



Judicial Integrity Network in ASEAN, UNDP

Justice in Times of COVID-19

Measures and Responses, Country Overviews

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Introduction

As the world faces the COVID-19, strong institutions have proved to be instrumental in holding together the economic and social frameworks in countries across the globe. Hence, today more than ever, along with the governments, healthcare and security systems, the judiciaries and courts are an important pillar in the steel-frame of all nations.

By means of the ‘Justice in Times of COVID-19’ Webinar on 28 May 2020, first in the series of Webinars hosted by the *Judicial Integrity Network in ASEAN*, we seek to enhance court excellence in the region by providing a platform for knowledge sharing and discussion on how courts in ASEAN have adapted operations, the challenges and successes thereof, to ensure access to justice, transparency and fair trials for citizens during the pandemic.

With rich contributions from Honourable justices from Indonesia, Malaysia, Philippines and Singapore, this document provides an overview of how court operations in these countries have undergone alterations amidst the outbreak. These insights also highlight some practices that courts have prioritized and scaled-up like e-filing and e-reviewing of case-documents, so that justice continues to be delivered to those in need.

We are very grateful to the legal luminaries for their time and effort in sharing these resources with us.

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Indonesia

Contributed by The Honourable Judge Andriani Nurdin, Deputy President, Jakarta High Court, Indonesia

The status of certain emergencies due to the Corona outbreak (pandemic) has an impact on the implementation of the judicial process. Certainly, the recommendation to "stay at home" cannot be carried out in conducting special criminal hearings because these involve several parties, including Judges, Public Prosecutors, Legal Counsels, defendants, and witnesses. Government of Indonesia has taken various measures during the corona pandemic in Indonesia; however, the judicial process must continue.

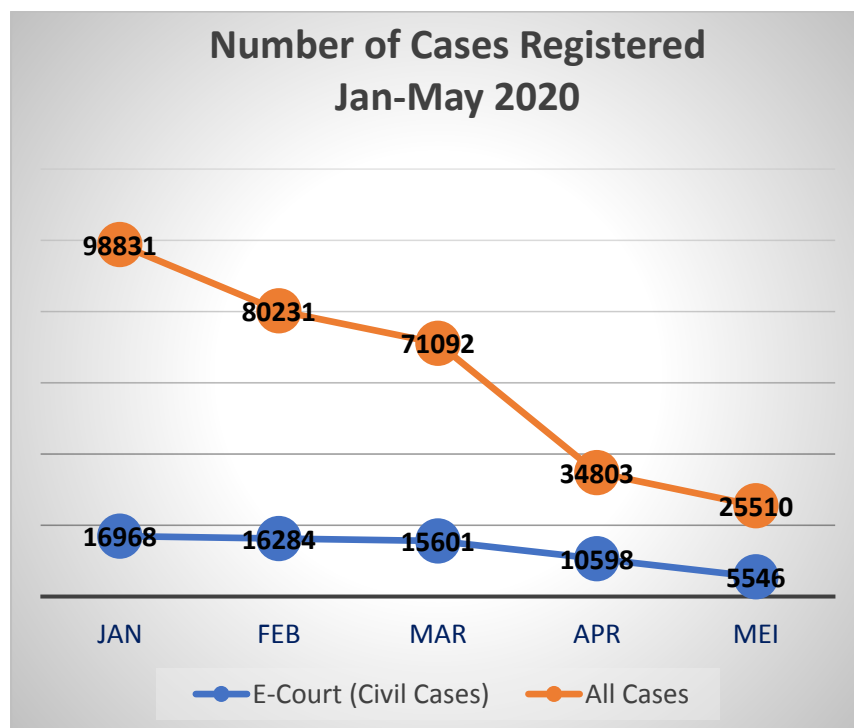
There are at least 3 (three) institutions involved in the judicial process and they have taken fast response and special measures. **First**, The Attorney General's Office issued an Attorney General's Instruction Number 5 Year 2010 on Optimization of the Implementation of Duties, Functions, and Authority in the midst of COVID-19 Responses, one of the points of which is to conduct criminal hearings by using video conferencing/live streaming. **Second**, the Supreme Court of the Republic of Indonesia issued a policy regarding Criminal Case Hearing by teleconference. **Third**, the Ministry of Law and Human Rights issued a regulation on Prevention, Handling and Control of the Spread of COVID-19 in prisons/correctional institutions, one of the points of which is that hearings can be carried out in prisons/correctional institutions, open to the public via internet media (live media streaming) or by conducting teleconference hearings. In addition, the Anti-Corruption Commission (KPK), through its Spokesperson Ali Fikri, stated that KPK will also carry out hearings through internet media (live streaming) or conduct teleconference hearings.

This pandemic situation forced public service institutions such as the Court to make adaption to work and service rules, which are: implementing work-from-home policy and providing online public service. Two years before the pandemic, in 2018 the Supreme Court launched an electronic case administration service for civil family matters known as **e-Court**. This service enables litigants to register cases and pay court fees online, without having to go to court. This service also applies to summons for litigants, so that the court clerk does not come to the residence of the litigant to deliver the summons. Bailiff simply sends the call willingly to the electronic domicile of the litigant. In 2019, the Supreme Court has again upgraded e-Court services so that its online services are expanded not only to administration but also to online trials. This electronic trial service allows trials with an answer, replica, duplicate, conclusion and reading decision agenda that can be done online. Attendance at court is only during evidentiary proceedings.

During the pandemic, the Supreme Court Circular Letter Number 1 Year 2020 on Guidelines for Implementing Duties During the Period of *Corona Virus Disease 2019* (Covid-19) Spread Prevention within the Supreme Court and Lower Judicial Bodies (SEMA 1/2020) states that judges and judicial apparatus can carry out official duties by working in their home/residence (work from home). The SEMA was updated with SEMA Number 2 Year 2020. Working at home is an activity of carrying out official duties including the implementation of trial administration by using e-Court applications, conducting trials using the e-Litigation application, coordination, meetings, and other official duties.

During pandemic, number of Cases registered through E-Court (for civil cases) and normal administration procedure (for other cases) are decreasing. It is estimated that, people are postponing

litigation in court due to the pandemic situation and the arrival of the Ramadhan/fasting month. Data every year shows a tendency to decrease in cases during Ramadan.



Hearing Schedule and Hearing Procedures during Covid-19 Pandemic

Based on the Circular Letter of the Chief of High Court of the Special Capital Region of Jakarta Number: W10-U/01/KP.05.1/3/2020 on Prevention of Covid-19 Spread within the High Court of the Special Capital Region of Jakarta and District Courts in the Jurisdiction of the High Court of the Special Capital Region of Jakarta (SEKP PT DKI W10-U / 2020) to follow up on SEMA Number 1/2020 and the amendments stipulate the following matters:

- During the emergency period, the time limit for the settlement of the case is not binding until the emergency period ends. The hearing schedule shall be adjusted to the schedule of substitute judges and clerks who come to the office. This relates to the schedule of the office shifts and work from home shifts which are made in a registered form in the form of a list of officials who come to the office every day, whether judges, substitute registrars, structural and functional officials and staff.
- Specific for criminal cases where the defendant is detained during this emergency period, the trial can be conducted via teleconference, through the following means:
 1. The indictment is read out by the judge, substitute registrar, public prosecutor and defendant's legal counsel in the courtroom conducting the case hearing. The defendant is in a special detention room equipped with teleconference facilities, so that the reading of the indictment is heard by the defendant and the defendant can determine his/her response after communicating with his/ her legal counsel on whether to submit a plea in bar or not.
 2. Witness examination is carried out by hearing the witnesses at the front of the court which is heard by the defendant who is in a special room in the state prison/correctional institution.
 3. The defendant's examination, reading of the claim, pleading, and reading of the decision are carried out by teleconference.

4. If there is no teleconference facility at the state prison and/or correctional institution, the trial will continue to be carried out normally (not by teleconference).

Furthermore, the provisions that have been explicitly regulated in SEMA 1/2020 are not regulated in the SEKP PT DKI W10-U / 2020. According to Point 2 letter a SEMA No: 1/2020, trials of criminal cases, military crimes and *jinayat* continue to be carried out specifically against the defendant who is being detained and his detention period cannot be extended further. Whereas for defendants whose detention can still be extended, trials of criminal, military and *jinayat* cases are postponed until the end of the period Covid-19 spread prevention within the Supreme Court and lower judicial bodies and the postponement of the trial can be carried out with a single judge. For cases of which the examination's time period is limited by the provisions of the legislation, the judge can postpone the examination even though it exceeds the statute of limitations with an order to the substitute clerk to record the extraordinary circumstances in the hearing minutes.

If there are cases **that are still necessary to be completed**, or if the state prisons/correctional institutions do not provide teleconference facilities, then the hearing will continue to be carried out as usual with due regard to the provisions of SEMA 1/2020 and its amendments, as follows:

1. Determination to postpone the hearing and limit the number of visitors to the hearing are under the authority of the panel of judges.
2. The panel of judges can limit the number of and determine the safe distance between visitors to the hearing (social distancing).
3. The panel of judges may order the detection of body temperature and prohibit physical contact such as shaking hands for parties who will be present or presented at the hearing.
4. The panel of judges and parties in the trial can use protective equipment in the form of masks and medical gloves in accordance with the conditions and situation of the trial.

Regarding civil, religious, and state administrative matters, it is recommended to use the e-litigation application.

Issues/Obstacles

However, the fast responses taken by the Attorney General's Office, the Supreme Court, the Ministry of Law and Human Rights, and KPK regarding the implementation of the judicial process are very precise but it does not mean that there are no problems arising in its implementation.

- Witnesses who are supposed to be summoned for attendance could not attend because they are afraid to come to the court or to the location where they are determined to testify (prison/prosecutor/attorney) for fear of being affected by Corona disease;
- The government's policy on Large-Scale Social Distancing Policy is a challenge for the Legal Counsel of the defendant who resides in another city to attend the hearing since there is no transportation available. This affects the Public Prosecutors and defendants who were detained in Detention House (Rutan). Meanwhile, the Defendant still wishes to be accompanied by the Legal Counsel, so that the trial becomes protracted, even though the Defendant's detention period is almost completed.
- Challenges also occur due to jurisdiction and the size of the organization of the Supreme Court, including to include various needs within each court covering: infrastructure (facilities and technology), human resources (number of judges, clerks, staff), internet connections etc. The Supreme Court of Republic of Indonesia is responsible for managing 910 courts in Indonesia covering 412 general and special court (for criminal, civil, and specific cases), 441 religious courts, 34 state administration court and 23 military court, thus facilities are one of the main issues.

- Challenge in anticipating delay in criminal court due to most of the defendants are in custody and there is a maximum period of detention that must be considered.

Validity of Teleconference Hearings

One of the main essential question in conducting teleconference hearings during the Covid-19 pandemic is whether it is considered as putting aside the principle of legality in terms of criminal law? This is important when we talk about the principle of legality in criminal law because Indonesia has a Continental European legal system (*civil law system*) in which one of the characteristics is the use of written and recorded rules (codified) as its legal source. Hence, the criminal application of the principle of legality is the main basis in the enforcement of criminal law, including criminal prosecution only in the manner determined by the law. In an "exceptional" situation such as the Covid-19 pandemic, the application of the principle of legality certainly becomes a problem. Criminal procedural law namely Law No. 8 Year 1981 on Criminal Procedure Law does not regulate how the criminal justice process in a pandemic situation.

Meanwhile, experts stated that both the Doctrine and jurisprudence gave legitimacy to the use of teleconferences even though the Criminal Procedure Code did not regulate them. Because there are no rules that prohibit or allow hearings by teleconference, the Panel of Judges can rule on the basis of abnormal conditions (*abnormal recht voor abnormal*). For example, such as the current Covid19 pandemic outbreak, the trial system is carried out by means of a teleconference system or E-Device. In this pandemic situation, the Progressive Law Stream believes that the law was created and works with the assumption of normal circumstances and situations. When the Judge faces an abnormal situation, the Judge must make a legal breakthrough. This is in line with the Supreme Court's call to apply the principle of *Solus Populi Suprema Lex Esto* namely The Health (Welfare, Good, Salvation, Felicity) of the People is the Supreme Law.

So far, the criminal procedural law governing teleconference only covers juvenile justice hearings. It concerns Law Number 11 Year 2011 Article 58 Paragraph (3) which states that in the case of a child victim and/or child witness being unable to present to give information before a court hearing, the Judge may order the child victim and/or child witness to be heard. Outside the court hearing through electronic recording conducted by the Community Counsellors (*Pembimbing Kemasyarakatan*) in the local jurisdiction attended by investigators or public prosecutors and advocates or other legal aid providers; or through a direct remote inspection with an audio visual communication tool accompanied by a parent/guardian, Community Counsellors or other companion. However, the challenge in conducting a court hearing for juvenile cases by teleconference is how to ensure a psychological support for the child during the hearing. Can this need be fulfilled through a psychological remote assistance? Even if there is psychological assistance provided by teleconference, it is certainly not as effective as direct assistance. Therefore, in principle, the court hearings for juvenile cases must also be postponed or limited to the maximum extent possible to avoid the risk of transmission to accompanying psychologists and children in conflict with the law.

Recommendations

The Ministry of Law and Human Rights and the Supreme Court must integrate judiciary function in times of emergency into the on-going draft of the new Criminal Procedure Code. This is important since during the teleconference hearing in emergency situations like Covid-19 pandemic, some norms of procedural law will be temporarily violated, for example the regulation on the definition of Witness Information in article 185 paragraph (1) of the Criminal Procedure Code which states that "Witness

testimony as evidence is what the witness stated at the court hearing, furthermore Article 186 of the Criminal Procedure Code states that the Expert statement is what an expert states at the court hearing. The phrase "states at the court hearing" will be a problem or a legal loophole later when interpreting the witness examination process at the prosecutor's office/KPK/elsewhere (not a courtroom), even worse it will become a gap for legal efforts to the Judicial Review because there are no rule which explicitly mention/regulate it. The second recommendation is for the Supreme Court to tackle facilities issue as one of the priority issues of the Court Modernization, including engaging with other institutions such as AGO and Ministry of Law and Human Rights.

Malaysia

Contributed by The Right Honourable Tan Sri Azahar Mohamed, Chief Judge of The High Court in Malaya, Malaysia

1. The spread of COVID-19 - “viral” both in the literal and metaphorical sense - necessitates an immediate sea-change in the way institutions function. The change faced by the Judiciary is not merely an ongoing technical one of digitising the court processes. It involves a more fundamental change in the concept or perception of what is a court.
2. Professor Richard Susskind (*Online Courts and the Future of Justice* (Oxford: OUP, 2020)) asks the question, is the court a place or a service? This suggests a fundamental distinction between two ways of thinking about courts:
 - (i) Court as a place
 - The traditional idea of an “open court” involves the judge, counsel and all parties being physically present in an open public courtroom at the same time.
 - The courtroom and its procedures have a symbolic and performative aspect. The process makes justice visible; it exemplifies legality and fairness.
 - Justice is seen to be done. Litigants feel that they have “had their day in court”.
 - (ii) Court as a service
 - Susskind suggests that litigants do not want courts, judges, lawyers, rules of procedure etc. What they want is a solution to their problem.
 - Ultimately, the function of the court is to provide a service: to solve problems by resolving disputes fairly and with finality.
 - The concept of the court as a service rather than a place frees us from more traditional constraints or shackles. There is no need for physical presence, or for parties to be involved in the process at the same time. Ultimately, what is important is for the service to be conducted in a manner that is fair and efficient.
3. This change towards a service-oriented conception is not specific to the courts.
 - (i) The court as a service rather than a place may strike the current batch of judges, “digital immigrants” (person born or brought up before the widespread use of technology), as a novel thing.
 - (ii) But the concept is not new to the generation of “digital natives” (person born or brought up during the age of digital technology, and so familiar with computers from an early age).
 - (iii) The perception of the court as a service would be in line with the way digital natives perceive food, communication, entertainment: no longer tied to a physical place (restaurant, post office, cinema), but a service available and accessible to everyone through the internet.
4. In common law countries, the courts have an inherent power to control their own procedures. Procedure is not an end in itself. There is no limit to the forms of procedure a court can adopt in the administration of justice. The only requirement is that the new procedure preserves the fundamental features of the rule of law.
5. While the content of the rule of law is hotly debated, for the purposes of this discussion, these features are most relevant and relatively non-controversial:
 - (i) Open justice;
 - (ii) Access to justice; and
 - (iii) Natural justice and fairness.
6. The shift towards using technology in court processes has been gradual, incorporating new innovations incrementally according to the times. The pandemic did not start this change; but created an urgent and immediate necessity for a more radical change.

7. A common objection against online hearings is the perceived inability to provide a fair trial. But:
- (i) One of the elements of a fair trial is that the dispute must be resolved without inordinate delay;
 - (ii) Justice delayed is justice denied. The pandemic will not disappear in a day or a week, we may never return to the old normal in the foreseeable future;
 - (iii) To insist on traditional procedures in the name of a fair trial may instead cause cases to be postponed indefinitely, scuppering the very essence of a fair trial; and
 - (iv) The resistance to embrace this big shift is also due to the fact that what a fair trial is perceived to be almost often being connoted with the traditional and sense of grandeur of advocating in courtrooms as opposed to advocating before an electronic screen where technology and internet stability somewhat “dictate” the “success” of the online hearing.
8. Prior to the emergence of COVID-19, Malaysia has implemented two initiatives to facilitate court processes using technology:
- (i) e-Filing system**
- Introduced in 2011 in certain courts at the city centre (Kuala Lumpur, Shah Alam, Putrajaya, Johore Bahru, Penang, Ipoh).
 - Parties file court documents electronically to the court’s Case Management System.
 - Used in addition to the filing of physical documents in the court registry.
 - The e-Court system was upgraded in 2016 and is now used at 271 courts which include all the Superior Courts and Subordinate Courts located at 20 major towns where the courts are busiest and with the heaviest caseloads. This system will be expanded to the remaining 121 Subordinates courts which include circuit courts at 82 locations in Peninsular Malaysia in 2021.
 - For Sabah and Sarawak, all High Courts and Subordinates Courts have been using the Integrated Court System since 2010. This system will be upgraded in phases, starting by end of this year.
- (ii) e-Review system**
- Introduced in 2018 at appellate courts, and extended in 2019 to High Courts and Subordinate courts.
 - Akin to an instant messaging platform, where court registrars and parties’ legal representatives can log in to the system for case management hearings.
 - Does not require all parties to participate at the same time.
9. The Malaysian government declared a Movement Control Order (“MCO”) starting from 18.3.2020 for an initial period of two weeks. Under the MCO, all non-essential government and private premises must remain closed. But fortunately for us, the two systems - e-filing and e-Review - have been up and running by that time, so our operations did not grind to a complete halt.
10. Nevertheless, it is important to state that it is unrealistic and impossible for the Courts to operate in the usual way during the COVID-19 pandemic. Doing so will run the risk of jeopardising not only the health and safety of judges and lawyers, but also that of litigants, court staff, including officers, clerks and other support staff.
11. Hence, our immediate step was to postpone all trials and hearings, and make use of the existing systems. All documents were to be filed through the e-Filing system. Case management hearings were to be conducted using the e-Review system. Urgent matters were to be handled by appointed officers, to seek instructions from the Chief Justice on a case to case basis (Press Statement, 15.3.2020).
12. Next, we expanded the use of the existing systems for hearing civil applications online. Three online routes were available to parties who apply:
- (i) Exchange of emails;
 - (ii) e-Review system; or
 - (iii) Video conferencing.

13. As regards the use of technology for online hearing, it is pertinent to stress that the Malaysian Judiciary is ready to conduct online hearing for civil cases with the consent of parties. In terms of ICT infrastructure, the Court is readily equipped with the latest and secure online hearing tools.
14. During the MCO, the online hearings were confined to applications filed together with a certificate of urgency. The conduct of online hearings was made subject to the parties' agreement and the court's discretion (Press Statement, 26.3.2020).
15. Several civil appeal hearings at the Federal Court and the Court of Appeal were conducted via video conferencing (Skype for Business). Case managements for criminal cases were also conducted online via Microsoft Team.
16. As the MCO continued to be extended, the types of matters for which online hearings were permitted were also expanded. These include uncontested or brief interlocutory applications, hearing of interlocutory appeals, and appeals to judges from decisions by registrars (Press Statement, 24.4.2020).
17. As the government begins to gradually ease the MCO, we have created a methodology by which our courts reopen gradually in three phases.
18. We are balancing open justice with public health concerns. It is a very delicate balancing act, i.e remaining vigilant and retaining our efficacy at the same time. Our priority was to get the judges, our staff and court users back to court safely. We have to balance between the need to resume open court justice and the safety and wellbeing of our judges and other users of the Court. At this moment we are not rushing back to trials in open courts. It will be a slow and cautious reopening.
19. With this in mind, we have drafted protocols to conditional opening of courts for restoring operation. This protocol is drafted with a view to achieving an acceptable level of physical distancing and to minimize too many individuals in the Court Complex and in individual courtrooms.
20. The 1st phase of our reopening is with effect from 4.05.2020 where a number of court services began to resume operations. Among these services are set to resume Registry of the Courts, One-stop Counter, and Commissioner for Oaths Counter, Power of Attorney Counter, and e-Filing Service Bureau Counter. Our immediate aim is to maintain a service to the public.
21. The 2nd phase is from 13.05.2020 until 31.07.2020. For this phase, we set a timetable for a phased reopening of the Courts across the country in several stages. Our decision to reopen the Courts did not mean we would operate at full capacity immediately. Initially only a limited number of Courts were allowed to operate on a rotational basis. Judges were required to start their open court hearing at staggered times instead of everyone congregating at a particular time. For judges who were not sitting, they and their supporting staff were required to work from home and continue to conduct remote hearings, where possible.
22. The 3rd phase is less certain. But depending on how the Covid-19 situation then develops, in the 3rd phase, we hope that all the courts will be allowed to reopen with effect from 1.08.2020 subject to strict health management practices, a condition expected to remain for a long period of time until an effective vaccine is found.
23. The Courts we left before the MCO were somewhat different when we returned on 13.05. 2020. The reopening of the courts on that day saw a returning to a new normal. In a reminder that getting back to normality could not be easy, court users had to line up via a single-entry point before entering the court building. They were required to fill up a form with their personal details, reasons for entering the building and which courtroom they were heading to, before they were allowed in. For criminal cases, only one family member would be allowed to enter. Everyone had their hands sprayed with hand sanitizer and their body temperature checked at the entrance. With the social distancing rule being observed in the courtrooms, sitting arrangements had been reconfigured, lawyers were not seated right next to each other, instead

there was one seat space between them. In the courtrooms, everyone was encouraged to wear protective facemasks. These are a few of the new normal that all have to grapple with.

24. On the bright side, the reopening of the courts amid heightened precautionary measures has been smooth so far. Early indications indicate that the court users are showing high compliance with the strict health standard operating protocols.
25. For ease of reference, the complete list of all SOPs, press release and instructions issued by the Chief Registrar's Office during the MCO is attached in **Appendix A**, and The Malaysian Judiciary's Standard Operating Procedure (SOP) During the COVID-19 Pandemic in **Appendix B**.
26. The Malaysian experience of online hearings has thus far been confined to relatively straightforward types of cases, with the agreement of the parties. More types of cases can be expected to migrate online.
27. Online hearings may not be suitable for every type of case. Some cases may be inherently unsuitable due to:
 - (i) The importance of witness demeanour and non-verbal cues (e.g. substantial civil or criminal trial);
 - (ii) The intense testing of cases by oral argument, involving active interplay between counsel and many judges (e.g. complex appeals in the appellate courts).
28. The popular online meeting platform Zoom has faced privacy flaws:
 - (i) "zoom bombing" (infiltration of meeting by hackers);
 - (ii) security issues (bug allows hackers to take over a zoom user's computer);
 - (iii) lack of end-to-end encryption (communication may be read by non-users); and
 - (iv) sale of user data for advertising purposes.
29. These concerns have only been exposed after its use became widespread. In the case of a court proceeding, which may involve sensitive materials or high-profile users, the cost of such flaws may be high. To address these concerns, the Court's Information Technology Division (IT Division) has embarked on the upgrading and enhancement of the Department's Enterprise Messaging and Communication system inclusive of video conferencing system since early of January this year.
30. The updated Court's video conferencing system is Skype for Business 2015 version (SfB), hosted by Courts at IT Division. The Court's SfB service is a more secure unified communications system, with multiple security-related improvements designed against all security threats.
31. The Malaysian Judiciary plans to implement the 3rd phase of the e-Court system to enhance system applications and expand the e-Court system nationwide to avoid gaps and inconsistencies of the court's technology capabilities across the judicial branch.
32. The Internet penetration rate in Malaysia is about 81% in year 2020 and will see the growth of Internet usage of around 2% to 3% a year, mostly in urban areas. In this time and age, the Internet usage by those from the rural areas are increasing in number, even though lower compared to those from the urban areas. The rural-urban divide between the two areas have been getting closer. Now, both rural and urban communities can exist together via Internet-using applications.
33. In the prevailing circumstances, it is evident that the Courts have been operating during the MCO and the specific measures taken by the Malaysian Judiciary indicate that it remains ever committed to modern technological advancement. The measures taken will require judges, officers and practitioners some time to adjust, but are necessary to ensure that continued access to justice is not brought to a standstill. It is hoped that all stakeholders will continue to lend their unrelenting support and continue to cooperate and remain steadfast in adopting the available technologies.

APPENDIX A

CHRONOLOGY OF MEASURES TAKEN DURING MCO (as at 13.5.2020)

Date	Measures taken
16.3.2020	Government announced Movement Control Order (“MCO”) from 18.3.2020 to 31.3.2020
17.3.2020	<p><u>Press statement: Immediate measures upon implementation of MCO</u></p> <ul style="list-style-type: none"> ● Postponement of matters fixed between 18-31.3.2020 to be postponed <ul style="list-style-type: none"> ○ All civil and criminal hearings/trials ○ Criminal case managements in Federal Court and Court of Appeal ● Filing of documents and new cases: <ul style="list-style-type: none"> ○ Proceed as usual for courts equipped with the e-Court system ○ To begin on 1.4.2020 for courts not equipped with e-Court system ○ Urgent Sessions Court matters can be filed in nearest court within same state with e-Court system ● Applications with certificate of urgency <ul style="list-style-type: none"> ○ To be handled by appropriate deputy registrar (“DR”) in relevant court ○ To seek instructions from Chief Justice, President of Court of Appeal, Judge/ Judicial Commissioner, or state court director as the case may be ● Case management <ul style="list-style-type: none"> ○ e-Review: to proceed as usual ○ Manual: to be postponed ● Criminal cases in subordinate courts <ul style="list-style-type: none"> ○ Remand and bail applications to proceed as usual ○ For new cases, Investigating Officer must give prior notice to Sessions Judge/ Magistrate on duty ○ State court directors to prepare duty roster for officers
25.3.2020	Government announced extension of MCO to 14.4.2020
26.3.2020	<u>Press statement: Online hearing for civil cases</u>

	<ul style="list-style-type: none"> ● Civil cases can be heard online via: <ul style="list-style-type: none"> ○ e-Review system ○ Exchange of emails ○ Video conference ● Conditions for online hearing <ul style="list-style-type: none"> ○ High Court/ subordinate courts in Peninsular Malaysia: all ex parte or inter partes applications with certificate of urgency ○ High Court/ Subordinate Courts in East Malaysia: all proceedings where dates have been fixed for e-Review/ video conference ○ Parties to apply at least 3 days before hearing date
2.4.2020	<p><u>Press statement: Remand applications</u></p> <ul style="list-style-type: none"> ● All remand applications to be heard in police stations ● Police must: <ul style="list-style-type: none"> ○ Give prior notice to court ○ Ensure safety of court officers and staff ○ Respect suspects' right to legal representation ○ Comply with Ministry of Health guidelines on dealing with covid-19
10.4.2020	Government announced extension of MCO to 28.4.2020
17.4.2020	<p><u>Press statement: Chief Justice issues response to article in New Straits Times</u></p> <ul style="list-style-type: none"> ● Courts continue to operate with more limited scope under MCO ● Online hearings <ul style="list-style-type: none"> ○ Online hearings, remote trials, and increased use of technology are the only feasible and logical options ○ Conducted for civil cases with consent of parties ○ Judiciary has taken steps to amend laws and rules of court ○ Pending amendments, judiciary has drafted practice direction on conduct of court proceedings via online hearing for stakeholders' feedback
22.4.2020	<p><u>Press statement: Announcement on first live stream of online hearing</u></p> <ul style="list-style-type: none"> ● Date, time, and link for public to access live stream of Court of Appeal online hearing

23.4.2020	First live stream of Court of Appeal online hearing Government announced extension of MCO to 12.5.2020
24.4.2020	<p><u>Press statement: Expansion of online hearing</u></p> <ul style="list-style-type: none"> ● For Federal Court and Court of Appeal cases, parties can apply for case to be heard online ● For High Court cases, list proceedings which can be heard online expanded to include <ul style="list-style-type: none"> ○ On application of parties: <ul style="list-style-type: none"> ■ Interlocutory appeal hearings ■ Uncontested interlocutory applications ■ Contested but brief interlocutory applications ■ Appeals to judge against decision of DR/SAR ○ Delivery of judgments ○ All mediations
1.5.2020	Government announced conditional MCO from 4.5.2020 onwards
2.5.2020	<p><u>Press statement: Continued closure of court premises</u></p> <ul style="list-style-type: none"> ● Court premises will continue to be closed and will not operate until further instruction from government
3.5.2020	<p><u>Press statement: Partial reopening of court services</u></p> <ul style="list-style-type: none"> ● List of court services to reopen from 4.5.2020: <ul style="list-style-type: none"> ○ Registry offices ○ Local counters (<i>kaunter setempat</i>) ○ Commissioner for Oaths counters ○ Power of Attorney counters ○ e-Filing services bureau counters ○ Administration and finance divisions ● Cases fixed for hearing in open court will begin to be heard in stages from 13.5.2020 ● Guidelines to be issued in respect of COVID-19 prevention standards during conditional MCO and after MCO

10.5.2020	Government announced extension of conditional MCO to 9.6.2020
11.5.2020	<p><u>Standard Operating Procedure during COVID-19 pandemic</u></p> <ul style="list-style-type: none"> ● Social distancing <ul style="list-style-type: none"> ○ Rotational working days for staff ○ Fixed team of essential staff to be on duty in court premises ● Remote hearings <ul style="list-style-type: none"> ○ Court to conduct online hearings as far as possible ○ Parties encouraged to apply, subject to judge’s discretion in the interest of justice ○ Courts may pilot trial proceedings by video/teleconferencing on their own motion ● Crowd control measures <ul style="list-style-type: none"> ○ Restricted points of entry with health checks ○ Reduced number of cases fixed for hearing ○ Fixing of hearings on staggered basis ○ Dispensation with attendance of parties to reduce number of people in court ● General health and safety guidelines <ul style="list-style-type: none"> ○ Body temperatures to be taken at point of entry ○ Visitors to complete form for contact tracing purposes ○ Visitors to wear face mask in court premises

APPENDIX B (Next page)



**OFFICE OF THE CHIEF REGISTRAR
FEDERAL COURT OF MALAYSIA
PALACE OF JUSTICE
PUTRAJAYA**

PRESS RELEASE

**THE JUDICIARY'S STANDARD OPERATING PROCEDURES (SOP)
DURING THE COVID-19 PANDEMIC**

The Government of Malaysia recently lifted the Movement Control Order ('MCO') and replaced it with the Conditional Movement Control Order ('CMCO') with effect from 4 May 2020 to 9 June 2020. Given the Covid-19 Pandemic, these and other restrictive measures are necessary to ensure the safety of the public. Our usual methods of providing legal services and managing our professional relationships have to adapt to entirely new norms and expectations. This does not mean that access to justice must come to a standstill. While the Judiciary remains committed to its constitutional obligation to ensure continuous access to justice to all members of the public, it must also ensure public health and safety.

To this effect, on 3 May 2020, the Judiciary announced that all Courts will resume operations on 13 May 2020 subject to strict safety measures. The Office of the Chief Registrar of the Federal Court of Malaysia issued and circulated the following documents (both dated 3 May 2020):

- (i) Case Conduct Guidelines during the CMCO and post-MCO; and
- (ii) Prevention of Covid-19 Standard Operating Procedures during the CMCO and post-MCO.

This media release is a non-exhaustive summary of the said safety measures for the benefit of the public's information to ensure that operations resume smoothly.

A. General Measures – Social Distancing and A New Order of Business

1. The new norm entails observing social distancing in every aspect of life be it in over-the-counter transactions, queuing up to enter the elevator or to purchase food at the Court canteens. To promote social distancing, all Courts have been marked with red borders which the public must comply with in view of the need to maintain social distancing.

2. Social distancing will also bring about a new order of business which entails institutional structural adjustments. To this end, the Government has put in place rotational working days for Government servants to ensure a continuous delivery of services while keeping safe.

3. Changes have also been made to the daily work culture in line with the social distancing rule. A fixed team of essential staff will be on duty at Court premises and only within fixed and limited durations. Duty rosters have been drawn up so that all Court staff will work rotationally, that is, sometimes from home and sometimes at their designated work-stations.

4. The following services will be fully operational subject to the new business order:

- (i) Registration Counters;
- (ii) One-Stop Centres;
- (iii) Commissioners for Oaths Counters;
- (iv) Powers of Attorney Counters;
- (v) E-Filing Services Bureau Counters; and
- (vi) Finance and Management Divisions, at all Cost and Responsibility Centres.

B. Remote Hearings

5. As far as possible, Courts may conduct online hearings using electronic means of communication to dispense with the need for movement and physical attendance

before the Court. Interlocutory applications, appeals and mediations may be heard via electronic means. The business of the Courts will be digitalised. Systematic applications such as e-Review will be fully utilised for case management and pre-trial conferences. Inspection and signing of documents will be done electronically. Online applications will be the new norm with minimal physical contact.

6. Parties are encouraged to apply to the Courts for online hearings in suitable cases to minimise physical interaction. It is at the discretion of the individual Judge or Registrar hearing the case to determine if the hearing should proceed remotely in the interest of justice.

7. Courts in Malaysia may also through their own motion pilot trial proceedings through video and teleconferencing for select matters, where appropriate, in the interest of justice after having regard to public health and safety.

C. Crowd Management Measures

i. Restricted Points of Entry and Crowd Control

8. Special arrangements are in place to regulate the entry of Court Users into and out of Court premises. There are fixed points of entry where all persons seeking to enter Court premises must queue up and undergo health checks before entering the said Court premises.

9. The capacity of locations in all areas of the Court such as courtrooms, lobbies, and registry areas will be limited to contain the flow of people entering within reasonable limits and having regard to the need for social distancing.

10. To contain the spread of Covid-19, we have implemented measures to minimise the number of visitors to the Courts. We are temporarily unavailable for social visits. All guided tours, internships and industrial trainings have also been suspended until further notice.

ii. Reduction in number of Cases Fixed for Hearing

11. If cases are to be heard in a physical courtroom, the number of cases in a given courtroom in any one session will be reduced. This is to avoid a large gathering of lawyers, litigants and the public. Those in the public gallery will have to comply with seating arrangements suitable to social distancing.

12. As mentioned earlier, Judges and Judicial Officers will operate on a shifts-basis. Locations that only have one courtroom will not adopt the shifts system but to compensate, the number of cases in those Courts will be reduced.

13. All in-Chambers matters will be conducted in Open Court.

14. Further, the following points should be noted on case management and trials before the Subordinate Courts:

(i) to prevent overcrowding in Court buildings, Sessions Court Judges and Magistrates are encouraged to reduce their cases for the day by 50% and trials need not be rushed;

(ii) priority will be given to part-heard cases and top-priority cases such as those involving civil servants, ageing cases and cases which involve persons in remand; and

(iii) all trials that have not yet begun are postponed during the period between 13 May 2020 and 31 July 2020.

iii. Staggered Hearings

15. The fixing of case hearings will be done on a staggered basis. This means that only counsel and parties related to the case will be allowed into the courtroom.

This measure serves to reduce the number of people in a courtroom at any given time.

16. Additional holding spaces or waiting areas in other courtrooms or at Court lobbies will be provided so that fewer people will need to gather in a courtroom. The Courts will rely on the Queue Management System (QMS) or any other suitable measures to call parties in for the next case.

iv. Alternative Hearing Protocols

17. The Court or parties may adopt any other appropriate measures to reduce the number of people in a hearing or trial. Where the accused person is represented by counsel, his/her attendance at such hearings may be dispensed with unless otherwise directed by the Court.

18. Mediation in cases where the parties are represented by lawyers can be conducted via video conferencing.

19. Applications for adjournment will be managed online without the need for parties to attend court. In cases where the Court does not require the attendance of parties, directions for the conduct of the case will be given through electronic means such as e-Review or email.

20. Additionally, in civil and criminal cases, the Court may choose to expedite trials while reducing the number of people involved by relying on witness statements.

D. Enhanced Cleanliness and Hygiene Control

21. Preventive measures will be taken to enhance hygiene in Court buildings. We endeavour to clean and disinfect public areas (such as building entrances, lobbies, lifts, courtrooms and registries) and often touched surfaces (such as door handles and handrails) at least once every three hours.

E. Emphasis on the Well-being of Court Staff and the Public

22. All measures taken are to ensure the well-being of Court Users and Court staff within Court premises consonant with best public health practices. These include:

- a. Court Staff are required to have their body temperature taken every day at the point of entry before they report for work;
- b. Court Users are required to have their body temperature taken at the point of entry to ensure normal body temperature and only those with a body temperature of 38 degrees Celsius and below will be allowed to enter.
- c. Court Users are required to complete a form for social tracing purposes before they enter the Court building;
- d. Court Users may not attend Court proceedings or conduct business at Court registry/offices if they are under quarantine or medical surveillance by the Government;
- e. Court Users should not attend the Court premises if he/she is generally unwell or has a fever and/or flu-like symptoms;
- f. Court Users are to wear a face mask when entering Court premises, in particular when interacting with other people within the premises (the Court will not provide face masks);
- g. Court Users are to disinfect their hands after entering and/or touching any handles or pressing any buttons etc., as far as practicable;
- h. The well-being of Court staff is to be monitored constantly. If there are any reports of Covid-19 infections, the Head of Department must inform the Health Department for further action. Any further directives from the Health authorities must be adhered to.

23. The above measures are issued in furtherance of the Judiciary's commitment to the efficient delivery of justice. The Judiciary stresses that public health and safety, including that of Court Users, Judges, Judicial Officers and Court staff continues to be the paramount consideration. The Malaysian Judiciary will keep vigilant and continue to review its SOP. The Judiciary will also continue to engage with stakeholders and keep Court Users informed of further developments.

24. To ensure everyone's health and safety we seek everyone's cooperation to read, understand, and comply with all safety protocols issued by the Government of Malaysia and the Judiciary as well as to keep themselves updated with all health and safety protocols issued from time to time.

25. We face a myriad of challenges and we want all of you to know that we stand in solidarity with you to face this unprecedented situation together.

Thank you

Office of the Chief Registrar
Federal Court of Malaysia
Palace of Justice
Putrajaya

Dated: 11 May 2020

All inquiries may be directed to the following email address:
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The Philippines

Contributed by The Honourable Jose Midas P. Marquez, Court Administrator of the Supreme Court of the Philippines

The Philippines is an **archipelago**. It has 7,641 islands, and in those islands are some **2,630** trial courts, **460** of which are special courts which hear family cases. Hence, it is not uncommon for litigants and lawyers to travel by land, sea, and air just to reach the courts. In fact, to many, this has become a challenge.

The country is likewise challenged by a growing jail population, especially with the intensified campaign of the present administration against illegal drugs. The **New York Times**, in an article last year,¹ described Dorm 5 of the Manila City Jail where “the air was thick and putrid (pyootrid) with the sweat of **518 men** crowded into a space meant for **170.**” Sadly, this is replicated in many of the jails across the country.

Combating the challenge of jail congestion, our Supreme Court allowed, among others, **the pilot-testing of virtual hearings**, and approved, in June 2019, the **Guidelines on the Use of Videoconferencing Technology for the Remote Appearance and Testimony of Certain Persons Deprived of Liberty, or PDLs, in Jails and National Penitentiaries**² in all **twenty-two (22) courts** in Davao City,³ one of the most progressive cities down south in Mindanao.

Our Supreme Court, steeped in tradition and held back by precedent, tiptoed in allowing the remote testimonies of PDLs through videoconferencing, as it grappled with serious constitutional issues, among which is the constitutional mandate that the accused shall enjoy the right “to meet the witnesses **face to face**”⁴ and our Rules of Court which entitles the accused in **all criminal prosecutions** to be “present and defend **in person** by counsel at every stage of the proceedings.”⁵ The Court reasoned that “[t]he remote appearance and testimony of an accused in a videoconference proceeding shall closely resemble his or her otherwise in-person courtroom testimony and experience.”⁶ The Court adopted international caselaw which declared that **face-to-face confrontation** at trial is a “preference that must occasionally give way to considerations of public policy and necessities of the case,”⁷ and where the “reliability of the testimony is otherwise assured.”⁸

Consequently, the virtual hearings were only being **pilot-tested**, and the remote testimony was only allowed **from the jail facilities to the courts**, and **limited only to PDLs** who are considered high-risk, seriously ill, and those who voluntarily consent to appear *via* videoconferencing.

The Court was also **very strict** with the technical and operational specifications in an attempt to “**closely resemble**” the “**in-person courtroom testimony and experience.**” It provided the **minimum requirements** for the videoconferencing equipment⁹ –

“Technology for court and jail facilities must be of such quality as to allow participants **to observe** the demeanor and non-verbal communications of other participants, **clearly see and hear** what is taking place in the courtroom to the same extent as if they were present in the courtroom, and **converse** with each other simultaneously. The PDL and his or her counsel appearing remotely from the jail should be able **to see clearly** the facial expressions of the judge, the witnesses, and all other persons who are testifying or speaking, and vice-versa.

1 Posted 7 January 2019.

2 A.M. No. 19-05-05-SC.

3 Seven (7) first-level courts, and fifteen (15) second-level courts.

4 CONSTITUTION, Art. III, Sec. 14(2).

5 RULES OF COURT, Rule 115, Sec. 1, par. (c).

6 Paragraph 3, I. General Provisions, A.M. No. 19-05—05-SC, 25 June 2019, citing *Ariz. R. Crim.* P. 1. 5.

7 *Virtual Testimony --- A Criminal Defender’s Guide to Arguing against its Constitutionality*, Santos, Gerissa, *Federal Criminal Defense Journal* (2011), citing *Maryland v. Craig*, 497 U.S. 836 (1990).

8 *Id.*

9 Paragraph 1, V. Technical and Operational Standards, A.M. No. 19-05—05-SC, 25 June 2019.

Video cameras, microphones, and high definition monitors that are sufficient in specifications, size, number, and placement, **shall be used** for this purpose.”

As such, among others, the “[v]ideo cameras must be placed in such a way as **to cover** the same image the PDL at the remote location would see, if he or she were physically present in the courtroom;”¹⁰ microphones “shall be **connected** to an audio processing device that provides echo-cancellation;”¹¹ “[a]udio speakers should be **directly connected** to the audio system to reduce latency and improve sound quality;”¹² and “[v]ideo monitors or screens must be **in high definition** and **large enough** for everyone to clearly see the video image, which should be as close to life size as possible.”¹³

It took **three (3) months** from the time the Guidelines were approved in June 2019 to actually start the pilot-testing in September of the same year. The courts and the jails had to be **set up** and prepared accordingly, and a seminar-training, presided by no less than our Chief Justice Diosdado M. Peralta, **was conducted** for the judges, prosecutors, public and private defenders, and jail wardens.

Serendipitously, the virtual hearings were limited to twenty-two (22) courts only, **until Covid-19 swarmed some five (5) months later.**

On March 16, 2020, Chief Justice Peralta, in response to the “exponential spread of Covid-19 cases in the country,” issued Administrative Circular 31-2020, and ordered that “all courts nationwide (all 2,630 of them) shall drastically reduce operations” and maintain only the necessary skeleton-staff to immediately act on urgent matters brought before them. He however emphasized that the Constitution and the laws were not suspended, and that the “courts are not shutting down in times of emergencies.”¹⁴

Four (4) days later, following the appeal of the National Government for the general public to stay home and “due to the unabated rise of Covid-19 infection,” all the courts across the country were “physically closed to all court users and may be reached only through their respective hotlines and email addresses.”¹⁵ Justices- and Judges-on-duty, together with their necessary skeleton force, were assigned in all areas in the country, and mandated only to immediately act and resolve urgent matters filed before the courts electronically.

The call of no less than the Secretary General of the United Nations Antonio Manuel Guterres for measures to address a “horrifying global surge in domestic violence directed against women and girls, linked to lockdowns imposed by governments responding to the Covid-19 pandemic”¹⁶ was likewise addressed in our jurisdiction with the assignment of Family Court Judges-on-duty in stations, cities, and provinces, **at any given working day**, with the directive that all matters concerning family cases, including domestic and gender-based violence, be referred to them.¹⁷ Consequently, prayers for specific remedies for the protection of women and children, such as temporary and permanent protection orders, were considered urgent and among those that any of our **460 courts hearing family cases** may immediately act upon and issue.

To make our courts, which could not physically open because of the virus, be more efficient, effective, and responsive to the needs of the court users during this public health emergency period, the Supreme Court, taking off from the **Davao experience**, immediately provided some 1,000 trial courts in key cities nationwide with official Philippine Judiciary 365 accounts each, which has an email application for their respective official email accounts used for online filing and transmission of documents, and a videoconference application for hosting the videoconferencing hearings.¹⁸ These 1,000 trial courts were initially authorized to pilot-test the conduct of videoconferencing hearings only on urgent matters in

10 Paragraph 1. a., id.

11 Paragraph 1. c., id.

12 Paragraph 1. d., id.

13 Paragraph 1. e., id.

14 Administrative Circular No. 31-2020, dated 16 March 2020.

15 A.C. 32-2020, dated 20 March 2020.

16 <https://news.un.org/en/story/2020/04/1061052>.

17 OCA Circular No. 90-2020, dated 5 April 2020.

18 A.C. 37-2020, dated 27 April 2020.

criminal cases involving PDLs. These hearings however covered all stages of newly-filed and pending criminal cases, including but not limited to arraignment, pre-trial, bail hearings, trial proper, and promulgation of judgment.¹⁹

This was actually already an improvement of **Davao** which only allowed two (2) locations, the court and the jail. Today, there can be as many locations as there are parties. The judge can host the hearing and preside from his or her residence. The public prosecutor can also be appearing remotely from his or her residence. And so is the public defender, while the PDL is in jail. Also, this is not just confined to certain PDLs, but to all PDLs.

Some two (2) weeks later, with many of our cities were still on lockdown, the Court even expanded the coverage of videoconference hearings to “all matters pending before (the courts), in both criminal and civil cases, whether newly-filed or pending, and regardless of the stage of trial.”²⁰

Thereafter, some **350 more courts** were authorized to conduct videoconferencing hearings bringing the total number to 1,350 courts.²¹ We are happy to note that in only three (3) weeks, and while parts of the country were still on lockdown, **3,201 videoconferencing hearings** have already been conducted by our judges, while some **22,522 PDLs have been released** since the lockdown, either through bail or recognizance, or after serving the minimum imposable penalty for the crime they were charged. Some minors or children in conflict with the law, who were released to their parents during this crisis.²² This welcome development not merely freed up space in our jail facilities, but more importantly, eliminated the risk of further spread of COVID-19 infection to the inmates inside the jail facilities.

In an instant, we saw litigation transformed by technology, with the least possible means and infrastructure. Through electronic transmission of pleadings and virtual hearings, PDLs were released from detention – some provisionally, some acquitted for good. Violence against women and children cases were heard. Search and arrest warrants were issued. Applications for temporary restraining orders and injunctions were addressed. Just last Tuesday, a Regional Trial Court in Pampanga sentenced an American to life imprisonment online for qualified human trafficking. For all these, we commend our judges and court personnel who can also be considered as frontliners during this public health emergency.

Behind the scenes of course were the challenges. The minor ones, like weak internet signal, parties’ lack of equipment, users’ lack of familiarity with the system and platform, and a few gaps in the rules, were easily addressed. There are at least two (2) significant challenges however with the present platform and equipment being used. The first is the limited view of the judge, the accused, the witnesses and the all the parties by all the participants in the hearing. Hence, it is not easy for the judge and the accused to determine whether or not a witness is being coached. The second is opening the virtual hearing to the public. Both challenges however are not insurmountable and can be addressed in due time.

Instead, what should be emphasized at this point, before I end, is the silver lining amongst all these during this pandemic, and that is – the policy makers, and they are our Supreme Court Justices, and the implementors, and they are the judges and court users, have been made aware through first-hand experience what technology can accomplish. This should reduce, if not totally eliminate, the biases that could stall exponential technological developments to enhance and expedite the administration and dispensing of justice. And with more people having internet access than access to the courts, without these biases, virtual access to justice can be a reality in our jurisdiction sooner than later in this digital age.

All told, the new normal can be justice is accessible to everyone at all times. We just have to embrace enabling technologies that are reliable, malware-free and Covid-free.

19 Administrative Circular No. 37-2020, par. 2.

20 A.C. 39-2020, dated 14 May 2020.

21 OCA Circular 96-2020, dated 18 May 2020.

22 Records from the Court Management Office, OCA, cited by Joel R. San Juan, 18,355 PDLs freed from jails to curb coronavirus spread, 18 May 2020, Business Mirror, available at <https://businessmirror.com.ph/2020/05/18/18355-pdls-freed-from-jails-to-curb-coronavirus-spread/>.

Singapore

Contributed by The Honourable Sundaresh Menon, Chief Justice of Singapore

Background

1. COVID-19 has disrupted the lives of individuals, families and businesses in Singapore and around the world in varied and fundamental ways. Following the first outbreak in Singapore in late January 2020, a series of increasingly tighter measures to contain the spread of the virus was implemented. On 3 April 2020, the Singapore Government announced that a set of more stringent measures to pre-empt the escalation of infections would be applied from 7 April to 4 May 2020, referred to as the “circuit breaker” period. During the “circuit breaker” period, most workplaces would be closed, leaving only essential services and key economic sectors open, while all schools would transition to full home-based learning. On 21 April 2020, it was announced that the “circuit breaker” period would be extended to 1 June 2020.
2. The Singapore Judiciary actively monitored the COVID-19 situation from the outset. This was essential in order to plan, pilot and adopt precautionary measures in a graduated manner to safeguard the health and safety of judges, practitioners and court users, while ensuring the continuity of essential court services. Shortly after the “circuit breaker” measures were announced, on 5 April 2020, the Judiciary notified all practitioners, court users and the public that the courts (consisting of the Supreme Court, the State Courts, and the Family Justice Courts) would only hear essential and urgent matters during the “circuit breaker” period. All other matters would be adjourned. The nature of essential and urgent matters was prescribed by each court by way of Registrar’s Circulars.²³
3. The measures that the Singapore courts have implemented in response to the COVID-19 situation thus far can broadly be classified into four categories: (a) business continuity plans; (b) remote hearings and active case management; (c) safe distancing measures in court premises; and (d) provision of information to practitioners, court users and the public.

Business continuity plans

4. The business continuity plans implemented by the Judiciary are aimed at ensuring that the courts remain fully capable of delivering essential services notwithstanding the disruption caused by COVID-19. These measures include

²³ Supreme Court, Registrar’s Circular No. 4 of 2020 (5 April 2020): <[supremecourt.gov.sg/docs/default-source/module-document/registrar/circular/rc-4-2020---updates-on-measures-relating-to-covid-19-\(coronavirus-disease-2019\)-from-7-april-to-4-may-2020.pdf](https://supremecourt.gov.sg/docs/default-source/module-document/registrar/circular/rc-4-2020---updates-on-measures-relating-to-covid-19-(coronavirus-disease-2019)-from-7-april-to-4-may-2020.pdf)>; State Courts, Registrar’s Circular No. 8 of 2020 (5 April 2020):

<statecourts.gov.sg/cws/Resources/Documents/RC%208%20of%202020.pdf>; Family Justice Courts, Registrar’s Circular No. 2 of 2020 (5 April 2020):

<familyjusticecourts.gov.sg/docs/default-source/legislation/registrar-circulars/rc_2020_2_updatesonmeasuresrelatingtovoc.pdf>.

- a. *Physical segregation*: Each judge, judicial officer, and staff member in each court is allocated to one of two teams. There is to be no physical interaction between persons of different teams. Each team is allocated separate and specified courtrooms, court facilities, and entry and exit points in court buildings. This policy was implemented in February 2020, and remains in force during the “circuit breaker” period, should there be a need for any judge, judicial officer or staff member to visit the court premises.
- b. *Telecommuting*: All judges, judicial officers, and staff are required to work from home unless their responsibilities require their physical presence in the court premises. Since March 2020 (before the “circuit breaker” measures were announced), the Judiciary had already taken steps to test and refine the arrangements, with court staff working from home on alternate weeks. Since the commencement of the “circuit breaker” period, telecommuting has been mandatory.
- c. *Temperature reporting*: All judges, judicial officers, and staff are required to report their temperatures twice daily on an online portal, so that temperatures can be monitored centrally. This policy has been in place since early February 2020.

Remote hearings and active case management

5. The Singapore courts have actively used remote communication technology such as Zoom to hear essential and urgent matters during the “circuit breaker” period. The technology and associated protocols were trialled before the commencement of the “circuit breaker” period.
 - a. Remote hearings:
 - i. *Virtual hearings*: Legislation was passed before the announcement of the “circuit breaker” measures to empower judges and judicial officers to exercise their powers and jurisdiction in proceedings conducted during the “circuit breaker” period using approved remote communication technology.²⁴ This paved the way for the use of remote communication technology for hearings, initially on a pilot basis, and thereafter as a general policy during the “circuit breaker” period.
 - ii. *Asynchronous hearings*: On 5 March 2020, the State Courts Centre for Dispute Resolution (“SCCDR”) adopted a protocol for the asynchronous hearing by email of certain disputes heard in the SCCDR, including

²⁴ See s 28(10) of the COVID-19 (Temporary Measures) Act 2020, which was enacted on 7 April 2020 and came into force on the same day: <ss0.agc.gov.sg/Act/COVID19TMA2020>.

early neutral evaluation of issues of liability and quantum in these disputes. Under the protocol, parties may email written submissions and supporting documents to judges, thus removing the need for physical attendance of parties in court.

- b. Active case management:
 - i. *Staggered hearing timings*: Before the commencement of the “circuit breaker” period, hearings on bulk lists were spread across more days of the week, with staggered commencement times on each day, so as to reduce the number of persons physically present in the waiting areas of court premises at any given time.
 - ii. *Issuing directions by written correspondence*: Judges and judicial officers are strongly encouraged to issue case management directions by way of written correspondence, where appropriate, so that hearings need not be convened for this purpose alone.
 - iii. *Dispensing with hard copies*: During the “circuit breaker” period, parties are to comply with any requirement to tender hard copies of documents to the court by electronically filing or submitting softcopies of those documents instead.

Safe distancing measures in court premises

- 6. While the Judiciary’s safe distancing measures were primarily intended to be applied before the commencement of the “circuit breaker” period (when physical hearings were still being conducted), they nevertheless remain applicable during the “circuit breaker” period in the event of essential and urgent hearings and other necessary visits to the court buildings.
 - a. *Strict control of entry into court buildings*: Temperature screening is mandatory for all visitors to court buildings, including practitioners and court users. In addition, before entry into court buildings, all visitors must declare (by way of an online Visitor Registration Form to be filled in on their mobile phones) if they fall within one of several prescribed categories (for instance, if they have been in contact within the last 14 days with any person confirmed or suspected to have COVID-19).²⁵ If so, they will not be permitted to enter.
 - b. *Mandatory spacing*: All visitors are required to comply with mandatory spacing in queue lines and seating areas, which are clearly demarcated. There are also

²⁵ See Supreme Court, “Advisory for Court Users and Visitors”: <supremecourt.gov.sg/quick-links/visitors/covid-19/advisory-for-court-users-and-visitors>.

restrictions on the number of persons allowed in each lift at any point in time. These measures ensure safe distancing within court buildings.

- c. *Restricting number of attendees:* Where physical hearings are deemed appropriate by the court, no more than two lawyers or litigants per party may appear at the hearing. Practice trainees, interns, legal executives and other assistants should not be in attendance. If a party requires additional attendees, it should make a request for an exemption to the court ahead of the hearing.
- d. *Regular cleaning* of common areas in court buildings such as lobbies, registration counters, restrooms, and lifts.

Provision of information to practitioners, court users and the public

7. Given the pace at which the COVID-19 situation has evolved, the Judiciary recognises that it is essential to communicate information regarding new measures and policies in a clear and timely way. The Judiciary has used various means to relay important information to practitioners, court users and the public:
 - a. *Messages from the Chief Justice and the Singapore Judiciary* that are circulated to the legal profession and the public through the Law Society, the Attorney-General's Chambers, and media releases.²⁶
 - b. *Registrar's Circulars* containing details on changes in court operations that are made available on the respective court's website.²⁷

²⁶ See "Message from Chief Justice Sundaresh Menon: The Singapore Judiciary's response to COVID-19" (5 April 2020): <supremecourt.gov.sg/docs/default-source/default-document-library/message-from-cj-on-covid-197292f832fc614700a0e435c6c75282a4.pdf>; and "Message from the Chief Justice: The Judiciary's response to the extension of the "Circuit Breaker" period" (24 April 2020): <supremecourt.gov.sg/docs/default-source/module-document/message-from-chief-justice---the-judiciary's-response-to-extension-of-circuit-breaker.pdf>.

²⁷ See footnote 1 above; and other Registrars' Circulars: Supreme Court Registrar's Circular No. 3 of 2020: <supremecourt.gov.sg/docs/default-source/module-document/registrarcircular/rc-3-2020---information-on-measures-and-other-matters-relating-to-covid-19-for-court-users-and-visitors-to-the-supreme-court.pdf>, Supreme Court Registrar's Circular No. 5 of 2020: <supremecourt.gov.sg/docs/default-source/module-document/registrarcircular/rc-5-2020---updates-on-measures-relating-to-covid-19-(coronavirus-disease-2019)-for-the-period-from-5-may-2020-to-1-june-2020.pdf>; State Courts Registrar's Circular No. 5 of 2020: <statecourts.gov.sg/cws/Resources/Documents/RC%205%20of%202020.pdf>, State Courts Registrar's Circular No. 9 of 2020: <statecourts.gov.sg/cws/Resources/Documents/RC%209%20of%202020.pdf>; Family Justice Courts Registrar's Circular No. 1 of 2020: <familyjusticecourts.gov.sg/docs/default-source/legislation/registrarcirculars/rc_2020_1_inforonmeasuresrelatingtocovid19.pdf>, and Family Justice Courts Registrar's Circular No.3 of 2020: <familyjusticecourts.gov.sg/docs/default-source/legislation/registrarcirculars/rc_2020_3_updatesmeasures5mayto1june2020.pdf>.

- c. *Dedicated microsites* on each court's website containing information for court users, advisories, links to electronic filing systems, and responses to Frequently Asked Questions (FAQs).⁶
- d. *Dedicated hotlines and email contacts for general and case-related enquiries*, operated by the respective court's registry.
- e. *Correspondence from the court's registry to parties/counsel in each affected matter*, notifying them in advance of specific measures to be adopted in relation to the case, such as adjournments, the use of remote communication technology, and safe distancing requirements.