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Increased adoption of technology by the Hong Kong courts

Due to the outbreak of COVID-19 in Hong Kong in January 2020, the Judiciary of Hong Kong implemented the general adjourned period ("GAP") on 29 January 2020 which ended on 3 May 2020. During the GAP, Hong Kong courts and tribunals were closed to maintain public health and safety. Accordingly, civil proceedings could not be commenced during that period as the courts would only deal with urgent applications, and hearings which were originally fixed to be heard during the GAP were required to be postponed until the courts re-opened. As justice delayed is justice denied, parties (or intended parties) to civil proceedings were seriously affected by the disruption to the normal operation of the Judiciary.

There is, however, a silver lining in the COVID-19 situation as it had created an opportunity for Hong Kong courts to increase the adoption of technology in the court process. On 21 February 2020, the Honourable Mr. Justice Coleman held a directions hearing via telephone conferencing for the first time in the history of Hong Kong. According to a press release, Mr. Coleman J considers that "the use of telephones is an 'obvious' solution during the current crisis when physical hearings are not permissible on health grounds"¹.

Legal practitioners should not be unfamiliar with the use of teleconference in arbitration proceedings but the holding of a telephonic court hearing is innovative and represents an important milestone for the transformation of Hong Kong's Judiciary in terms of the use of modern technology in the court process.

On 25 March 2020, the Chief Justice of the Court of Final Appeal, Mr. Geoffrey Ma Tao-li, made a public statement that the Judiciary had been exploring further ways to increase court services during these challenging times without compromising the health and safety of court users, staff and judges. As such, the Judiciary has been actively considering to expand the use of technology in court proceedings including hearing submissions by telephone, video-conferencing or similar means of visual aid.

The Judiciary has taken an incremental approach on the increased adoption of technology in the court process. On 2 April 2020 (during the GAP), the Chief Judge of the High Court, the Honourable Mr. Justice Poon, issued a Guidance Note for Remote Hearings for Civil Business in the High Court (Phase 1: Video-Conferencing Facilities) (the "Guidance Note") which took effect on 3 April 2020. Phase 1 concerns the use of the present court's video-conferencing facilities for remote hearings in civil cases in the Court of First Instance and the Court of Appeal of the High Court.

¹ Jasmine Siu (2020) "Coronavirus: Hong Kong judge in favour of hearings being conducted via telephone during public health crisis", *South China Morning Post*, 28 February, Available at: <https://www.scmp.com/news/hong-kong/law-and-crime/article/3052936/coronavirus-hong-kong-judge-favour-telephonic-hearing>

Whilst the GAP has ended on 3 May 2020, the Judiciary considers that it is still of utmost importance that justice will be duly administered continuously and effectively without compromising the health and safety of the public. Therefore, Phase 2 of the Guidance Note was issued on 8 June 2020 and set out the expanded practice for remote hearings by electronic means (including both the court's existing video-conferencing facilities as well as telephones) in all of the following civil courts: (i) the Court of Appeal of the High Court; (ii) the Court of First Instance of the High Court (Judges and Masters); (iii) the Competition Tribunal; (iv) the District Court (Judges and Masters); and (v) the Family Court. Phase 2 has come into effect since 15 June 2020.

In fact, before the outbreak of COVID-19, the HKSAR Government published the Court Proceedings (Electronic Technology Bill) in the Gazette in December 2019 which aims at facilitating active case management by implementing streamlined and standardized electronic court processes in the court system. It is proposed in the Bill that electronic filing with the court will be generally allowed, and that documents between parties can be served and exchanged electronically subject to mutual agreement. The Bill was introduced to the Legislative Council for first reading on 8 January 2020.

Going forward, it seems that the adoption of modern technology for remote court hearings (particularly for directions hearings where no live witnesses are required) and the electronic filing and service of court documents will increasingly become the trend. This will indeed be a welcoming change as it improves the public's access to justice whilst providing an opportunity to save time and costs.

This article is prepared by the dispute resolution team of Yang Chan & Jamison LLP headed by Valarie Fung. The team advises clients in a wide range of contentious work including debt recovery, commercial and contractual disputes, shareholders' disputes, banking-related disputes, fraud, cybercrime and employment disputes.

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