98 or above➤ Microsoft Edge version 98 or above➤ Safari version 11.1 or above
Connection	Internet (wired LAN connection to computer)
Speed	at least 10 Mbps (for hearings with 2 parties connected remotely)
Video resolution	HD720p or above
Security	end-to-end encryption is implemented and controlled at the video-conferencing server system of the Judiciary

Besides, functional requirements of the common items to be used in the conduct of remote hearings are as follows:

(b) Laptop Computer

As a secondary channel transmission, receipt and display of document view, to be set up side-by-side the camera view as an additional function of the hardware VC unit.

(c) Display Unit

Appropriately sized display unit supporting high definition screen display to facilitate the conduct of remote hearings.

(d) Camera

For capturing the participant's facial and other views to facilitate the conduct of remote hearings. The camera shall be compatible with the VC unit of the participant, both in terms of connectivity and video resolution, and supports at least panning and zoom views

(e) Speaker System

The speaker shall be connected to the VC unit of the participant for the participant to hear the voices of the other participants audibly to facilitate the conduct of remote hearings. The system shall be equipped with feedback control feature.

(f) Microphone

The microphone shall be connected to the VC unit of the participant for capturing his/her voice to facilitate the conduct of remote hearings.

(III) Technical Specifications of the Court's VCF

8. The technical specifications of the VCF of the Judiciary are given below for reference.

(a) Video Conferencing Server System

Protocol	ITU H.323, H.320, SIP and WebRTC compliant
Connection	Internet
Speed	Up to 1 Gbps
MCU compatibility	H.241 and H.231
Video resolution	from 352x240 up to 1920x1080
Security	embedded encryption ^[2]
Multi-site conference	up to nine (9) remote sites

(b) Camera, Speakers and Microphone

^[1] End-to-end encryption is a mandatory requirement unless directed otherwise by the presiding Judges and Judicial Officers (“JJOs”)

^[2] VC connection may not be encrypted, depending on the compatibility with the remote VC unit(s)

Appendix 2

Form for the Use of Remote hearing : Unrepresented Litigants

1. Personal Details

Name:

HKID number/passport number:

2. Availability of video-conferencing facilities

Please indicate below if you have the following facilities:

- ☐ video conferencing (“VC”) unit;
For details of the VC display unit, please refer to Enclosure⁴
- ☐ laptop computer;
- ☐ display unit;
- ☐ camera;
- ☐ speaker system;
- ☐ microphone; and
- ☐ access to internet connection

⁴ The technical details will be made available at a later stage.

3. Computer literacy

Please indicate on a scale from 1 to 5 the following (please circle as appropriate):					
Experience in participating in remote meeting/hearing	1	2	3	4	5
Computer literacy/confidence level in technology	1	2	3	4	5
Ability to use receive and view documents on screen	1	2	3	4	5
Ability to engage and follow remote meeting	1	2	3	4	5

4. Views on remote hearing

Please indicate below your views on remote hearing:

- ☐ No objection
- ☐ I have reservations. Please indicate below any other personal particulars that may be relevant when the Court considers the order of a remote hearing:

**Submission Form
for the conduct of a proceeding via remote media
under a remote hearing order**

1. Case Details

Case No.:

Approving Judge:

Date of Approval:

Approval/Order Details:

Hearing/Trial Judge: (in Chinese)

Case Nature: (in Chinese)

Date(s) of Hearing:

Estimated Length:

2. Facilities for Use

- ☐ Video Conferencing:
 - Destination(s):
 - Date of testing (if known)
- ☐ Real-time transcription service
- ☐ Visualizer
- ☐ Multi-dialect Interpretation
- ☐ Multimedia playback (Video Tape, CD, DVD, VCD, MD, and MP3)
- ☐ E-Bundle
- ☐ Others/Remarks:

Please refer to Enclosure⁵ and provide necessary information

- ☐ Where the Court's remote hearing facilities are to be used in conjunction with the services and/or materials provided by commercial entities (such as telecommunications carriers, telephone conferencing or video conferencing providers, real-time court reporting, transcription and interpretation service providers), I undertake to pay the costs of the engaging these commercial entities.

3. Party Details ** (please include witness details if applicable)

Party Name	(In Chinese)	Party No.	Party Type	Representation: Legal Firm/In Person	(In Chinese)

4. Interpreter (if applicable)

Proposed location where interpretation will be arranged and provided:

- ☐ If the interpretation will be provided at a remote location outside Hong Kong, I confirm that the interpreter is qualified in accordance with Hong Kong law.

⁵ The technical details will be made available at a later stage.

5. Contact Details

Contact Person:

Post:

Legal Firm/Company:

Telephone No.:

(Office)

(Mobile)

Name of Technical Personnel (if any):

Telephone No.:

(Mobile)

The court will contact the mobile phone number on the date of pre hearing test and the actual hearing date.

**** Note: Subject to any given court order and nature of the case, information provided may be used for the purpose of display in the Daily Cause List.**

Appendix 4

Note to unrepresented litigants attending a remote hearing

This note serves to assist unrepresented litigants in preparing and participating in a remote hearing. For further details on the preparation and conduct of remote hearing, please refer to “Guidance Note on the Preparation and Conduct of Remote Hearing”.

Before the hearing

1. Once the Court has directed a remote hearing, the hearing is to be conducted using the Judiciary’s Video Conferencing Facilities (“VCF”). Please be reminded not to appear in person at the court room on the day of the hearing.

Preparation of remote hearing facilities

2. Before the hearing, you should check that you are equipped with the suitable remote hearing facilities and equipment. You have to be equipped with the following items:
 - (a) video conferencing (“VC”) unit. Both hardware, software, and browser-based options are available for the VC unit;
 - (b) laptop computer;
 - (c) display unit;
 - (d) camera;
 - (e) speaker system; and
 - (f) microphone.
3. You should refer to the “The remote hearing facilities of the Judiciary” (at Appendix 1 of the Guidance Note on the Preparation and Conduct of Remote Hearing) for the technical requirements of the VCF of the Judiciary. You may refer to the Judiciary’s website [insert hyperlink]

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for step-by-step instructions on how to set up and join a remote hearing hosted by the Judiciary, as well as the action buttons that can be used during the VCF meeting.

4. To avoid technical issues from delaying or disrupting the hearing, the Clerk of the Court listed for the hearing will contact you to arrange a test connection before the hearing. You may refer to the “The remote hearing facilities of the Judiciary” for details on connection testing with the Judiciary’s staff. During the testing session, Judiciary’s staff will ensure that you are able to see and hear the Court and other parties clearly via the VCF, as well as provide guidance on how you can access, view and navigate documents electronically. Arrangement may need to be made for the unrepresented defendant to be sent a paper bundle, if necessary.
5. If you have any issues in joining the VCF or testing your equipment, please contact the Clerk of the Court listed for the hearing as soon as possible. The Court and the Judiciary’s staff will assist to ensure you will be able to participate in the hearing in a format as appropriate, having considered the circumstances.

Other preparations

6. Before the hearing you should choose an appropriate physical location for your appearance at the hearing remotely (“remote location”). You should also participate in the test connection arranged by the Judiciary’s staff from the same location.
7. The remote location should be:
 - (a) Quiet and private such that you will not be disrupted nor heard by other people during the hearing;
 - (b) Properly secured and the doors should be closed;
 - (c) Well-lit; and
 - (d) The backdrop of the venue should be in a neutral manner. You should not use virtual background.

8. If you have difficulty in finding a suitable remote location, the Court may direct you to participate from designated rooms equipped with appropriate VCF facilities in the Judiciary.

On the day of hearing

9. Please be ready at least 20 minutes before the hearing and ensure that you have:
 - (a) Dressed appropriately as if you were attending a physical court hearing;
 - (b) Fully charged or plugged in the device you are using to join the remote hearing;
 - (c) Any documents required for the hearing ready;
 - (d) Your preferred sacred book or scripture to swear an oath on (if applicable)
 - (e) Removed from the space anything that could be distracting, such as mobile phone (unless you are using it for the hearing).
10. Please also ensure that the camera is suitably positioned throughout the proceedings so that your face and your surroundings can be clearly seen.

During the hearing

11. Remote hearings are formal court hearings. You will be subject to the same rules and regulations governing your appearance as if you were appearing physically in the court room.
12. You may wish to note that:
 - (a) No electronic communication device should be switched on without the permission of the Court in order not to interfere with the hearing or transmission;

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- (b) You should be alone in the remote location unless with the Court's permission otherwise;
 - (c) You should follow the Court's instructions;
 - (d) It is a criminal offence under the Courts (Remote Hearing) Ordinance to record (by audio, video or photo) and/or publish the remote hearing without lawful authority or reasonable excuse.
13. You are advised to speak in a slow and clear manner during the remote hearing. Please mute your mic when you are not speaking.
14. If there are technical errors during the remote hearing, including any deterioration in picture and sound quality, please inform the Court immediately by pressing the "raise hand" button on the screen. If the Court considers that it is not possible for the hearing to continue, it may adjourn the matter and require in person attendance on an appointed date and time; or make any other direction that may be appropriate in the circumstances of the case.

**Attendance Sheet
(Telephone Hearings)**

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

Proposed directions (if any)⁶

⁶ Proposed directions, if any, shall be provided to the Court by 4pm on the working day before the hearing.

Attendance Sheet⁷
(Browser Based VCF)

Action Number:	
Date of hearing:	
Time of hearing:	
Name of solicitor firm:	
Name of Counsel:	
Name of the solicitor/trainee/legal executive and the party acting for:	_____ (solicitor/trainee/legal executive) for _____
Email address to receive Login ID:	
Email address to receive Password ⁸ :	
Contact phone number:	

Proposed directions (if any):

⁷ This Attendance Sheet must be provided to the court by such time/date as directed.

⁸ For security reasons, please provide different email addresses for receiving Login ID and Password.

**Application Form
for access to a remote hearing**

1. Case Details

Case title:

Case No.:

Date of proposed attendance:

2. Applicant's details

Name:

HKID number/passport number:

Contact number:

Email address:

*Once your application has been approved, the meeting link and password will be sent to your email.

3. Regulations

You may wish to note that under the Courts (Remote Hearing) Ordinance, it is a criminal offence to record and publish a remote hearing without lawful authority or reasonable excuse. A failure to comply with the orders of the Court may also constitute a contempt of court.

4. Undertaking

I, the applicant, certify that if the Court permits this application, I will abide by the relevant legislation, and any additional orders made by the Court.

Signed:

Dated: