

Remote Hearing Protocol

Practice and Procedures

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Part 1: Introduction

- 1.1 This paper sets out the protocol to conduct remote hearings during the restrictions on movement imposed by the Prevention and Control of Infectious Diseases (Measures within the Infected Local Areas) Regulations 2020 (i.e. the Movement Control Order (“MCO”), as well as for hearings subsequent to the MCO where physical attendance in court would be detrimental to public health.
- 1.2 As the table of contents show, the paper includes a step-by-step protocol covering both logistical and technical requirements as well as practical guidance for the conduct of hearings and trials. It deals with the current legislative framework and makes a proposal for an omnibus amendment to the Rules of Court 2012, the Rules of the Court of Appeal 1994 and the Rules of the Federal Court 1995 to give the courts the necessary powers to be the arbiter as to whether the proceedings will be conducted remotely, as opposed to making it by consent.
- 1.3 It is hoped that this paper will provide a comprehensive road map for conducting hearings and trials remotely, and can be used as a guide for the Judiciary and the Bar in the future.
- 1.4 The reader of this paper will, we hope, conclude that conducting hearings and trials remotely is surmountable both from a legal and a technical standpoint and is a process that can be put in place very quickly. To that end, we would also urge the National Security Council to include the courts and the judicial system in the list of essential services which may operate during the MCO, which will enable legal firms to access their office and make the necessary preparation for hearings and trial.

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Part 2: Objectives

- 2.1. There are potentially three scenarios that may arise after the current MCO period ends on 12 May 2020. In scenario 1 the MCO will be lifted entirely or modified sufficiently to allow the courts to physically re-open for business as usual. In scenario 2, the MCO will be extended or modified in such manner that the courts will be obliged to remain physically closed but can be open for remote business. In scenario 3, the MCO is extended on such terms that it becomes impossible for the courts to open even for remote business. For the purposes of this paper, scenario 3 need not be addressed.
- 2.2. If scenario 1 prevails, it is likely that some form of social distancing will still be advised or mandated or it may continue to be unsafe for some lawyers and parties, particularly those at risk such as the infirmed or elderly to attend court as usual. In such a case (i.e. where the MCO permits courts to reopen) parties shall be at liberty to apply for a remote hearing as a substitute for a face-to-face hearing.
- 2.3. If scenario 2 prevails, the courts should at least reopen for remote business. In such a case, it should be at the discretion of the individual Judge or Registrar hearing the case to determine of his or her own motion or upon application of any of the parties if the hearing should proceed remotely in the interest of justice and public health and safety.
- 2.4. In general, it is recognised that the gold standard remains for hearings and trials to be conducted with due regard to the principles of open justice, with the appearance of counsel, parties and witnesses in open court, oral advocacy and face-to-face hearings. However, where public health and safety concerns make this standard unattainable, it is necessary to adapt in order to serve the ends of justice, the needs of the national economy and the survival of the legal industry.
- 2.5. This protocol should operate for as long as public health and safety concerns as monitored and announced by the Ministry of Health and confirmed by the Chief Justice remain in force.

Part 3: Present Capabilities

3.1 Internet Accessibility

Internet penetration in Malaysia is high. There is also no shortage of service providers offering internet services at reasonably competitive rates.

Bandwidth strength and internet speed may however vary from location to location and from state to state, depending on each service provider. Slower internet speed has also been experienced in Malaysia during the MCO due to a surge in bandwidth demand.

3.2 Law Firm IT Infrastructure

In terms of infrastructure, most law firms in Malaysia would have installed or upgraded their computers or digital equipment in stages commencing from 2009. This was when the Court Recording and Transcription system (CRT) was first implemented in the Courts. The urgency to do so was also accelerated by the advent of the E-Filing system (EFS) in the Malaysian courts in 2011, starting in Kuala Lumpur and implemented in stages thereafter in all states in West Malaysia.

Most law offices would have adapted to these changes and would be equipped with some form of digitalization and scanning software and hardware.

Part 4: Limitations of Present Capabilities

- 4.1 This does not mean however that all law firms expanded their infrastructure to cover cloud computing, online research facilities or remote access to their files and documents, either from home or from any other location. Some do not have facilities at home, equipped with computers with audio-visual capabilities.
- 4.2 As was the case for the rest of the world, law firms in Malaysia did not anticipate the sudden events that transpired, leading to the MCO commencing on 18 March 2020. Many lawyers find themselves ill-equipped during the MCO to continue working as they would have been able to in their physical office premises.
- 4.3 Law firms will need to adapt to the changes that may be adopted after the MCO is lifted in terms of safe distancing generally and more specifically the new directions and protocols to be implemented by the Courts moving forward.
- 4.4 Some law firms will find the transition difficult. This is one of the matters that will fall within the discretion of the Court in deciding whether a hearing should be conducted remotely. It is also suggested that the Bar Council and the State Bars develop programmes to assist law firms who have difficulties with the transition, whether by way of providing facilities that can be shared or technical assistance.
- 4.5 This must nevertheless be one of the paramount concerns and considerations moving forward, when the Judiciary implements any form of remote court hearings. The adjustment will be easier where the litigation is between well-resourced and sophisticated parties as recognised in the judgment of Mr John Kimbell QC (sitting as Deputy High Court Judge) in *Re One Blackfriars Ltd (in liquidation) Hyde & Anor (joint liquidators of One Blackfriars Ltd) v Nygate (in his capacity as representatives of the estate of James Joseph Bannon) & Anor* [2020] EWHC 845 (Ch), see paragraph 53.
- 4.6 The courts in Malaysia will recognise that all law firms and the litigants they represent are not equally resourced. Some will adapt faster than others. Not all will be able to adequately equip themselves in a short period of time to be able to effectively and efficiently present their arguments in remote hearings. In the circumstances, not all will be able to advocate for their clients to the best of their abilities.
- 4.7 The new protocols for remote hearings should not therefore cause one party to enjoy an unfair advantage over another. Accepting that the fair and efficient disposal of legal proceedings is a fundamental part of the legal system in Malaysia, all stakeholders must nonetheless accommodate and be considerate of the individual circumstance of each litigant and each law firm in the face of a public health crisis.
- 4.8 Finally, one other limitation that should be addressed is that, during the MCO period, legal services should be scheduled as essential services with at least limited access to office for urgent tasks such as access to files, documents, scanning facilities and other preparatory needs.

Part 5: Current Legislative Arrangement

- 5.1 For civil proceedings, the legislation relevant to hearings is the Courts of Judicature Act 1964, involving the meaning of the words 'hear'/'heard'/'hearing', 'sit'/'sitting' and 'try' found in:
- (i) sections 18(1), 19, 23 and 29 for High Court;
 - (ii) sections 38(1), 39, 67 and 69 for Court of Appeal; and
 - (iii) sections 74, 75, 78 and 85 for the Federal Court.
- 5.2 Sections 19, 39 and 75 of the Courts of Judicature Act 1964 provide that the court:
- (i) 'shall sit at such times/on such dates and at such places as'; and
 - (ii) the Chief Judge/President of the Court of Appeal/Chief Justice 'shall/may from time to time appoint'.
- 5.3 There is no equivalent provision in the Subordinate Courts Act 1964.
- 5.4 As there are no restrictions or limitations as to how the hearing or sitting is to be conducted, it is arguable that these statutory provisions confer a discretion that is sufficiently wide to allow for a direction for a sitting by way of a remote hearing i.e. where the parties and the court are not present at the same location. On the other hand the absence of any words specifically referring to the manner of conducting the hearing may invite the counter argument that the discretion under these provisions is limited only to the time and place of the sitting.
- 5.5 It is for this reason that it is suggested that an amendment to the Rules, pursuant to section 17 of the Courts of Judicature Act 1964 and/or section 4 of the Subordinate Courts Rules Act 1955, which only requires the immediate approval of the Rules Committee and a gazetting of the same pursuant to section 17(4) of the Courts of Judicature Act 1964 and/or section 8 of the Subordinate Courts Rules Act 1955 to be effected. This will allow the Rules Committee to determine, as a matter of practice, the manner of hearings when public health and safety are of concern.
- 5.6 The suggested amendment to the Rules can be found in Part 6 below.

Part 6: Proposed Amendments to the Legislative Framework

- 6.1 The following proposed amendments will only require approval of the Rules Committee pursuant to section 17 of the Courts of Judicature Act 1964 and section 4 of the Subordinate Courts Rules Act 1955, and should be made for the Rules of Court 2012, the Rules of the Court of Appeal 1994 and the Rules of the Federal Court 1995.

IN exercise of the powers conferred by section 17 of the Courts of Judicature Act 1964 [Act 91] and with consent of the Chief Justice, the Rules Committee makes the following rule:

Rule ____

Conduct of proceedings in the interest of public health and safety

Provided it is in the interest of public health and safety, the Chief Justice may by practice direction or the Court may of its own motion, direct that any cause or matter fixed for hearing, trial or appeal under these Rules be conducted otherwise than in open court and in such place and in such manner as the Court may direct, including the giving of any directions as to the filing and service of documents.

Part 7: Technical Requirements

- 7.1 This Part is intended to provide guidance for lawyers, litigants-in-person, witnesses and any other parties appearing in remote hearings. It is based on primarily on the guide issued by the Federal Court of Australia: '[National Practitioners/Litigants Guide To Virtual Hearings And Microsoft Teams](#)'.
- 7.2 For the purposes of this guide, four (4) options to host remote hearings will be explored:
- (i) Skype for Business, which is currently being used by the Malaysian courts;
 - (ii) Microsoft Teams, which will replace Skype for Business by 31 July 2021;
 - (iii) Zoom Meeting; and
 - (iv) Cisco Webex Meeting
- 7.3 All of these platforms can be accessed for free by participants. These platforms do offer paid packages which will provide additional features to participants. Nonetheless, the free basic versions of these platforms are generally adequate for purposes of remote hearings. Insofar as hosting is concerned, some of the free basic versions may be inadequate or contain limitations.
- 7.4 This guide is meant to provide basic guidance on how these platforms can be used to facilitate remote hearings. It is not intended to provide a comprehensive overview of all the technical features, packages and pricing of these platforms.
- 7.5 While there is no data driven advice that this paper can make as to the appropriate platform, anecdotal evidence from speaking to advocates and judges from other jurisdictions, including the UK, Australia, Singapore and South Africa, would suggest that Zoom might be the most appropriate platform for jurisdictions that have variable internet connectivity. The Singapore Court system utilises Zoom.

Skype for Business

- 7.5 **Annexure A** contains step-by-step, illustrated instructions on how to use Skype for Business.
- 7.6 Hardware requirements: A list of hardware requirements for Skype for Business can be accessed [here](#).
- 7.7 Software requirements:
- (i) The host will be able to circulate a Skype for Business Meeting link by email to the participants so they can join the meeting. This link can also be circulated to any other party who did not receive an invitation.

- (ii) Participants can access the remote hearing session from the Skype for Business Meeting link. The remote hearing can be conducted using a web browser. Please note that for those participants who do not already have the Skype for Business Application, it is no longer available for download and participants should access the remote hearing via a web browser.
- (iii) The mobile Skype for Business application is available as a free download for iOS and Android. Although the features are limited, the application is adequate for the conduct of remote hearings and may be used by participants who do not have access to a laptop or desktop but have access to a smartphone or tablet.

7.8 Joining a remote hearing on Skype for Business

- (i) The host will be able to create a virtual lobby in order to decide and control who is able to access the meeting.
- (ii) After joining the remote hearing, participants will enter the virtual lobby. They will remain there until admitted by the host into the remote hearing.
- (iii) The remote hearing can be recorded through Skype for Business directly.

Microsoft Teams

7.9 **Annexure B** contains step-by-step, illustrated instructions on how to use Microsoft Teams.

7.10 Hardware requirements: A list of hardware requirements for Microsoft Teams can be accessed [here](#).

7.11 Software requirements:

- (i) The host will be able to circulate a Microsoft Teams Meeting link by email to parties so they can join the meeting. This link can also be circulated to any other party who did not receive an invitation.
- (ii) Participants can access the remote hearing session from the Microsoft Teams Meeting link. It is not necessary to download the Microsoft Teams application. The remote hearing can be conducted using a web browser.
- (iii) Participants can also use the Microsoft Teams application, which is available as a free download [here](#).
- (iv) The Microsoft Teams application is also available as a free download for iOS and Android. Although the features are limited, the application is adequate for the conduct of remote hearings and may be used by participants who do not have access to a laptop or desktop but have access to a smartphone or tablet.

7.12 Joining a remote hearing on Microsoft Teams

- (i) The host will be able to create a virtual lobby in order to decide and control who is able to access the meeting.
- (ii) After joining the remote hearing, participants will enter the virtual lobby. They will remain there until admitted by the host into the remote hearing.
- (iii) The remote hearing can be recorded through Microsoft Teams directly.

Zoom Meeting

7.13 **Annexure C** contains step-by-step, illustrated instructions on how to use Zoom Meeting.

7.14 Hardware requirements: A list of hardware requirements for Zoom Meeting can be accessed [here](#).

7.15 Software requirements:

- (i) The host will be able to circulate a Zoom Meeting link by email to parties so they can join the meeting. This link can also be circulated to any other party who did not receive an invitation.
- (ii) Participants can access the remote hearing session from the Zoom Meeting link. It is not necessary to download the Zoom application. The remote hearing can be conducted using a web browser.
- (iii) Participants can also use the Zoom application, which is available as a free download [here](#).
- (iv) The mobile Zoom application is also available as a free download for iOS and Android. Although the features are limited, the application is adequate for the conduct of remote hearings and may be used by participants who do not have access to a laptop or desktop but have access to a smartphone or tablet.

7.16 Joining a remote hearing on Zoom Meeting

- (i) The host will be able to create a virtual lobby in order to decide and control who is able to access the meeting.
- (ii) After joining the remote hearing, participants will enter the virtual lobby. They will remain there until admitted by the host into the remote hearing.
- (iii) The remote hearing can be recorded through Zoom Meetings directly.

Cisco Webex Meeting

7.17 **Annexure D** contains step-by-step, illustrated instructions on how to use Cisco Webex Meeting.

7.18 Hardware requirements: A list of hardware requirements for Cisco Webex Meeting can be accessed [here](#).

7.19 Software requirements:

- (i) The host will be able to circulate a Cisco Webex Meeting link by email to parties so they can join the meeting. This link can also be circulated to any other party who did not receive an invitation.
- (ii) Participants can access the remote hearing session from the Cisco Webex Meeting link. It is not necessary to download the Cisco Webex Meeting application. The remote hearing can be conducted using a web browser.
- (iii) Participants can also use the Cisco Webex Meeting application, which is available as a free download [here](#).
- (iv) The mobile Cisco Webex Meeting application is also available as a free download for iOS and Android. Although the features are limited, the application is adequate for the conduct of remote hearings and may be used by participants who do not have access to a laptop or desktop but have access to a smartphone or tablet.

7.20 Joining a remote hearing on Cisco Webex Meeting.

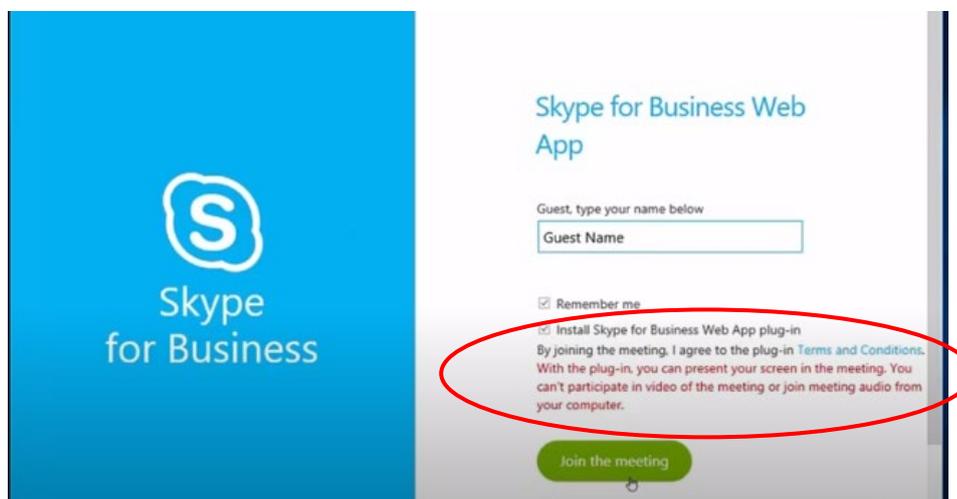
- (i) The host will be able to create a virtual lobby in order to decide and control who is able to access the meeting.
- (ii) After joining the remote hearing, participants will enter the virtual lobby. They will remain there until admitted by the host into the remote hearing.
- (iii) The remote hearing can be recorded through Cisco Webex Meeting directly.

Annexure A: Instructions for Using Skype for Business

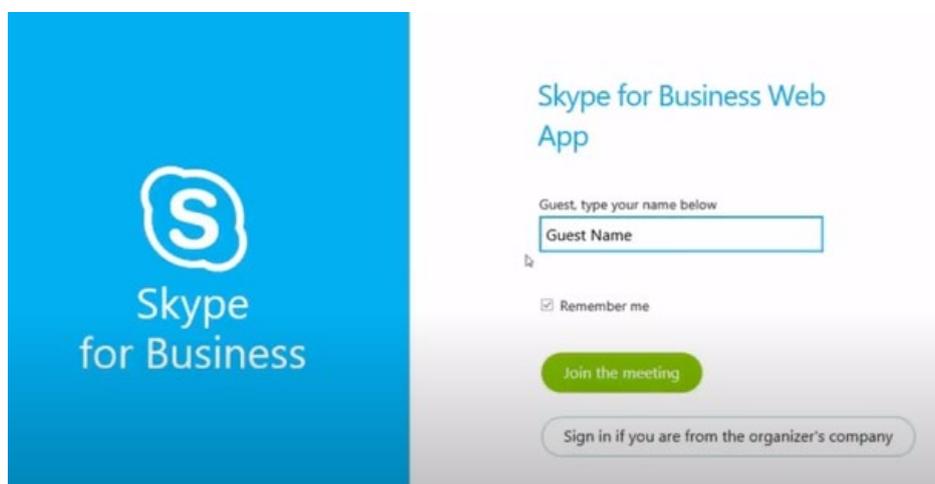
- To join a remote hearing, click on the Join Skype for Business Meeting link.



- For participants who already have Skype for Business installed on their device, the link above should automatically redirect to the Skype for Business application.
- Otherwise, the participant may be redirected to this screen in a web browser:

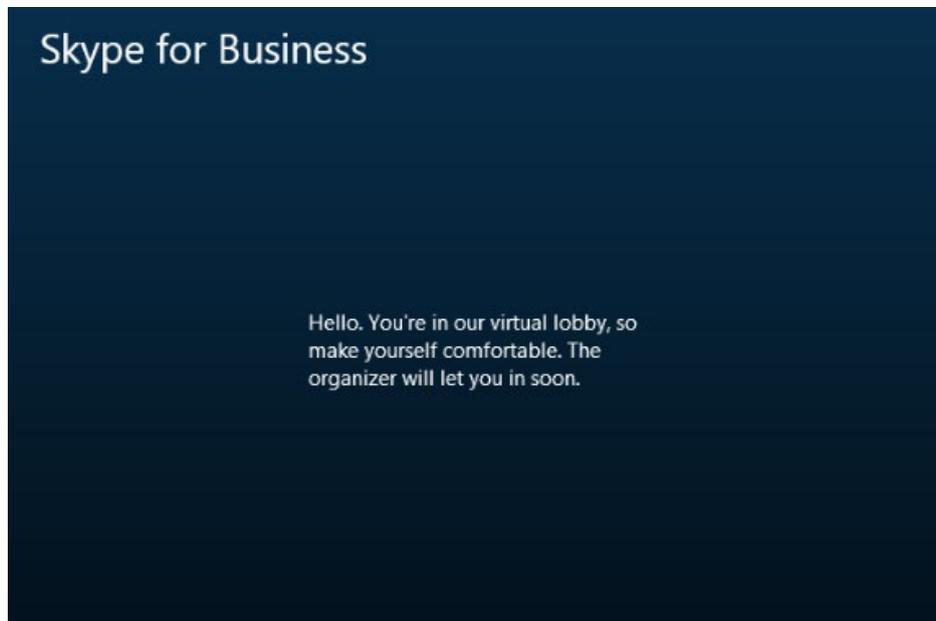


- The participant must install the Skype for Business Web App plug in.
- Once the Skype for Business Web App plug in is installed, the participant should be redirected to the following:



- Enter your Name.

- Select “Join the Meeting”.
- Wait in the virtual lobby until the host has admitted you into the remote hearing.



- To mute and unmute your microphone, select the microphone icon on the Skype for Business menu ribbon.
- To turn your camera on and off, select the camera icon on the Skype for Business menu ribbon.

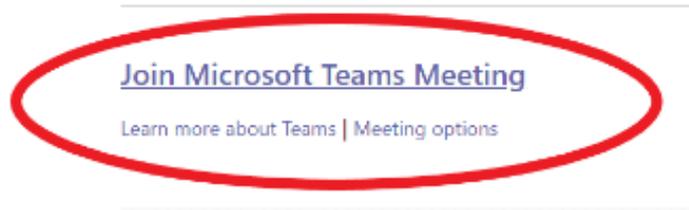


- Participants can also share their screen by selecting the ‘Share’ button on the Skype for Business menu ribbon.

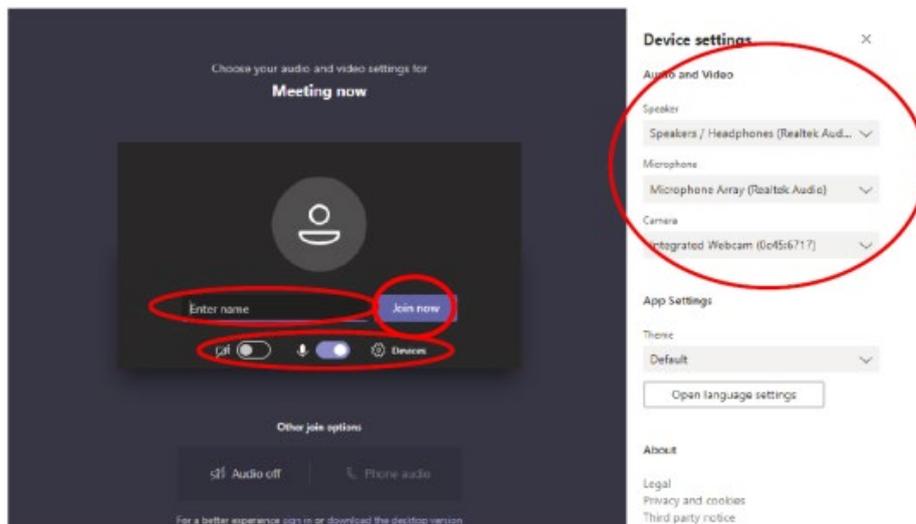


Annexure B: Instructions for Using Microsoft Teams

- To join a remote hearing, click on the Join Microsoft Teams Meeting link.

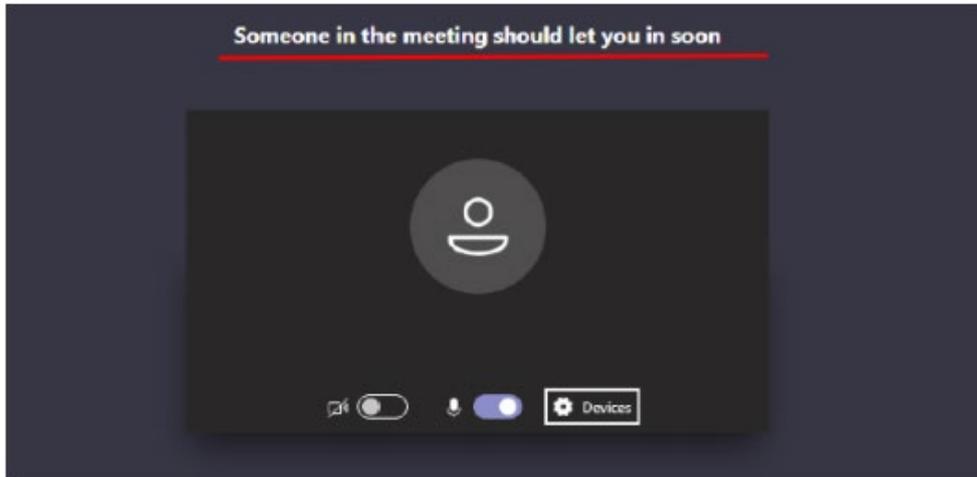


- For participants who already have Microsoft Teams installed on their device, the link above should automatically redirect to the Microsoft Teams application.
- Otherwise, the participant will be redirected this screen in a web browser



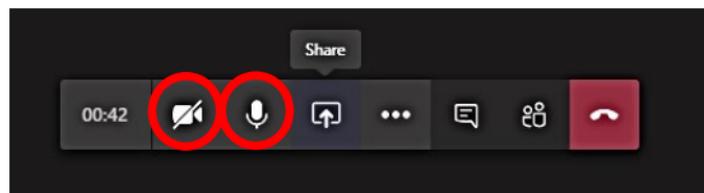
(Image Source: <https://www.fedcourt.gov.au/online-services/virtual-hearings>)

- Insert your Name.
- If necessary, adjust your microphone and camera settings.
- Select "Join Now".
- Wait in the virtual lobby until the host has admitted you into the remote hearing.



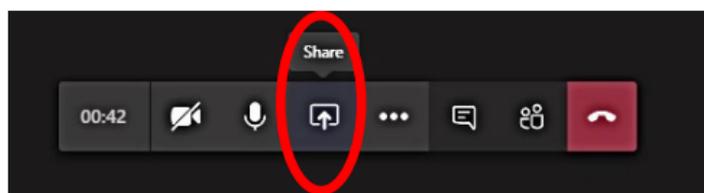
(Image Source: <https://www.fedcourt.gov.au/online-services/virtual-hearings>)

- To mute and unmute your microphone, select the microphone icon on the Microsoft Teams menu ribbon.
- To turn your camera on and off, select the camera icon on the Microsoft Teams menu ribbon.



(Image Source: <https://www.fedcourt.gov.au/online-services/virtual-hearings>)

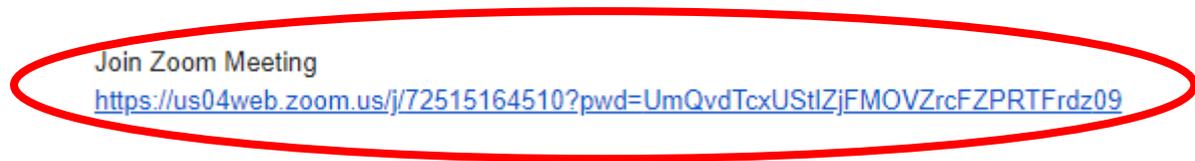
- Participants can also share their screen by selecting the 'Share' button on the Microsoft Teams menu ribbon.



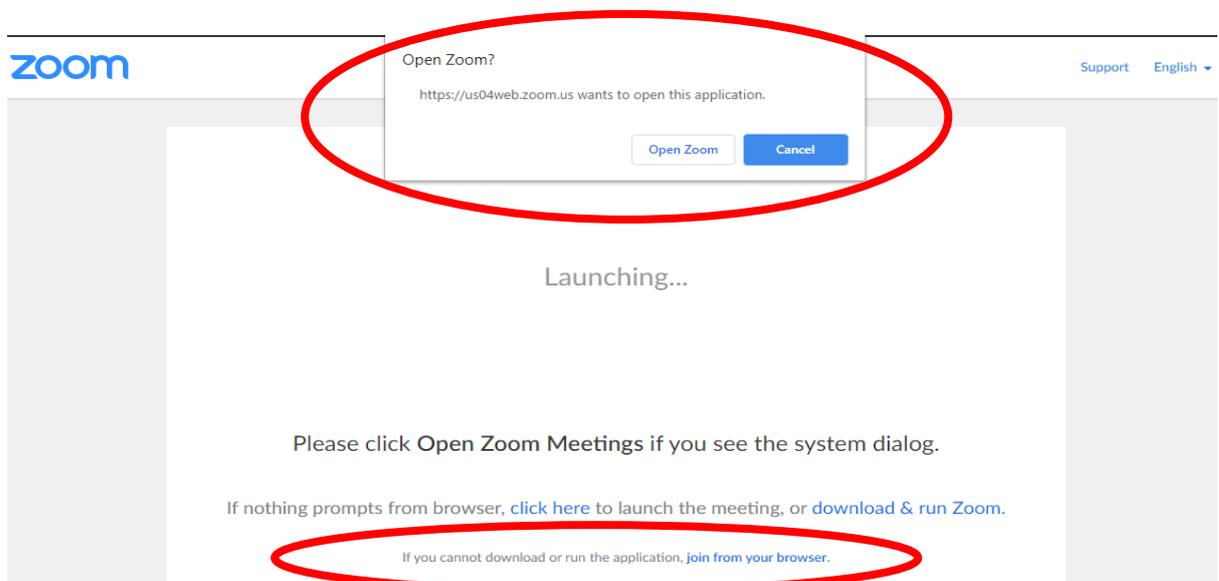
(Image Source: <https://www.fedcourt.gov.au/online-services/virtual-hearings>)

Annexure C: Instructions for Using Zoom Meeting

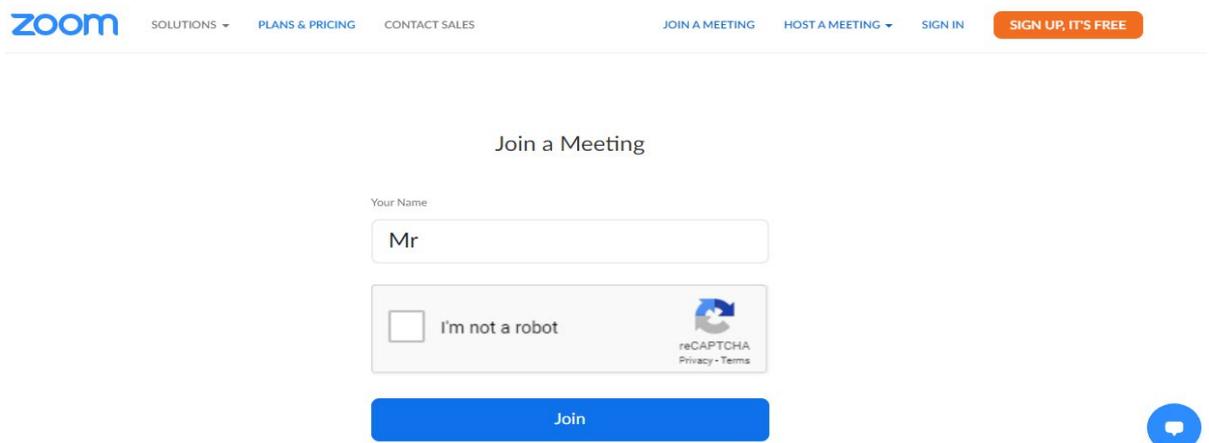
- To join a remote hearing, click on the Zoom Meetings link.



- Participants will be brought to a page where there will be an option to proceed with a Zoom application (if already installed on their device) or through their web browser.



- If the web browser option is chosen, the participant will be redirected to this screen in a web browser.



- Insert your Name.
- Select "Join".

- Wait in the virtual lobby until the host has admitted you into the remote hearing.

Please wait, the meeting host will let you in soon. ↗



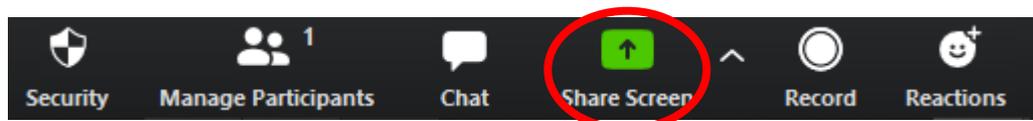
- Once you are admitted, there will be a pop-out as follows.



- Select "Join with Computer Audio".
- To mute and unmute your microphone, select the microphone icon on the Zoom Meetings menu ribbon.
- To turn your camera on and off, select the camera icon on the Zoom Meetings menu ribbon.



- Participants can also share their screen by selecting the 'Share' button on the Microsoft Teams menu ribbon.

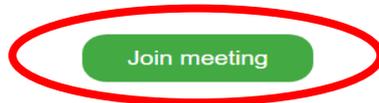


Annexure D: Instructions for Using Cisco Webex Meeting

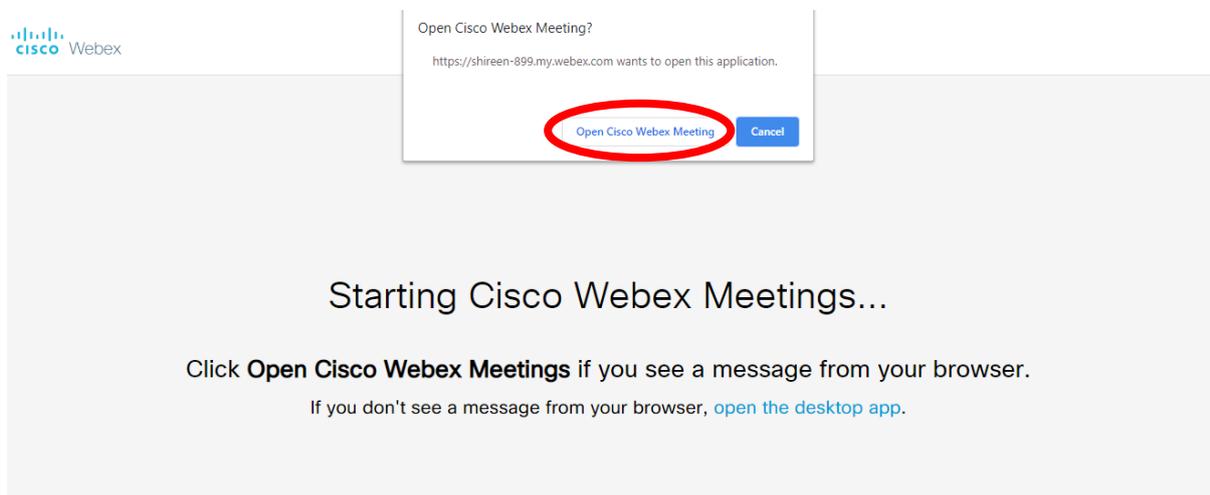
- To join a remote hearing, click on the Cisco Webex Meeting link.

Meeting number (access code): 571 063 822
Meeting password: 3dyABb

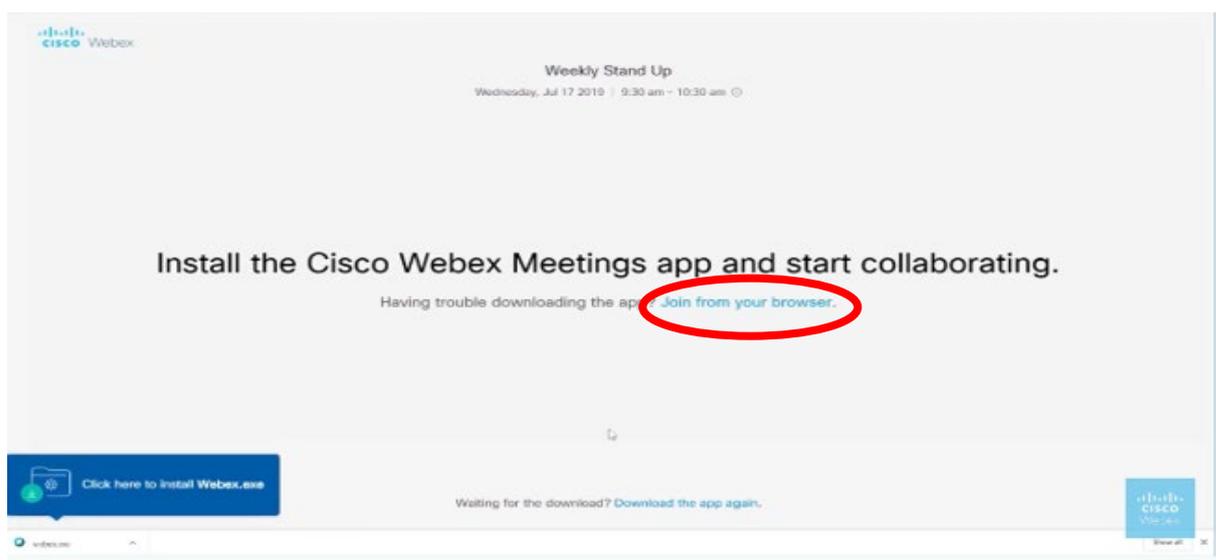
Friday, March 13, 2020
3:00 pm | Malaysia Time (Kuala Lumpur, GMT+08:00) | 1 hr



- For participants who already have Cisco Webex Meeting installed on their device, you will be redirected to this screen in a web browser. Select "Open Cisco Webex Meeting" to proceed.



- Otherwise, the participant will be redirected to this page.



- Select 'Join from your browser'.

- Wait in the virtual lobby until the host has admitted you into the remote hearing.

Waiting for others to join

- Once you are admitted, you will be brought into the remote hearing
- To mute and unmute your microphone, select the microphone icon on the Cisco Webex Meeting menu ribbon.
- To turn your camera on and off, select the camera icon on the Cisco Webex Meeting menu ribbon.
- Participants can also share their screen by selecting the 'Share Content' button on the Cisco Webex Meeting menu ribbon.



Part 8: Proposed System for Remote Hearings and Trials

8.1 It is suggested that this proposed system be implemented by way of a Practice Direction after the amendment of the Rules as proposed in Part 6 of this paper. Unless the context otherwise requires, all references in this Part to 'hearing' shall be deemed to refer to both hearings and trials.

Application for Remote Hearing

8.2 The Judge or Registrar hearing the matter may direct a remote hearing of his or her own motion, or upon application of the parties.

8.3 The discretion to direct a remote hearing remains with the Court, provided always that the parties shall be given an opportunity to be heard before a remote hearing is directed.

8.4 In exercising its discretion, the Court shall have regard to the following matters:

- (i) what manner of hearing (whether by teleconference or video link) would best serve the interest of justice and public health and safety, having regard the location of the parties and/or witnesses at the time the hearing will be conducted, the speed of online connectivity available to them and whether the parties and/or witnesses are sufficiently equipped with and/or will have access to the technology (both hardware and software) that will be necessary for the conduct of the hearing in the manner proposed;
- (ii) what directions should be given for the filing and exchange of notices of application, affidavits and exhibits including any directions on deferred attestation of affidavits and exhibits before the Commissioner for Oaths or Notary Public;
- (iii) whether the exchange of written submission and authorities will facilitate the proper and expeditious conduct of the hearing or will cause unnecessary expense or delay;
- (iv) what directions should be given to compile, label, index and cross-refer all the documents and materials, including their filing and service, to facilitate convenient and accurate reference to them during the hearing;
- (v) whether the parties will have sufficient access to staff and office equipment prior to the date of hearing or trial to enable them to fulfil the requirements demanded of them for the hearing;
- (vi) if, having regards to the matters enumerated in (i) to (iv) above and any other relevant factors, the Court is in reasonable doubt that a hearing by means other than personal attendance cannot, in that instance, be fairly conducted between the parties or will in any way defeat the ends of justice or compromises public health and safety, the matter shall be fixed for hearing in the usual way as a matter

of urgency before the same or another Judge or Registrar at the earliest opportunity; and

(vii) such other directions as may be necessary for the fair and safe conduct of the remote hearing.

8.5 Where any party applies for a remote hearing, it shall do so by written notice containing such information as is prescribed in the form attached to the Practice Direction. A proposed form is set out below.

Application for Remote Hearing

Suit No.: _____

This application is made by _____ (identify the plaintiff or defendant, as the case may be) for _____ (describe the nature of the matter to be heard, i.e. whether hearing of an application / appeal / trial etc., as the case may be) and requests that a case management be fixed before the Judge (or Registrar) hearing the matter, so soon as the urgency of the case demands, for the purpose of hearing the parties on this application.

If the respondent intends to oppose this application, the respondent is required to furnish grounds justifying the opposition forthwith and in any event within reasonable time prior to the case management. The reasons for disagreement must be stated fully and candidly, and be accompanied by a signed statement of the solicitor having conduct of the matter that he or she has caused all necessary enquiries to be made and has not omitted to state any material fact or matter.

Dated _____

Solicitor for the applicant

To the respondent

This Application for Remote Hearing is filed by Messrs _____ of (state address), solicitors for the applicant.

Case Management for Remote Hearings

- 8.6 For the cases that fall within the e-Review system, all case managements shall proceed as usual by way of e-Review.
- 8.7 For the cases that do not fall within the e-Review system and require the physical attendance of the parties in court, all case managements are to be conducted via the suggested platform for remote hearings (see Part 7: Technical Requirements).

Note: It is suggested that the Judiciary consider the possibility of expanding the e-Review system to include all matters before the courts.

- 8.8 The standard requirements under the Rules of Court 2012, the Rules of the Court of Appeal 1994 and/or the Rules of the Federal Court 1995 must be complied with, which includes, where applicable, the filing and service of the following:

- (i) bundle of pleadings;
- (ii) bundle of documents;
- (iii) statement of agreed facts;
- (iv) statement of issues to be tried;
- (v) witness statements;
- (vi) affidavits;
- (vii) expert reports;
- (viii) record of appeal;
- (ix) written submissions; and
- (x) bundle of authorities.

- 8.9 Directions shall be given during the case managements to ensure that electronic copies of all relevant documents are filed and/or served on all relevant parties. Directions shall also be given as to the appropriate method for the parties to collate, index and cross-refer to all necessary materials that will be used during the remote hearing.
- 8.10 Prior to the remote hearing, the parties are to furnish the Registrar with the necessary details of counsel who will be involved in the remote hearing. These details include the email address, digital platform I.D and mobile phone number of counsel.
- 8.11 The Registrar shall initiate a telecommunications channel (for example, a WhatsApp group chat) between the solicitors and the Registrar for the purposes of addressing technical issues that may arise during the remote rearing.
- 8.12 The Registrar shall, prior to the remote hearing, fix a date upon which to conduct a test run of the remote hearing. During the test run, the Registrar shall ensure that the Court and the parties are able to refer to the necessary materials conveniently and efficiently.

Trials and Other Proceedings with Witnesses

8.13 For trials and other proceedings with witnesses, the following additional matters shall be dealt with during case management.

- (i) Arrangements shall be made and directions given for witnesses to attend and give evidence from an independent remote location agreed by the parties or determined by the Court. In selecting an independent remote location, the Court shall have regard to the cost and convenience of the location to the witness as well as the availability of appropriate technological and other facilities at the location, and shall consider the suitability of available premises at (1) the State Bar Committee (2) court building and (3) independent law firms. The Court shall also consider the socioeconomic background, the language literacy and computer literacy of the witness and if the Court considers that witness will require assistance during the remote hearing, appropriate directions shall be given for that purpose.
- (ii) Every witness giving evidence from a remote location shall be supervised at all times by an independent supervising officer, who shall be an independent and impartial person identified and approved by the Court during case management and shall be either a member of the Judicial and Legal Services, a practising advocate and solicitor of good standing, an authorised member of the Court staff or such other person to whom the parties agree.
- (iii) The independent supervising officer will at the commencement of the hearing make an affirmation that he or she will be present at all times at the said remote location and will ensure that the witness does not make or receive any communications from any person until the witness is released. It shall also be the duty of the supervising officer to confirm the identity of the said witness, and to ensure that that witness does not possess materials that could prejudice the fair trial or hearing of the matter and shall take all reasonable care to prevent any form of witness tampering i.e. through the possession of personal notes, external communication devices, etc.
- (iv) Directions shall be given for each witness to be provided with electronic or physical copies of the necessary materials that will be used during the remote hearing.
- (v) The supervising officer shall be directed at all times by the Court and for this purpose shall keep a telecommunications line open during the remote hearing so that he or she is contactable at all times by the Court.
- (vi) The Court shall ensure that the Court and the parties have full sight of the witness and his or her immediate surroundings at all times during the remote hearing.

Time Management

- 8.14 The Court shall, prior to or at the final case management, obtain from the respective solicitors the number of counsel who will be present and an estimate of the time required by counsel for their submissions at the remote hearing. This is necessary to enable the courts to schedule hearings on a staggered basis, and to allow for the smooth running of multiple remote hearings in a day.
- 8.15 The parties shall cooperate to ensure that their remote hearing is concluded within the allocated time. Counsel will be expected to adhere to their allocated time for submissions, which may be extended at the discretion of the Court.

Recording of Remote Hearing

- 8.16 The Court shall ensure, where possible, that an audio-visual recording of the entire remote hearing is made and retained. Unless otherwise ordered, the audio-visual recording shall serve as the official record of the remote hearing.
- 8.17 During or at the end of the remote hearing, the Court shall give directions on the transcription of the audio-visual recording in consultation with the parties.

Part 9: Conduct of Video Link Hearings

Pre-Hearing

- 9.1 The registrar or interpreter, and the parties, will all need to log in or call in to the dedicated session 10 minutes before the stated start time of the remote hearing.
- 9.2 Participants are to test their equipment (speakers, microphone and camera) beforehand so that the technology is not a distraction.
- 9.3 Once the parties are ready, the judge(s) will then be invited into the session by the registrar or interpreter.

Standard Procedures During Hearing

- 9.4 The judge, or chair of the panel, as it may be, will commence the session by going through and ensuring that the participants understand the following guidelines:
 - (i) the parties will make their submissions in the usual order, beginning with the applicant or appellant, unless otherwise instructed;
 - (ii) participants are to mute themselves when not speaking in order to avoid any potential background noise or echoes;
 - (iii) if a participant wishes to speak, he or she can raise a hand so that the speaker can pause to allow the participant to speak. The speaker should keep an eye out for such signals;
 - (iv) when speaking, participants are to look directly at the webcam, not at the computer screen. The camera should be positioned at eye level or slightly above eye level;
 - (v) participants are to speak one at a time and to pause prior to speaking in case there is any audio/video lag;
 - (vi) if reference is made to documents, the speaker should pause to ensure that the judge(s) and other participants are able to identify the documents referred to;
 - (vii) participants should seek permission from the judge(s) if they need to move away from their screen during the hearing;
 - (viii) participants may drink water during the proceedings. Eating is not permitted.
- 9.5 The registrar or interpreter assisting the judge(s) will alert the participants and pause proceedings if any of the participants lose signal. The proceedings will continue once the participant has been reconnected. All parties are urged to have a measure of

flexibility and understanding about the technological and other difficulties that may be experienced by others.

Other matters

9.6 **Background**

Participants are to be mindful of what is behind them, and should choose a solid neutral and preferably grey background if possible.

9.7 **Lighting**

Light from a window behind the participant might blind the camera, making him or her look dark. Light above the participant in the centre of a room might also cast shadows. Ideally, position a lamp, or sit facing a window, where light is directly on the participant's face. Participants should also be aware that the computer monitor casts light that can make one look blue.

9.8 **Dress Code**

Participants are to be dressed in chambers attire, whether the proceedings are in chambers or in open court.

9.9 **Communication Within Teams**

Participants should maintain a group chat on Whatsapp or a similar platform to speak and discuss privately.

9.10 **Viewing Documents**

It would be helpful for participants to set up 2 physical screens, which can also be achieved by splitting screens or having several windows open which can be flicked between. The central screen will display the video conference in process and the second screen can be used to view the relevant documents.