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LEGAL UPDATE

PROTOCOL FOR VIRTUAL COURT HEARINGS

COVID-19 Pandemic is seen as a *once-in-a-lifetime* event that has caused a lot of turbulence to corporations, organisations, and individuals who own or run businesses. It not only changed the way people work but also changes the way people litigate, arbitrate, mediate, and negotiate. Never before terms such as online *dispute resolution (ODR)* and *virtual hearing* have been discussed frequently as during the past two years. In Vietnam, the People's Supreme Court of Vietnam (**Supreme Court**) issued Directive No. 02/2020/CT-CA dated 20 March 2020 at the beginning of the Pandemic to encourage courts at all levels to apply technologies to organise virtual hearings where possible. Unfortunately, at that time, there were no follow-up guidelines on which steps must be taken to ensure the legitimacy of a virtual hearing. In 2021, Vietnam-based legal practitioners received good news when the Supreme Court joined hands with the Supreme People's Procuracy, the Ministry of Public Security, the Ministry of Defence, and the Ministry of Justice to roll out an official protocol for virtual court hearings (**Protocol**). This Protocol is set out in Joint Circular No. 05/2021/TTLT-TANDTC-VKSNDTC-BCA-BQP-BTP (**Joint Circular 05**) and took effect on 1 February 2022.

This Legal Update sets out some remarkable rules applied to an online courtroom as set out under the Protocol.

1. Which Matters Qualify for Online Hearing?

The Protocol paves the way for the application of virtual hearings to most criminal, civil and administrative cases, at either first instance or appellate proceedings. The following list sets out which cases cannot be conducted via a virtual hearing:

- Cases involving State secrets; and
- Criminal cases involving crimes in relation to national security (Chapter XIII of the 2015 Penal Code), or
- Crimes against humanity, and war crimes (Chapter XXVI of the 2015 Penal Code).

2. Who Decides which Court Hearings can be Online?

We may get familiar with the current practice of arbitration where parties in dispute can decide whether they want to have the arbitration hearing virtually. This parties' autonomy principle is, however not applied to court hearings.

According to the Protocol, the court will have the exclusive power to compel parties to go online or offline for the hearings. The Protocol stipulates that, before the hearing, the presiding judge must assess whether an online hearing should be organised, and if yes, whether mandatory technological conditions could be satisfied. For criminal cases, however, the court's decision is subject to approval from the competent procuracy.





3. Rules for a Virtual Court Hearing

The Protocol lays down the following rules for the operation of an online hearing.

3.1 Pre-hearing Plan, Scope, and Logistic Issues

Upon the court's decision on bringing the case to an online hearing, the court shall send a pre-hearing plan to all relevant parties involved in the hearing. The pre-hearing plan includes the following information:

- Hearing dates and agenda;
- Logistics information: log-in guidelines and points of contact;
- Entry screening rules where each participant at the courtroom shall be verified based on the presentation of their identification documents, e.g. ID cards, passport, lawyer license;
- Courthouse rules for the virtual hearing, i.e. operation of electronic facilities, dress code, and principles of preserving the confidentiality of the hearing;

3.2 Technical Specifications and Requirements

Technical requirements are imposed on the venues where the online hearing is broadcasted. Basically, there are two main venue points connected with each other via an online platform:

- a. The centre point which is the location of the judge's bench (i.e. located at the court or other locations chosen by the judge), and
- b. The component points where other participants

of the hearing, other than the judges, are located. There will be maximum three-component points allowed to be connected with the centre point. The centre point and the component points need to be equipped with technical equipment of good-quality standard for ascertaining smooth connectivity, adequate visibility, and lighting during the hearing.

The set-up for technical infrastructure and trial run shall be conducted by the court right before the hearing.

3.3 Online Etiquette and Due Process

Participants in an online courtroom have to comply with the following important etiquette rules:

- Always leave the camera open; mute the microphone unless asked to speak.
- Do not make noises while the electronic device is open.
- Participants must wear proper attire and are not allowed to leave the screen during the hearing without the judge's permission.
- The litigants, victims, defence counsels or lawyers participating in the virtual hearings must present their ID documents.
- The schedule and mandatory procedures for an online hearing shall be in line with those stipulated for an offline hearing under the Criminal Procedure Code, the Civil Procedure Code, and the Administrative Procedure Code.



4. Confidentiality and Transparency in a Virtual Hearing

The Protocol sets out the rules that the attendants' identification information must be verified by the judge before the commencement of the hearing and, notably, in criminal trials, authority officials at the component points must directly conduct an on-site check against defendants and relevant parties to make sure that they are indeed the ones entitled to participate in the hearing. In addition, the online participants are obliged to keep their cameras on during the hearing.

The Protocol also allows the parties involved in online hearings to share e-documents for the purpose of presenting additional evidence to the judges. In criminal trials, after the parties have sent documents electronically to the judge, hard copies of such documents will be subsequently collected by the detainment centre officials at the component location and then be delivered to the judge in charge, for the purpose of verification. In civil or administrative trials,

relevant evidentiary documents can be completely submitted to the judge online. The judge may request the parties to submit hard copies for their examination, if needed.

Though the Protocol sets out the important rules to safeguard the confidentiality and transparency in virtual hearings, there are other issues that the Protocol should address to increase the level of confidentiality and transparency. For example, the online platform must be provided by a reputable service provider and the video recordings (if any) must be stored and kept by the court officials with a protected password.

5. Conclusion

Virtual hearings have become more and more prevalent in many countries. Even though Vietnam is quite late in bringing the Protocol on virtual court hearings into practice, this move is very welcomed by both local and the foreign legal community who practice law in Vietnam.

Contact Information

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