

立法會 *Legislative Council*

LC Paper No. CB(2)501/2025

Ref : CB2/BC/4/24

Report of the Bills Committee on Courts (Remote Hearing) Bill

Purpose

This paper reports on the deliberations of the Bills Committee on Courts (Remote Hearing) Bill (“the Bills Committee”).

Background

2. “Remote hearing” refers to a proceeding ordered by the court (including any judges or judicial officer (“JJOs”)) (whether on its motion or on application by any party to the proceeding) to be conducted through a remote medium.¹ A remote hearing may apply to the entire proceeding or be confined to part(s) of the hearing process.² According to paragraph 8 of the Legislative Council (“LegCo”) Brief issued by the Administration Wing of the Chief Secretary for Administration’s Office and the Judiciary Administration (“Jud Adm”) on 20 November 2024 (File Ref.: AW-275-020-010-030-008), the Judiciary has been conducting remote hearings for civil proceedings at different levels of courts and tribunals where appropriate since 2020, and has issued four guidance notes³ to set out the relevant arrangements. The Chief Justice may also direct that a criminal proceeding in the Court of Final Appeal be heard remotely by exercising his power under rule 78 of the Hong Kong Court of Final Appeal Rules (Cap. 484A).⁴

¹ Including live audio link (e.g. telephone), live audio-visual link (e.g. video-conferencing facilities), and any other real time communication facility as designated by the Chief Justice.

² Such as the taking of evidence from one or more witnesses (whether within or outside the jurisdiction), or that only some of the concerned parties are participating remotely.

³ The four guidance notes can be accessed from the Judiciary’s website: https://www.judiciary.hk/en/court_services_facilities/gap_remote_hearing.html.

⁴ The rule provides that “[i]n any matter not provided for in these Rules, the practice and procedure in the Court shall be such as may be decided by the Chief Justice who may, if he thinks fit, be guided by the practice and procedure of the High Court”.

3. According to paragraph 2 of the LegCo Brief, the Judiciary has been taking proactive measures in making greater use of technology in court operations, both in handling court business and in communications between the courts and court users. Remote hearings are one of the Judiciary's key initiatives to promote the use of technology, and are part of its ongoing efforts in enhancing the efficiency of court operations. Remote hearings would also enable the courts to better tackle unforeseen and complicated situations, such as when the courts are not open as usual due to a local epidemic.

4. At present, owing to legal impediments, most criminal cases cannot be heard remotely.⁵ For instance, the existing law generally requires the defendant to be physically present at different stages such as arraignment and trial. For civil proceedings, where remote hearings may prima facie be permitted under the current law, there are no express provisions setting out how matters are to be handled in a remote mode.

5. Therefore, as stated in paragraph 4 of the LegCo Brief, the Administration has introduced the Courts (Remote Hearing) Bill ("the Bill") into LegCo with the aim of providing for the application for, and the operation and effect of, remote hearings for court proceedings in Hong Kong. It will provide a clear legal basis for JJOs to order remote hearings at various levels of courts and tribunals where appropriate, having regard to all relevant factors, as well as the dual requirements of open justice and fair hearing.

Courts (Remote Hearing) Bill

6. The Bill was published in the Gazette on 22 November 2024 and received its First Reading at the LegCo meeting of 4 December 2024. It seeks to provide for:

- (a) the application for, and the operation and effect of, remote hearings;
- (b) fair disposal of, and public access to, remote hearings;
- (c) offences to protect the integrity of proceedings and offences relating to the prohibition of recording on court premises; and
- (d) related matters.

⁵ There are provisions in the Criminal Procedure Ordinance (Cap. 221), the Magistrates Ordinance (Cap. 227), the Probation of Offenders Ordinance (Cap. 298) and the District Court Ordinance (Cap. 336), among others, requiring an accused person or a probationer to appear in person before the court for the relevant proceedings.

Bills Committee

7. At its meeting held on 6 December 2024, the House Committee agreed to form a Bills Committee to scrutinize the Bill. The membership list of the Bills Committee is in **Appendix 1**. The Bills Committee has held six meetings with the Administration and Jud Adm, and invited written submissions from the public. A list of organizations which have made written submissions to the Bills Committee is in **Appendix 2**.

Deliberations of the Bills Committee

8. The Bills Committee's views and concerns about the policy issues relating to the Bill and its individual clauses are summarized below.

Policy issues relating to the Bill

9. Members of the Bills Committee are generally supportive of the Bill. They consider that the use of remote hearings in proceedings can effectively enhance the efficiency of the administration of justice in Hong Kong, reduce the time spent on proceedings by legal practitioners and parties to the proceedings, and make the judicial procedures in Hong Kong more accessible and usable abroad, which is conducive to publicizing and promoting the construction of the rule of law in Hong Kong. Some members opine that the Bill can provide a complete legal framework for the use of remote hearings in proceedings.

10. Some members are concerned about whether the waiting times for cases to be heard would be shortened with the adoption of remote hearings in courts. According to Jud Adm, the waiting times for cases to be heard are affected by a number of factors, such as the caseload, the complexity of the cases, and whether the court building would not be open due to special circumstances. The Judiciary has no hard and fast target for shortening the waiting times for cases to be heard with the adoption of remote hearings.

11. Some members have remarked that the legal sector has been discussing the adoption of remote hearings and generally supports the use of remote hearings in proceedings. As for the benefits brought by the use of remote hearings to the legal sector, Jud Adm has advised that at present, solicitors are generally required to be physically present in court for even short proceedings (e.g. three-minute hearings); but with the use of remote hearings, solicitors can stay in the office waiting for their cases to be dealt with by the Master, and attend the hearings by means of a live audio link (e.g. telephone). This would save them the time of going to the courts to attend the hearings, thus enhancing the work efficiency of the legal sector.

Factors to be considered in making a remote hearing order

12. Concern has been raised as to how to ensure that persons participating in remote hearings outside Hong Kong would do so voluntarily without being coerced or interfered with. There is a suggestion that the Judiciary, in drawing up practice directions for the conduct of remote hearings, should spell out clearly the requirements on the locations of witnesses participating in remote hearings, or even stipulate that such participation must take place at certain designated premises, so as to avoid other legal disputes arising from inappropriate locations for conducting remote hearings.

13. Jud Adm has responded that under clause 9 of the Bill, in making, varying or revoking a remote hearing order for a proceeding, the court must consider various applicable factors, including “the measures to be taken to ensure that evidence is given freely without coercion or other influence” (clause 9(j)). If, having considered this factor, the judge is of the opinion that the reliability of a witness participating in the remote hearing to give evidence or the evidence obtained is unsound, the judge may vary or revoke the remote hearing order and require the parties to be physically present at the hearing.

14. On the other hand, pursuant to the Judiciary’s proposed arrangements, a witness giving evidence remotely should give evidence in a separate room in a quiet and undisturbed environment, with two cameras in the room, one facing the witness and the other behind him or her throughout the recording process, so that the judge can have a clear view of the surroundings of the witness giving evidence. During the hearing, the judge may instruct that the cameras be turned to check that there is no other person in the room who may affect the giving of evidence. The Judiciary has seven rooms with relevant facilities available for use by persons who do not have suitable facilities or space.

15. Some members are concerned about whether persons with disabilities (“PWDs”) participating in remote hearings would be provided with the various kinds of support offered to PWDs in physical hearings by the Judiciary, such as infra-red headphones and sign language interpretation services. Concern has been raised as to whether the Judiciary can make arrangements as far as possible to support the participation of PWDs in remote hearings on the basis of the principle of accessibility where technologically feasible.

16. Jud Adm has pointed out that under clause 9 of the Bill, in making, varying or revoking a remote hearing order for a proceeding, the court must consider applicable factors, including “the ability of the parties to engage with and follow the proceeding (if conducted through a remote medium)” (clause 9(d)). For this reason, if it transpires that a participant cannot hear or see well, this may affect

the judge's consideration as to whether it is appropriate for the proceeding to be conducted by way of a remote hearing.

17. To enhance the authoritativeness of remote hearings and the credibility of overseas witnesses in giving evidence, some members have enquired whether the Administration would seek the assistance of overseas judicial or law enforcement agencies, such as entering into cooperation agreements with other jurisdictions whereby suitable facilities would be provided by other jurisdictions for the use of overseas witnesses giving evidence remotely. Jud Adm has advised that it keeps an open mind on how practical arrangements should be made to achieve greater credibility or authoritativeness in respect of the giving of evidence by overseas witnesses, and will explore this further.

18. Expressing concern about the local law enforcement agencies' difficulties in conducting investigations and enforcing the law in the event of perjury by overseas witnesses at remote hearings, some members consider it necessary to set out more clearly in practice directions how to prevent overseas witnesses from committing perjury. Jud Adm has explained that as provided under clause 16 of the Bill, the law in force in Hong Kong relating to evidence, procedure, contempt of court and perjury also applies to witnesses giving evidence remotely. It is the Judiciary's plan to finalize and issue relevant practice directions and guidelines by phases for the conduct of remote hearings after the passage of the Bill. The Judiciary will consider members' views when drawing up practice directions for remote hearings.

Excluded proceedings

19. Some members have expressed support for the inclusion of criminal trials as excluded proceedings under the Bill, considering that it would be more prudent for the defendant in a criminal trial to appear in person before the court. Some members have pointed out that under clause 6(4) and (5) of the Bill, the court may, on its own motion or on application by any party to an excluded proceeding, make an order for a witness (other than a vulnerable witness) to the proceeding to give evidence or be examined through a remote medium. The Administration has been requested to clarify the scope of criminal trials as referred and whether remote hearings may still be conducted in specific circumstances, such as the process of a witness giving evidence or bail applications.

20. Jud Adm has clarified that a criminal trial in Schedule 1 of the Bill refers to the trial proper and does not include procedures prior to the trial proper such as case management conferences and pre-trial review hearings. On the other hand, in accordance with clause 6(4) and (5) of the Bill, a witness (other than a vulnerable witness) to an excluded proceeding may also give evidence remotely if the judge thinks fit.

21. Some members have expressed concern as to why certain witnesses would still be allowed to give evidence remotely, despite the inclusion of criminal trials as excluded proceedings under the Bill. They have sought to know the extent to which the court may exercise its power in this regard.

22. Jud Adm has explained that the court will take into account a host of factors under clause 9 of the Bill, including clause 9(j) as mentioned above, in deciding whether or not to allow a witness to give evidence remotely. A criminal trial may involve a defendant being remanded in custody, during which there may be a need for a witness to attend the hearing remotely due to special reasons, and without the evidence of the witness, the rights of the defendant may be affected (e.g. the defendant may have to remain in custody for a longer period where it would take time to arrange for the witness to return to Hong Kong for the hearing). The Judiciary holds the view that clause 6(4) and (5) of the Bill may leave room for the judge to make a decision on the premise of ensuring that no witness is being coerced. If the judge has doubts as to whether a witness is giving evidence voluntarily without coercion or other influence, the judge may vary or revoke the remote hearing order under clause 8 of the Bill and require the witness to appear in person before the court.

NS proceedings

23. Members note that as proposed under clause 5 of the Bill, no proceeding of a case concerning national security (“NS proceeding”) may be conducted through a remote medium under the Bill, under the law or otherwise. Jud Adm has advised that to provide a stronger safeguard for the administration of justice in NS proceedings, the Judiciary is of the view that no remote hearing should be conducted in any NS proceeding, whether it be criminal or civil.

Specific operation of and security measures for remote hearings

24. Members note that the Judiciary has conducted over 2 000 remote hearings for civil proceedings at different levels of courts and tribunals since 2020. Some members have enquired whether the Judiciary will provide technical support to users of remote hearings in the light of relevant experience, and suggested that the Judiciary should provide adequate training and assistance to the legal sector and the public for the conduct of remote hearings.

25. Jud Adm has pointed out that the operation of remote hearings has been smooth since their introduction. With respect to technical support, Jud Adm will assign dedicated staff to liaise in advance with any witnesses or parties appearing remotely. Information such as links, login accounts and passwords for remote hearings will be provided by email to the witnesses or parties participating in the hearings, and connection tests will be carried out to ensure that the connection is smooth before the formal hearings are conducted. Jud Adm has also advised that

it will issue practice directions for the use of remote hearings to provide legal practitioners and parties to the proceedings with specific guidance on the details and specific operation of remote hearings, and will issue administrative instructions on the hardware and software requirements for audio-visual facilities or how they should be technically implemented.

26. There is concern that in adopting remote hearings, the Judiciary should guard against cybersecurity threats such as computer virus implantation in the system, leakage of network information and cybercrime. On the other hand, given the recent spate of cyber frauds associated with deepfake technology, some members are worried about the possibility of lawbreakers deceiving the court by impersonating witnesses through deepfake technology to participate in remote hearings.

27. According to Jud Adm, the Judiciary sets great store by data protection and information technology (“IT”) security. The system for conducting remote hearings is developed, maintained and managed by the Judiciary itself, which has drawn reference from the guidelines issued by the Digital Policy Office (“DPO”) of the Government with respect to data protection and IT security, and will enhance such work as per DPO’s advice. In practice, the Judiciary will adopt various measures to ensure that the legal representatives, witnesses, defendants, etc. attending hearings remotely are not impostors. The Correctional Services Department (“CSD”) has also put in place a mechanism to ensure that those attending hearings (regardless of whether they are physical or remote hearings) are really the defendants concerned. In addition, Jud Adm has agreed with CSD on the arrangements for the conduct of remote hearings. In the case of a litigant in person, the Judiciary will require the litigant to produce proof of identity in front of the camera to confirm his or her identity. If the judge or the parties consider that the demeanour of a witness giving evidence is odd during the remote hearing, the judge may at any time require the witness to stop giving evidence remotely and, instead, to be physically present in court to give evidence.

Providing for offences relating to the prohibition of recording on court premises

28. Members note that clauses 26 and 27 of the Bill seek to provide for new offences of recording and publishing a protected session of, and a protected subject in relation to, a proceeding, and recording and publishing a broadcast, without permission of the court. Pointing out that the levels of penalties for committing these offences are relatively high (i.e. a fine at level 5 (HK\$50,000) and imprisonment for two years on summary conviction; or a fine at level 6 (HK\$100,000) and imprisonment for five years on conviction on indictment), some members have enquired about the Administration’s considerations in formulating the penalties and whether any comparison has been made regarding the penalties for similar offences in other jurisdictions.

29. In addition, clause 38 of the Bill proposes to amend section 7 of the Summary Offences Ordinance (Cap. 228) to impose criminal offences on recording any court premises and/or any person on court premises, and publishing a court recording, without lawful authority. Under clause 29(1) of the Bill and the proposed new section 7(5) of Cap. 228, it would be a defence for a person charged with any of the above offences to establish that, at the time of the alleged offence, the person had reasonable excuse for the contravention. The Legal Adviser to the Bills Committee (“Legal Adviser”) has sought clarification from the Administration on what would constitute “reasonable excuse” and the reasons for setting different penalty levels for the above offences, all of which are intended to prohibit conduct of a similar nature, under the Bill. Regarding the defence of reasonable excuse provided under the Bill, some members are concerned that the requirement is too loose.

30. Jud Adm has responded that the culpability of the offences of recording and publishing protected sessions or protected subjects, and recording and publishing broadcasts, is considered more serious than that of the offences of recording on court premises and publishing such recordings. As the former would more likely prejudice or interfere with court proceedings and compromise more seriously the administration of justice, a higher level of penalties is proposed. Jud Adm has also mentioned that during the consultation on the Bill, The Law Society of Hong Kong has expressed the views that audio- or video-recording or photographing on court premises without permission is a serious offence, and that such acts, if done during an ongoing proceeding, might even affect the fairness of the trial and thus should warrant a heavier and deterrent penalty. Jud Adm has explained that in determining the penalties, reference has been taken from the practices in jurisdictions such as the United Kingdom, New Zealand, Australia and Singapore, where the penalties for such acts are comparable to those proposed under the Bill.

31. As for what would constitute “reasonable excuse”, Jud Adm has explained that for the purposes of each of the offences under Part 5 and clause 38 of the Bill, it is a matter for the court to decide in light of the circumstances of each case. For instance, if a person takes a picture of someone who suffers from a medical emergency during a court proceeding as a way to provide assistance for the latter’s medical treatment, it may be regarded by the court as a reasonable excuse for making an unauthorized proceeding recording.

Clause 2 of Part 1 of the Bill—Interpretation

Definition of “JJO”

32. It has come to some members’ attention that according to paragraph (a) of the proposed definition of “JJO”, JJO means a judicial officer as defined by section 2 of the Judicial Officers Recommendation Commission Ordinance (Cap. 92). As the scope of the definition is already quite wide, some members

have enquired about the reasons for adding paragraph (b) to the definition to include other persons.

33. Jud Adm has explained that the proposed definition of “JJO” in question involves remote hearings and covers all proceedings other than excluded proceedings. To avoid omissions, it is necessary for the proposed definition of “JJO” to include, in addition to the judicial officers listed in section 2 of Cap. 92, other persons appointed as deputy or temporary judicial officers, and persons appointed to specified Tribunals but not listed in section 2 of Cap. 92, so that persons performing judicial functions in the proceedings covered by the Bill are more clearly included in the proposed definition.

Definition of “legal representative”

34. Some members have pointed out that persons having a right of audience before tribunals, e.g. trade union representatives having a right of audience under the Labour Tribunal Ordinance (Cap. 25), are not necessarily legal practitioners. Under the proposed definition of “legal representative” in the Bill, these persons may be mistaken for legal practitioners. Some members have suggested that the Administration should consider amending the proposed definition of “legal representative” in clause 2 of the Bill to clearly differentiate between a person qualified to practise law and any other person having a right of audience.

35. Jud Adm has advised that in view of members’ comments, the Administration will propose amendments to take out paragraph (d) from the definition of “legal representative” and subsume it under the definition of “participant” in the same clause to avoid any misconception that persons who have a right of audience before the court are also legal practitioners. As the meaning of “right of audience” varies depending on the context, Jud Adm considers it more desirable to spell out the concept in plainer terms, i.e. “is entitled to participate” in the remote hearing context, and will therefore make such an amendment when paragraph (d) of the definition of “legal representative” is subsumed under the definition of “participant”.

Definition of “court”

36. Some members have asked, and the Legal Adviser has sought clarification from, the Administration about the reasons why the proposed definition of “court” does not include tribunals in Hong Kong other than those listed therein. Jud Adm has explained that the policy intent is to restrict the scope of the Bill to cover only the courts of the Hong Kong Special Administrative Region, i.e. the courts and tribunals under the purview and administration of the Hong Kong Judiciary, where judges and judicial officers shall exercise their independent judicial power on cases falling within the jurisdiction of the relevant courts and tribunals. These courts and tribunals do not include other statutory tribunals

such as the Copyright Tribunal and the Market Misconduct Tribunal. They are thus not included in the definition of “court”.

Definition of “participant”

37. Some members have asked who may actually be included as participants as defined in paragraph (a)(v) of the proposed definition of “participant”, and sought clarification from the Administration on the difference between “officer” and “individual” in the reference to “an officer or individual” in paragraph (a)(v)(A) to (C) of the proposed definition. There is a suggestion that the Administration should consider whether there is a need to retain the reference to “officer” and, if so, consider defining the term under the Bill to enhance clarity. There is also a suggestion that consideration be given to replacing the term “appointed” in paragraph (a)(v) of the proposed definition with another term to reflect more accurately the nature of participation of a relevant “participant” in a proceeding.

38. Jud Adm has pointed out that examples of persons covered by the proposed definition of “participant” include: a person who has specialized knowledge or experience of a particular subject appointed under section 9(4) of the Lands Tribunal Ordinance (Cap. 17) to assist the Lands Tribunal in a proceeding; and assessors whom the Court of First Instance may call to its aid in civil proceedings under section 53 of the High Court Ordinance (Cap. 4). Jud Adm has further explained that the inclusion of the descriptions “officer” and “individual” in the proposed definition of “participant” is intended to differentiate officers assisting in an official capacity from individuals assisting in other capacities. Jud Adm has advised that taking into account members’ comments, the Judiciary agrees that it is not necessary to retain the description “officer”, and the Administration will therefore propose an amendment to delete “officer or” from paragraph (a)(v) of the proposed definition.

39. As to why the specific word “appointed” is used, Jud Adm has explained that the policy intent is for the definition of “participant” to cover all persons appointed (whether by the court or otherwise in a proceeding under a set of procedure) to advise on any matter in relation to the proceeding, etc. This is because other than formal appointment, there may be other forms of involvement, e.g. call to aid. The combined use of “appointed” and “involved” is therefore adopted in the relevant provisions to cover both scenarios.

Definition of “remote hearing order”

40. The Bills Committee notes that as the court may also vary a remote hearing order under clause 7(3) of the Bill apart from clause 8(1) of the Bill, the Legal Adviser has suggested that the Administration may consider adding a reference to “section 7(3)” in the proposed definition of “remote hearing order”. Jud Adm

has advised that the Administration will propose an amendment in response to the Legal Adviser's suggestion.

Clause 4 of Part 1 of the Bill—Provisions not affected by this Ordinance

41. The Bills Committee notes that the Legal Adviser has sought clarification from the Administration on the reasons for providing in clause 4(b) of the Bill that nothing in the Bill, if passed, would affect the operation of section 23 of the Fugitive Offenders Ordinance (Cap. 503), which deals with the admissibility of evidence, etc. in proceedings under Cap. 503.

42. Jud Adm has explained that the Bill is applicable to all courts and tribunals under the purview and administration of the Judiciary, including the court of committal as defined by section 2(1) of Cap. 503 whose functions in committal proceedings relating to surrender of fugitive offenders cases are different in nature and purpose from other proceedings. Principles of its own kind on admissibility of evidence, covering aspects including the admissibility of supporting documents or other documents and the restriction on the area of evidence that can be adduced and received, have been well-established in Cap. 503. Those principles are set out in section 23 of Cap. 503. Jud Adm considers it necessary that the operation of the section is kept intact in proceedings engaging the mode of remote hearing. It is therefore stipulated in clause 4(b) of the Bill that the Bill would not affect the operation of section 23 of Cap. 503.

Part 2 of the Bill—Remote Hearing Order

Clause 6—Court may make remote hearing order

43. Members note that under clause 6(2) of the Bill, the court's decision to make a remote hearing order does not apply to an excluded proceeding, but under clause 6(4) and (5), the court may, on its own motion or on application by any party to an excluded proceeding, make an order for a witness (other than a vulnerable witness) to the proceeding to give evidence or be examined through a remote medium. The Administration has been requested to consider including a reference to clause 6(4) and (5) in the context of clause 6(2) to make it clearer which specified parts of an excluded proceeding may be conducted through a remote medium. The Legal Adviser has also invited members to note that under clause 6(5) of the Bill, witnesses (other than vulnerable witnesses) to excluded proceedings may give evidence and be examined through a remote medium if the court so orders, and such witnesses include a defendant giving evidence as a tainted witness, i.e. in his or her capacity as a witness. However, defendants giving evidence in their own capacity are not included.

44. Jud Adm has explained that clause 6(1) deals with the making of a remote hearing order for a proceeding, whereas clause 6(2) specifies that clause 6(1) does

not apply to an excluded proceeding. Clause 6(4), on the other hand, deals with the making of a remote hearing order for certain parts of an excluded proceeding, whereas clause 6(5) confines the parts of the excluded proceeding to a witness (other than a vulnerable witness) giving evidence or being examined only. The court's powers to make remote hearing orders under clause 6(1) and (4) are two distinct powers applicable to non-excluded proceedings and certain parts of excluded proceedings respectively. Jud Adm therefore considers it unnecessary to add a reference to clause 6(4) or (5) in clause 6(2).

45. In some members' view, to ensure that no proceeding concerning national security may be conducted through a remote medium, the Administration should consider amending Schedule 1 to the Bill to the effect that a "criminal trial" under excluded proceedings does not include an NS proceeding, so as to make it clear that no part of an NS proceeding may be heard remotely under clause 6(4) or (5).

46. According to Jud Adm, clause 5 of the Bill expressly provides that "[n]o NS proceeding may be conducted through a remote medium under this Ordinance, under the law or otherwise". Given that Schedule 1 may be amended by notice published in the Gazette, Jud Adm is of the view that no such room should be left for NS proceedings. The Administration has added that clause 5 as presently drafted seeks to prohibit NS proceedings from being conducted by way of remote hearings on all fronts, including banning such proceedings from being conducted through a remote medium under other ordinances. This policy objective cannot be achieved if the conduct of NS proceedings by way of remote hearings is only prohibited under Schedule 1.

47. Members note that under clause 6(3)(a)(iii) of the Bill, the court may, in a remote hearing order, specify the place or virtual space, or both, for the hearing of the relevant proceeding. Members and the Legal Adviser have requested the Administration to clarify the meaning of "virtual space", and suggested defining "virtual space" in the Bill to enhance the clarity of the term.

48. According to Jud Adm, "virtual space", as opposed to a physical space, generally refers to a computer-generated or electronically-generated environment or space where the court and the participant can interact through an interface (e.g. virtual courtroom). "Virtual space" should be interpreted in the technology context, which will evolve over time with the advancement of technology. From the policy perspective, Jud Adm considers it more helpful to court users and flexible for the court to cope with the technological advancement if elaborations and examples on "virtual space" are to be provided through practice directions.

Clause 7—Court may invite submissions

Clause 8—Court may vary or revoke remote hearing order

49. The Bills Committee notes that the Legal Adviser has sought clarification from the Administration on why the Bill does not provide for an appeal mechanism for a party to a proceeding whose application to the court for making a remote hearing order under clause 6(1) or (4) of the Bill is denied by the court. The Legal Adviser has also requested the Administration to clarify the legislative intent of clause 7(1) of the Bill.

50. According to the supplementary information provided by Jud Adm, clauses 7(1), 7(2), 7(3) and 8 of the Bill seek to ensure that the parties to a proceeding have the right and opportunity to express their views, and enable the court to review a remote hearing order after considering the parties' views and/or a material change of circumstances of the case. Clause 7(1) of the Bill provides that "[t]he court may, before making a remote hearing order for a proceeding under section 6, invite the parties to the proceeding to make submissions". Clause 7(1) of the Bill is applicable to all remote hearing orders made under clause 6 of the Bill, regardless of whether such orders are made on the court's own motion or on application by any party to a proceeding. It remains a case management decision of the court to decide whether to direct a remote hearing for a proceeding. Such decisions are judicial decisions. Under the existing appeal mechanism in the Hong Kong's judicial system, any party who wishes to appeal against a remote hearing order made by the court should do so in accordance with the prevailing rules and procedures for such appeals at different levels of courts. It is the Judiciary's intention that the existing rules and procedures concerning appeals to the court's exercise of case management decisions, which include the making, varying or revoking of a remote hearing order, should continue to apply. Parties may lodge an appeal on such decisions in accordance with this established mechanism. Thus, there is no need to provide a separate appeal mechanism in this regard under the Bill.

51. The Legal Adviser has also sought clarification from the Administration on whether a party would have the right to make representation to set aside or vary the court's order where the court has made a remote hearing order after inviting submissions from the relevant parties under clause 7(1) of the Bill, or where there has not been a specified material change of circumstances as referred to in clause 8 of the Bill.

52. Jud Adm has explained that any party who is still not satisfied where the court has made a remote hearing order after inviting submissions from the relevant parties under clause 7(1) of the Bill, or where there has not been a specified material change of circumstances as referred to in clause 8 of the Bill, may resort to the prevailing appeal mechanism for the court's exercise of case management decisions.

53. Regarding clause 7(1) of the Bill, the Administration has been asked why there is no requirement that the court must, before making a remote hearing order, invite the parties to make submissions. Jud Adm has explained that for some relatively simple proceedings (e.g. three-minute hearings), the parties would generally accept the remote approach. A mandatory requirement for the court to invite parties to make submissions on whether to make a remote hearing order might affect work efficiency. Jud Adm has added that clause 7 of the Bill seeks to make it clear that the right of the parties to make submissions to the court is not prejudiced, and that if a party is dissatisfied with a remote hearing order made by the court, which has not invited the parties to make submissions before making the remote hearing order, the party may apply to the court to vary or revoke the order under clause 7(2). Any party may also lodge a further appeal to the court against the decision in accordance with the aforesaid established mechanism.

54. Clause 7(2) of the Bill provides that “[i]f the court does not invite the parties to make submissions under subsection (1) before making a remote hearing order, any party to the proceeding who is dissatisfied with the order may apply to the court within a period as specified by the court to vary or revoke the order”. Noting that the relevant application period is set at 14 days in the draft practice directions, some members have enquired whether the “a period as specified” is purely a matter of the judge’s discretion and whether the parties may ask for an extension.

55. Jud Adm has advised that the Judiciary is prepared to specify the relevant application period by means of practice directions, and the tentative proposed period is 14 days, having regard primarily to the need to strike a balance between the work efficiency of the court and allowing reasonable time for the parties to make submissions. If there are special circumstances and sufficient grounds to justify an extension of time for making submissions, the parties may also make an application for extension to the court. The Administration has added that under clause 32(c) of the Bill, the Chief Justice may make rules or give directions regarding the application for variation or revocation of a remote hearing order under clause 7 or 8. These arrangements would provide the court with the necessary flexibility to carry clauses 7 and 8 into effect.

56. Some members and the Legal Adviser have asked whether the participation of an additional party in the course of a proceeding conducted by way of a remote hearing would constitute a material change within the meaning of clause 8(3) of the Bill. Jud Adm has explained that clause 8 has been drafted in such a way as to leave room for the court to decide on its own what would constitute a “material change”.

57. Members note that under clause 7(3) and (4) of the Bill, the court may impose any condition that it considers appropriate if it affirms, varies or revokes

a remote hearing order after inviting the parties to make submissions, and must inform the parties to the proceeding of such a decision. The Legal Adviser has requested the Administration to clarify why such power and duty are not provided for in clause 8 (Court may vary or revoke remote hearing order) of the Bill, and asked the Administration whether the policy intent regarding any decisions made by the court under Part 2 of the Bill is to require the court to give reasons for such decisions; if so, the Legal Adviser has requested the Administration to consider stipulating this requirement in Part 2 of the Bill.

58. Jud Adm has advised that in view of the Legal Adviser's comments, the Administration will propose amendments to clause 8 to the effect that the court may also impose any condition that it considers appropriate in varying or revoking a remote hearing order when there is a material change of circumstances, and that the court must inform the parties to the proceeding of its decision.

Clause 9—Factors to be considered

59. Some members have asked the Administration whether the court must consider all the factors set out in clause 9 of the Bill when making, affirming, varying or revoking a remote hearing order. Jud Adm has pointed out that, as implied in the drafting of clause 9 where “the court must consider the following factors” is immediately followed by “(if applicable)”, if a factor is not applicable in a particular case, then the court does not need to consider the factor.

60. The Legal Adviser has sought clarification from the Administration on whether the court may affirm, vary or revoke a remote hearing order and impose any appropriate condition under clause 7(3) of the Bill only if the court, after considering the factors under clause 9 of the Bill, is satisfied that, in the circumstances of the case, it would be in the interests of justice to make the decision; and whether it is necessary to consider providing for this in clause 7 of the Bill.

61. Jud Adm has explained that since a remote hearing order affirmed, varied or revoked by the court under clause 7(3) of the Bill is an order made under clause 6(6) of the Bill, it is not necessary to repeat in clause 7 of the Bill that the court, after considering the factors under clause 9 of the Bill, is satisfied that, in the circumstances of the case, it would be in the interests of justice to make the decision. Unlike clause 7 of the Bill, for the court to vary or revoke a remote hearing order under clause 8 of the Bill, there must be a material change of circumstances after the remote hearing order is made or varied. It is therefore necessary for the court to consider the factors under clause 9 of the Bill and be satisfied that, in the circumstances of the case, it would be in the interests of justice to vary or revoke the order.

Part 3 of the Bill—Operation of Remote Hearing

Clause 14—Consequences of failure to attend remote hearing

62. Some members and the Legal Adviser have sought clarification from the Administration on the following: if the court has specified in a remote hearing order the virtual space, or both the place and virtual space, for the hearing of the proceeding, and a participant has failed to connect to the “virtual space” for reasons beyond his or her control (e.g. due to the failure of the service provider to provide the necessary connection at the relevant time where no prior notice has been given to the participant), whether such a participant would be considered as having failed to attend the remote hearing in compliance with the remote hearing order, and would accordingly be subject to the same consequences as if the remote hearing were a physical hearing, such as being found to be in contempt of court for having breached the remote hearing order. The Legal Adviser has also asked the Administration to clarify, in the event that such a participant is a witness who is the subject of a witness order or witness summons in a criminal trial (i.e. has also been ordered by the court to give evidence or be examined through a remote medium pursuant to clause 6(4) and (5) of the Bill), whether he or she would also be found guilty of a contempt of court under section 36 of the Criminal Procedure Ordinance (Cap. 221) for disobeying the witness order or witness summons, unless he or she could establish, on the balance of probabilities, that he or she has a reasonable excuse for the disobedience.

63. Jud Adm has explained that the legislative intent of clause 14 of the Bill is to make the consequences of failure to attend a remote hearing the same as those of absence from a physical hearing. The consequences of failure to attend a court hearing, be it physical or remote, vary depending on the role of the absent participant, the reason for the absence, the nature of the proceeding, and other relevant circumstances of the case. For example, the application or the claim of a party to a civil proceeding who fails to attend the hearing of the application or the trial may be struck out; and if a witness fails to attend a hearing in answer to a witness summons, the witness may be found to have disobeyed a court order and be held in contempt of court. As regards the scenario of anyone failing to attend a remote hearing, the consequences would be the same as those for a physical hearing in that the court would make a judicial decision based on the available information, the evidence and the circumstances of each case.

64. Members have further requested the Administration to advise whether the contempt of court that might be committed by a participant not complying with a remote hearing order would only be a criminal offence. Jud Adm has replied that under the common law, contempt of court is divided into two categories, i.e. civil and criminal. Civil contempt of court is committed when a court order or an undertaking given to the court by a party in a proceeding is disobeyed; the *mens rea* required is merely an intention to disobey the court order or undertaking.

Examples of conduct which are regarded as civil contempt of court include disobedience to an order for the payment of money into court in time and disobedience to a judgment or order to do or abstain from doing any act within a specified time. Criminal contempt of court is committed when such conduct interferes with the due administration of justice generally. Examples of conduct that may constitute criminal contempt of court include disobedience to a witness summons to attend a court hearing, disrupting court proceedings and insulting judicial officers.

65. Jud Adm has explained that Part 2 of the Bill does not currently state in any certain term that such conduct would attract the consequence of being cited for contempt of court; while such conduct may indeed disrupt court proceedings, thereby undermining the due administration of justice, and subject to the circumstances of each case may constitute criminal contempt of court, civil contempt is also a possibility considering that it involves a breach of the remote hearing order. Contempt of court given its severity is generally treated as the last resort to be utilized if the court is unable to enforce its orders by other means (including but not limited to appropriate costs orders); it is far from being the only consequence arising from a failure to attend a remote hearing pursuant to a remote hearing order.

Clause 17—Administration of oaths and affirmations

66. Members note that under clause 17(a) of the Bill, an oath to be sworn or an affirmation to be made by a participant in a remote hearing may be administered by way of a live audio-visual link, as nearly as practicable in the same way as oaths or affirmations are physically administered in a court. A number of members have expressed concern as to whether it would contravene the existing relevant oath-taking requirements under the Oaths and Declarations Ordinance (Cap. 11) if oaths or affirmations at a remote hearing are only administered “as nearly as practicable in the same way” as oaths or affirmations are physically administered in a court.

67. Jud Adm has explained that when a participant in a remote hearing takes an oath or makes an affirmation by way of a live audio-visual link, the participant is still required to do so in a manner that complies with the relevant requirements of Cap. 11. Nevertheless, in practice, given the different settings in a remote hearing vis-à-vis a physical hearing, there may inevitably be some minor aspects which are technically not identical with each other, e.g. no judicial clerk would be present right beside the person taking an oath at a remote hearing to assist that person. As Part II of Cap. 11 sets out the provisions on the taking of oaths and making of declarations in general, including how oaths are to be taken and affirmations are to be made as well as how oaths and affirmations are to be administered, whereas clause 17(a) of the Bill enables the taking of oaths and

making of affirmations by way of a live audio-visual link, Jud Adm considers that the clause does not contravene the relevant provisions of Cap. 11.

The phrase “for all effects and purposes”

68. Pointing out that the inclusion of the phrase “for all effects and purposes” in clauses 10, 15, 19(2) and 21(2) of the Bill is not a way of drafting that is commonly seen in other pieces of legislation in Hong Kong, some members have suggested that the Administration should review the use of this phrase.

69. Jud Adm has explained that the inclusion of the phrase “for all effects and purposes” in the aforesaid clauses is meant to indicate that the relevant actions taken at a remote hearing are deemed to have the same effects and purposes as similar actions taken at a physical hearing. Jud Adm has advised that in view of members’ comments, the Administration will propose amendments to replace the phrase with “for all intents and purposes”, which is more commonly used in other pieces of legislation in Hong Kong.

Part 5 of the Bill—Offences and Penalties

70. As regards the proposed definition of “protected session” in clause 26(5) of the Bill, members have requested the Administration to clarify whether the meaning of “breaks” referred to in paragraphs (a)(ii) and (b)(ii) of the definition covers the time during adjournment of court proceedings.

71. Jud Adm has explained that such “breaks” do not include the time during adjournment of court proceedings. In this connection, the Administration will propose amendments to make it clear that “breaks” referred to in paragraphs (a)(ii) and (b)(ii) of the proposed definition do not include the adjournment of proceedings to be heard on the following day or to another date to be fixed.

Part 6 of the Bill—Miscellaneous

72. Under clause 32 of the Bill, the Chief Justice may make rules or give directions regarding any or all of the matters set out in its paragraphs (a) to (l). Some members and the Legal Adviser have sought clarification from the Administration on whether the rules to be made would be subsidiary legislation subject to the negative vetting procedure by LegCo under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1), and whether the directions to be given would not be subsidiary legislation and therefore would not be subject to scrutiny by LegCo under the negative vetting procedure (i.e. LegCo would not have the power to amend the directions). Some members are of the view that the drafting of the clause is ambiguous in that it does not specify which of the matters set out in paragraphs (a) to (l) would be addressed by way of making rules

or giving directions. The Legal Adviser has also asked the Administration to clarify whether there would be any matters set out in paragraphs (a) to (l) that could only be addressed by way of either making rules or giving directions; or whether there would be any matters set out therein that could be addressed by way of making rules under certain circumstances and by way of giving directions under other circumstances, and if so, what would those circumstances be. The Legal Adviser has suggested that the Administration should consider splitting clause 32 into two separate clauses, one dealing with matters to be addressed by making rules (i.e. subsidiary legislation) and the other covering matters to be addressed by giving directions (i.e. not subsidiary legislation).

73. Jud Adm has confirmed that the rules mentioned in clause 32 of the Bill would be subsidiary legislation subject to the negative vetting procedure by LegCo, and that the directions mentioned in the same clause mean practice directions issued by the court, which would not be subsidiary legislation subject to LegCo's scrutiny. Jud Adm has explained that whether the matters set out in paragraphs (a) to (l) of clause 32 are to be addressed by way of making rules or by way of giving directions would depend on the substance of the subject matters. Jud Adm has added that in general, matters involving operational or technical arrangements are usually prescribed in practice directions rather than in subsidiary legislation.

Part 8 of the Bill—Related Amendments

74. Members note that clauses 41 and 42 of the Bill seek to amend section 83U of the Criminal Procedure Ordinance (Cap. 221) and section 36 of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) in relation to the right of a defendant to be present at the hearing of an application for leave to appeal and at the hearing of an appeal. Jud Adm has explained that these amendments are intended to exempt a defendant from attending certain hearings and proceedings, so as to enhance the work efficiency of the court.

75. Jud Adm has advised that taking into account members' concern that such amendments may be considered as depriving defendants (particularly litigants in person) of the right to be present at appeal-related hearings, the Administration will propose amendments to keep the existing provisions of section 83U of Cap. 221 and section 36 of Cap. 484 intact, and to add new provisions in the two ordinances to empower the court to dispose of an application for leave to appeal on paper when the court considers it appropriate, in addition to making a related amendment and specifying transitional arrangements. Jud Adm has explained that the relevant amendments are in line with the policy intent underlying clauses 41 and 42 of the Bill which seek to enhance the efficiency of court hearings, and would expressly provide an option and flexibility for the court to deal with applications for leave to appeal by paper disposal where appropriate such that no parties are required to attend the court.

Proposed amendments to the Bill

76. In addition to the amendments to be proposed by the Administration as elaborated in paragraphs 35, 38, 40, 58, 69, 71 and 75 above, the Administration will also propose a number of textual and technical amendments to the Bill. The Bills Committee has no objection to these amendments.

77. The Bills Committee will not propose any amendments to the Bill.

Resumption of Second Reading debate on the Bill

78. The Bills Committee has completed the scrutiny of the Bill. The Administration has indicated its intention to resume the Second Reading debate on the Bill at the Council meeting of 26 March 2025. Subject to the moving of the relevant amendments by the Administration, the Bills Committee raises no objection.

Consultation with the House Committee

79. The Bills Committee reported its deliberations to the House Committee on 28 February 2025.

Council Business Divisions
Legislative Council Secretariat
21 March 2025

Bills Committee on Courts (Remote Hearing) Bill

Membership List

Chairman Prof Hon Priscilla LEUNG Mei-fun, GBS, JP

Deputy Chairman Hon LAM San-keung, JP

Members Hon Paul TSE Wai-chun, JP
Hon Holden CHOW Ho-ding, JP
Hon YUNG Hoi-yan, JP
Hon Doreen KONG Yuk-foon
Dr Hon Hoey Simon LEE, MH, JP
Dr Hon Johnny NG Kit-chong, MH, JP
Hon LAM Chun-sing
Hon Maggie CHAN Man-ki, MH, JP
Hon Benson LUK Hon-man
Dr Hon Kennedy WONG Ying-ho, BBS, JP
Hon LAI Tung-kwok, GBS, IDSM, JP

(Total: 13 members)

Clerk Mr Lemuel WOO

Legal Advisers Ms Wendy KAN
Ms Yvonne WONG

Bills Committee on Courts (Remote Hearing) Bill

**List of organizations which have made written submissions
to the Bills Committee**

1. The Law Society of Hong Kong
2. Chinese Dream Think Tank