



Standing International Forum
of Commercial Courts

Second SIFoCC COVID-19 memorandum

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Introduction

1. On 29 May 2020, the Standing International Forum of Commercial Courts (SIFoCC) published a First Memorandum on COVID-19. With the benefit of contributions from across the global membership of SIFoCC, the Memorandum offered a particular focus on the use being made of technology to address issues facing jurisdictions in light of the pandemic. Noting that emerging technologies can be successfully used to enable a significant part of the court system deliver fair and open justice while the pandemic continues, the First Memorandum offered principles for that delivery, and underlined the value of sharing early experience.
2. The First Memorandum continued:

“There is a further point of context which urges that we proceed with a longer-term view towards technology in a justice system. The consequences of the pandemic will likely place longer term demands on and challenges for courts, and perhaps Commercial Courts in particular. This is in light of:

 - a. lasting damage to economies;
 - b. both increased defaults and changes in strengths within the business sector;
 - c. increased use of technology by business itself as a result of the pandemic;
 - d. the build-up of dispute backlog;
 - e. damage at least to some parts of the legal profession;
 - f. increased calls for better arrangements for access to justice for those without means.”
3. The aim of this Second Memorandum on COVID-19 is to focus beyond the pandemic, to arrangements using technology that we might keep for the future because they improve justice. Like the First Memorandum, it has the benefit of contributions from across the global membership of SIFoCC.
4. Some courts were originally established with the use of technology for access to justice in mind. This has been especially fortunate in light of the international health crisis that has arisen as a result of the COVID-19 pandemic. It has helped case management and hearings to proceed online much on the same basis as they did before.
5. However, changes to take advantage of improvements in technology and lessons learnt from experience are still possible. And while for some, there have been many hearings over the years where some participants have appeared by video link, there were rarely, until the emergence of the pandemic, hearings where all participants appeared online from different locations. For some this has become the norm, at least for now, to enable courts to remain fully operational during the present health crisis.

6. Valuable lessons have been learnt for the future, but for all, an important question is what to retain for the future. Some have noted a considerable, though incidental, benefit has been to enable or allow the potential, at least in time, for a reduction in costs for the court and the parties.
7. Some consider that the effectiveness of the use of e-systems in administering justice has been proved. At least in some contexts, there is evidence that justice can be administered fairly, justly and at less cost in this way. There is no doubt more to learn from experience and from sharing experience, and research – itself assisted by technology – may have an important part to play.
8. An adverse financial impact of the pandemic on some court budgets has been highlighted, where public revenues from taxation have reduced. But if states are quick to recover from the effects of this pandemic, healthy and vibrant commercial courts will be critical. We are at a point where their economic contribution, in assuring a working legal framework for business in the age of technology, is most needed. To do this work it is important that courts retain experience and staff, and are resourced to make the most of technology in their own working.



Video technology

9. The availability of forms of video technology will become an important consideration in both managing caseloads and protecting and preserving the integrity of, and public confidence in, the administration of justice.
10. The forms of technology vary, and the variations are important to the underlying considerations just identified. They include proprietary meeting products (Zoom, Teams, Webex etc.) that are able to be used anywhere, court-based or bespoke audio visual technology, internet streaming, and internet sites (such as YouTube channels for courts).

How important is 'live', physically face-to-face, evidence?

11. Does the integrity of some evidence depend on presence and reality that is available only with 'live', physically face-to-face, evidence and not with evidence taken using video technology? Is the integrity of the trial process affected if participants, including witnesses and the public, do not experience the trial through physical presence at a physical centre?
12. Views will differ on these important questions. A consideration of the first order will be not to diminish the integrity of evidence and of the trial process. But experience from the acceleration in use of technology during the pandemic helps inform fresh consideration and discussion of the questions, and future decisions. And as technology and its reliability develops further, the questions just asked are also important to considerations of efficiency.
13. The ability to take evidence from people without requiring costly or physically inconvenient or impossible travel liberates the process from the tyranny of distance. This point has an obvious practical dimension. It comes with practical – but surmountable – challenges of reliability of technology, suitability of venue from which the evidence is given, and (in international cases) time zones. But the point has a substantive dimension too: the trial may be able to benefit from evidence that would otherwise be unavailable.
14. A traditional view held by some has been that 'live', physically face-to-face testimony optimises the ability of the trier of fact to assess the credibility of a witness. This is not a universal view, and even where held there are counterpoints. As experience of taking evidence online increases, there is the opportunity further to test and reflect on the reliability of the view. At the same time, there is opportunity for continuing research into the question of whether participating online rather than in a physical courtroom has effects (positive or negative) on witness behaviour, and if so what those effects are.

15. It is relevant to recognise that even before the pandemic it was increasingly appreciated that video recording before trial provided an opportunity for evidence to be more contemporaneous to events, and video at trial provided an opportunity to address the challenges presented by a vulnerable witness being expected to give evidence in a courtroom.¹
16. In trials of commercial cases in particular, simultaneous video transmission should have an important place when conditions make in-person testimony from a particular witness infeasible. As a guiding principle, it is suggested that a party seeking to dispense with live physically face-to-face, testimony of a witness in favour of simultaneous video transmission be required to give a good and sufficient reason. This is a matter for each jurisdiction, but examples of a good and sufficient reason might include health, travel or visa impediments, or the court lacking the judicial power to compel a witness in a foreign nation to appear. In addition, if the parties are agreed that a particular witness need not appear in person, dispensation should be permitted.
17. Preparation and procedures for video testimony are important. It is important that the location is suitable and to identify on the record any person physically present in the room with the witness. The court should be satisfied that there are adequate safeguards against coaching, signalling or influencing a witness. Towards that end, first, witnesses should be reminded that they must not communicate with third parties while giving evidence. And second, as a further safeguard, witnesses should be asked to identify anyone who is in the room with them, and to give a view round the room on their video screen at the start of their evidence.
18. More generally, courts ought to be open to new approaches to evidence, especially where there is consent by all parties. So long as the proposal does not fundamentally alter the nature of the judicial process, innovative ideas for taking testimony or other evidence that is consented to by the parties should attract a receptive consideration by a judge.
19. If the parties consent to the trier of fact observing a medical procedure, chemical process or manufacturing process through online video streaming, then the judge ought to be open to the admissibility of this evidence. There may be different considerations for evidence adduced through questioning, but party consent is a relevant safeguard for the fairness of the innovative trial technique.
20. The view has even been expressed that on occasion greater focus is placed on content when a witness appears on video. There will be other considerations including the judge's own sense of the assistance he or she (or the jury) will need to decide the issues reliably, and the consideration that receiving evidence is an important public feature of the administration of justice.

¹ Note for example: <https://www.theadvocatesgateway.org/images/toolkits/9-planning-to-question-someone-using-a-remote-link-2017.pdf>

21. The Singapore Courts anticipated that applications for the taking of evidence by video link from witnesses located overseas would become more prevalent in view of the travel restrictions that continue to remain in place in Singapore and many other parts of the world. To address any potential international law risk that may arise from online taking of evidence, the Singapore Courts have required parties making such applications to take steps to ensure that the foreign country in question does not raise objections.² The English Courts make broadly the same requirements.

How important is it for argument (rather than evidence) to be 'live', physically face-to-face, rather than by online means?

22. Great flexibility can be achieved, and convenience and efficiency enhanced by recognising that physical proximity is not always necessary for the delivery of oral argument. Again, however, depending upon the circumstances, the undertaking of argument, especially appellate argument, should be recognised as an important public feature of the administration of justice.
23. 'Live' argument, whether physically face-to-face or using video, provides the judge with the opportunity to question lawyers and quickly get to the heart of the matter. Judges formulate questions before the argument but, at times, questions are a spontaneous response to an assertion by a lawyer.
24. Judicial experience from the pandemic suggests that 'live' argument using video rather than being physically face-to-face does not reduce the insight and assistance gained by the judge from the argument. The fact that the oral argument will invariably be supplemented by written argument may contribute to this result.
25. Some proponents of greater use of video reference the fact that in commercial litigation courts already require the presentation of arguments in written form, whether 'skeleton' argument or fuller 'brief', and whether to be supplemented by oral argument or not. Others hold to the view that oral argument can illuminate, through test and challenge, in a way that written argument alone cannot, and this is why the choice of channel or medium for oral argument remains important.
26. A relevant consideration is of course the ability of lawyers for the parties to gauge a judge's receptiveness to an argument and recast the argument or present an alternative argument. It will be valuable to gain a sense of the lawyers' perspective, but judges have seen little sign of difficulty here where video is used. Whatever the conclusion reached about using video for argument on sensitive or finely balanced points of substance, the case for regular use of video where case management is under discussion seems strong.

² Singapore Supreme Court Practice Directions at para 56A. Singapore International Commercial Court Practice Directions at para 111A.

27. As regards appellate argument, the view has been expressed that it is difficult for the members of a panel of appellate judges to fully test arguments presented to them by video. The fact that they are separated from each other inhibits the kind of conversation with counsel that the panel can conduct when they are able to work together when physically present in the same room. This view too merits discussion and comparison of experience.
28. An overarching point of significance is that there is an unquantifiable loss in collegiality, and perhaps in professional learning and development, when advocates for parties have interactions only by remote means. The same may be true where interactions between advocates and the judiciary are only by online means. Against the remarkable gains possible in terms of efficiency and cost, the lack of human interaction has been noted. These are significant points for consideration and study. A continued exchange of views between jurisdictions may identify new ways to mitigate the points, including through striking a good balance.

Addressing fatigue by (i) user technique and (ii) improved technology

29. User fatigue from technology is frequently experienced and referenced. It is important to recognise the point and address it.
30. It may be partially mitigated by the periodic grant of breaks or recesses. The precise timing of such breaks or recesses should be agreed with the participants before each day's session begins. It is the practice in some jurisdictions for the timing of these breaks or recesses to be included in a pre-hearing protocol.³
31. Strong wireless connections, good working audio and video, satisfactory lighting, and backgrounds that do not distract from the content of presentations are highly desirable.

³ The Equal Treatment Bench Book committee of the Judicial College of England and Wales has published an interim Guide to Good Practice for Remote Hearings with additional treatment in Appendix E of the 2021 edition of the Equal Treatment Bench Book. While part of these are concerned with the use of technology in pandemic conditions, part is concerned with the use of technology generally: <https://www.judiciary.uk/wp-content/uploads/2020/03/Good-Practice-for-Remote-Hearings-May-2020-1.pdf> and <https://www.judiciary.uk/announcements/equal-treatment-bench-book-new-edition/>

Achieving a true sense of reality

32. The use of technology must be managed to maintain the sense of the real engagement: of the state taking the dispute with the seriousness that a public gathering implies. This perhaps informs one that technology will not (or should not) replace, but enhance, physical presence where possible.
33. Human nature craves interpersonal contact. It is wonderful to speak to a friend or family member by telephone, but it is not an adequate substitute for being in that person's physical presence. Humanity is an essential attribute of a judge, and there is an assessment to be made whether in some contexts a wholesale shift to the use of video technology may have some impact on this, and whether and how that can be mitigated.

Generally

34. There may be much to be said for dedicated and high-quality research in some or all of the areas referenced above.



Jury trials

35. The considerations discussed above also apply to juries as they do to judges when what is under consideration is the receipt of evidence and argument by video rather than 'live', physically face-to-face.
36. In a number of jurisdictions there is experience of juries receiving evidence (factual and expert) by video, sometimes recorded and sometimes immediate.
37. The question of online participation by jurors when physically separated from each other is quite different. The fundamental nature of jury trials would likely be altered were jurors to participate online and physically separated from each other in hearing evidence and deliberating to verdict. It is essential that jurors give their undivided attention to all evidence and work together. Early experience in America found parties unwilling to give consent to proposals for physical separation of jurors from each other.
38. A different situation is where jurors are sitting together in a place that is physically separate from but linked by video to other participants in the trial. In Scotland, for example, where a jury of 15 persons is required by Scots law, juries are being located during the pandemic in separate buildings but together. This has proved workable and is believed to work well.
39. It has been suggested that the use of video technology for the jury selection process may prove more promising. Juror hardship issues and issues of possible bias in a civil case could be addressed during online questioning of prospective jurors with party consent. Consent may be more forthcoming if the parties are aware that the jury selection will not be delayed but will take place in person if there is no consent to online questioning.

Good governance

40. The protocols and procedure to be developed in using technology will vary in content depending on the occasion.
41. For instance, case management may well be efficiently and effectively done by 'in chambers' discussions with counsel on Zoom, Teams or Webex, without any unnecessary formality. Interlocutory hearings can likewise be arranged with public viewing as if the application were in court.
42. Public observation can be managed by orders and technical supervision. The confidence of the wider commercial community can be enhanced by the consultation of the commercial bar and profession generally, as well as by courts making their procedures known publicly through technology such as streaming and YouTube channels.
43. The following points have been emphasised where a hearing takes place using video technology:
 1. Guidance and ground rules agreed in advance to cover issues such as how the hearing will commence, etiquette, court dress, equipment tests, livestreaming, recording, checking and enhancing audio/video quality, breaks and adjournments, and dealing with technical difficulties. This can be done by establishing a pre-hearing protocol.
 2. A test, where practicable, carried out ahead of hearings with the parties and witnesses to check there are no technical issues.
 3. The control and monitoring of access to the system and presence at locations during the hearing to ensure complete security, with participants admitted on the direction of the judge.
 4. Arrangements to enable the parties and judges to be placed in separate rooms where it is necessary for judges or the parties to discuss issues separately.
 5. Arrangements and guidance for e-bundles for documents and authorities, sometimes in addition to key physical documents.
 6. Necessary adjustments being made to deal with time differences.

44. A number of jurisdictions underpin their arrangements and approach with an overriding objective to deal with all cases justly.⁴ The overriding objective may be amplified to state expressly that dealing with all cases justly includes dealing with them efficiently by, so far as practicable, making appropriate use of information technology. The courts may be empowered to take all steps that are necessary or expedient for the proper determination of a case, obliged to manage cases in accordance with the overriding objective, and required to conduct all hearings in such manner as they consider most suitable, given the issues raised by the dispute and in order to facilitate the just, expeditious and economical determination of the dispute. The Qatar International Court points out that an overriding objective and the flexibility to meet, including through technology, has always been of considerable importance but is particularly critical at the present time.
45. Courts will also develop experience and arrangements for their approach to hearings where different parties (or others) may wish to participate in different ways in a single hearing, or attend a hearing in different ways. This is sometimes referred to as a 'hybrid' hearing.

⁴ The concept of an overriding objective was introduced by Lord Woolf in civil justice reforms led by him at the end of the twentieth century. The ADGM Court Procedure Rules state that the overriding objective of the system of justice in the ADGM Courts, which is exclusively a paperless system harnessed by technology, is "accessible, fair and efficient".



Developing case management and case management systems

46. Technology may be harnessed to develop the courts' case management capabilities.
47. Courts will need to continually improve their case filing and case management systems. The pandemic has called for electronic document exchanges and secure large file sharing: for example, an electronic courtbook repository is currently being developed in the Supreme Court of Victoria.⁵
48. On case management principles, the SIFoCC Memorandum on International Best Practice in Case Management⁶ is fully applicable in the context of greater use of technology.
49. In some jurisdictions, written correspondence, which can be transacted through an online filing system, has already become a primary means of giving case management directions to the parties at least on simpler points, thus minimising the need for counsel to attend physically in court.
50. Case management is an area where asynchronous hearings (where the parties can contribute online and sequentially over a period rather than on a single occasion) may have a particular part to play.
51. For example, moving forward, the electronic case filing system (eLitigation) in Singapore will be enhanced to provide an online asynchronous hearing facility that can be used for all case types, to allow parties and the court to communicate in a manner akin to instant messaging through a desktop/laptop computer or a mobile phone app. It is envisaged that records of such communications, being formal communications with the court and between parties, will be automatically stored in the electronic case files. If all relevant matters are addressed in such communications, oral hearings (physical or online) can be dispensed with. To some extent, this is how the CE-File system in England and Wales is used in its Commercial Court and other Business and Property Courts of England and Wales in 2020. 4,500 of the more straightforward applications (many made by consent) were decided through CE-File and without a hearing by the Commercial Court.
52. Use of pretrial examinations via video streaming or videotaping of testimony may be addressed with the court at an early case management conference.

⁵ To include the use of operable links to documents produced under subpoena.

⁶ <https://sifocc.org/app/uploads/2020/05/SIFoCC-Presumptions-of-Best-Practice-in-Case-Management-May-2020.pdf>. The SIFoCC International Working Group responsible for the SIFoCC Memorandum on International Best Practice in Case Management was co-chaired by Chief Justice James Allsop (Federal Court of Australia) and Sir Peter Gross (Court of Appeal of England and Wales), and assisted by an international expert judicial panel.

53. The People's Courts of China have built a one-stop dispute resolution mechanism and a one-stop litigation service center, providing online litigation services such as filing, inquiry, payment of fees, mediation, court hearing. During the COVID-19 pandemic in 2020, online litigation became the new normal. On 3 February 2021, the Supreme People's Court (SPC) released a document 'Several Provisions on Providing Online Filing Services for Cross-border Litigants', which allows, for example, cross-border litigants to file civil and commercial cases of first instance after real-name registration and identity verification through a WeChat mini program – China Mobile Micro Court.
54. Technology-based systems or platforms specially developed to meet the needs of parties, lawyers, judges, staff and the public may include these features or attributes:⁷
- available in multiple languages
 - free to use
 - accessible through a variety of devices including tablets and mobile phones
 - available 24 hours a day from anywhere in the world (providing the user has access to the internet)
 - safe and secure to use
 - allow parties to file and access case papers and communications with the court
 - easy-to-use interface, customised for litigants in person / self-represented litigants and legal practitioners to ensure streamlined navigation
 - provide email and SMS notifications to alert users of tasks and communications thereby ensuring that users are kept up to date with how their case is progressing and what actions, if any, are required from them
 - integrated with video and telephone conferencing facilities, allowing parties to appear at hearings online
 - an in-built help function to assist users who may have queries in relation to the system's functionality
 - internal accounts for judges and staff; external accounts can be created for legal practitioners as well as litigants in person / self-represented litigants, with the appearance and functionality of a user's account varying depending on their role
 - appeal court access to the trial file so that all applications for permission to appeal and subsequent appeals can be conducted using the same system

⁷ The list is kindly provided by the Qatar International Court from its eCourt system, but many of the features and attributes can also already be found in other systems offered in other jurisdictions.

55. Abu Dhabi Global Market Courts (ADGM Courts) have managed the entirety of its caseload with these and other features through its eCourts Platform since February 2018. The Platform is also used to provide the following to users and the Court:
- external users have a dedicated home page unique to that user which allows them to do everything required with the Court, including the commencement of cases and appeals, filing documents, paying filing fees, and viewing the digital court file
 - the home page also allows the user to invite counsel to view it as part of the team requiring access to the court file, and it provides access to videoconference links
 - no part of the life of a case is handled outside of the court file, with the exception of certain applications
 - electronic evidence bundles to the parties for hearings and trials at no cost to the parties; these form part of the digital court file
 - the Platform generates an SMS and email to the parties each time a document is filed or uploaded by the Court, and court procedure rules provide that such notifications are to be considered as service upon the parties to the proceedings
 - transcripts are uploaded to the digital court file at no cost to the parties; the audio and video of the video hearing is also saved on the cloud, with appropriate security, for access later if this is needed
 - judges have a dedicated portal with access to the Platform, allowing them to view the digital court files at any time without requiring the assistance of the Registry staff
 - bespoke dashboards allow the Court to track numerous features of caseload, especially disposal times, to ensure that key performance standards are met



Asynchronous dispute resolution methods

56. To avoid simply replacing the tyranny of distance with the tyranny of time zones, so-called asynchronous methods may be useful. Techniques such as pre-recording submissions, openings and arguments may have their place. Although there may be compromises involved, there is a place for these techniques to be used as part of a suite of mechanisms and tools.
57. Asynchronous hearings free up time usually allocated for a physical hearing at a designated time and place, doing away with waiting time for lawyers and saving the court time for the judge, so increasing efficiency all round. Their use in case management is noted above.
58. Hangzhou Internet Court of China established asynchronous hearings in 2018. The Court found this freed judges from fixed court hearing times, improved trial efficiency, and allowed parties to prepare each question carefully by consulting with a lawyer or expert within a specified period.
59. The Singapore Courts have, for example moved towards implementing asynchronous hearings by online means from March 2021. From 16 March 2020, the State Courts in Singapore instituted a protocol for asynchronous court dispute resolution hearings by email (aCDR) in respect of certain disputes heard in the State Courts Centre for Dispute Resolution (SCCDR).⁸ In the aCDR process, parties provide updates on the progress of the case and apply for directions by email, and the court will respond with the appropriate directions over email.

⁸ Registrar's Circular No. 2 of 2020, State Courts of Singapore (5 March 2020): <https://www.statecourts.gov.sg/cws/Resources/Documents/RC%202%20of%202020.pdf>

Ensuring open justice by public observation/access

60. Public access to online judicial proceedings must be preserved, absent a compelling reason for confidentiality. As the conduct of hearings by online communications technology becomes more commonplace, public trust and confidence in the 'new normal' in the way justice is administered is key.
61. Accordingly, where cases are conducted online, it is important to ensure that members of the public can still observe proceedings.
62. In some jurisdictions all hearings are therefore livestreamed with details of how to access the livestream made available on the court's website. The court's IT staff manage the livestream and ensure that it is activated and deactivated at the appropriate times. Among other jurisdictions, the Supreme Court of Victoria provides on its website and in its daily law list instructions to the public for requesting links to online hearings conducted using Zoom. It also livestreams many proceedings.
63. Members of the public ought not to be required to identify themselves, just as they would not need to do so if they were sitting in the gallery of a courtroom. At the same time, consideration needs to be given to protocols and strategies to deal with witnesses out of court who should not be observing the testimony of other witnesses.
64. The important question remains about audio or visual recording by an observer or participant, which would be prohibited if they were sitting in the gallery of a courtroom. An available practice is at the start of every hearing for the judge or judicial officer to administer a standard reminder to all that there is to be no photography or oral or visual recording of the hearing (other than the official recording) and no dissemination of the same. Counsel may be asked to remind particular persons of the prohibition against the making or disseminating of audio and video recordings of the hearing.
65. In China, SPC has established China Court Trial Online ([www://tingshen.court.gov.cn](http://tingshen.court.gov.cn)), so the public can choose to watch live or video recorded court hearings of Chinese courts at all levels across the country online. China Court Trial Online has provided live streaming of over 10 million trials from its launching in 2013 to December 2020.

66. In addition to or instead of providing online access to the media and members of the public, open court hearings conducted using online communication technology may be broadcast and streamed on TV screens in physical courtrooms, where media representatives and the members of the public can observe the proceedings from the public gallery. This facilitates adherence with the principle of open justice, while mitigating the risks of unauthorised recordings and other security concerns that may arise from online access. On the other hand, compared with online access, it reduces the opportunity for the public to see and understand the administration of justice in action. A number of jurisdictions may look to strike a balance depending on the type of hearing involved.
67. Brazil has experienced some attempts to disrupt courts' online hearings and also cyber-attacks. In November, the online system of the Superior Court of Justice was broken into and the Court services were suspended for one full week due to that. Cyber-attacks were also experienced at several Federal and State Courts, and an attempt was made at the Electoral Superior Court. With these examples, the robustness of technology systems in use at the moment warrants careful consideration in every jurisdiction. The view has been expressed that in the same way that we are concerned with the physical protection of judges, lawyers and parties, now that we are taking courts to the cloud, we should rethink our cyber protection.
68. Counsel involved in hearings conducted over video can seek leave from the court for other persons (e.g. party representatives located overseas) to observe the hearing by particular means or from particular locations. Where necessary, particular terms can be imposed.
69. Some video platforms cannot handle a high volume of public participants. Telephone access may be an alternative in this situation.

Holding the confidence of the wider commercial community

- 70. The confidence of the wider commercial community is promoted when judicial proceedings employing technology are conducted in a manner that does not alter the core functions of judges, juries, witnesses and lawyers.
- 71. Taking testimony online may strike the commercial community as sensible. Preliminary conferences with the judge that are conducted by telephone or video demonstrate efficiency and economy, and are consistent with the norms of commercial enterprise. Hearings using video technology may allow wider observation by the commercial community, especially in cases with parties located internationally, with increased understanding of the court process and decision making the result.
- 72. The quality and timeliness of judicial rulings are likely to remain a principal focus of the business community.



Capturing and using data to make improvements

- 73. The increased use of technology provides important opportunities for courts to capture data, where appropriate, to enable them to identify and understand where improvement can be made, where need is not being met and whether innovations are working.
- 74. At the same time, close attention must be given to the risks with interference in proceedings and of privacy concerns by inappropriate use of recording (see above), security issues and the consequences of data scraping.

Access to decisions and judgments, and orders

- 75.** The increased use of technology also provides important opportunities for decisions and judgments to be made widely and publicly available, and without cost. At the same time, the sheer volume may place a premium on high-quality indexing and the desirability of standard neutral citation systems.
- 76.** Electronic case filing systems ought to provide an email or text alert to the parties or their lawyers that a judicial ruling has been posted. Logging on to the system ought to provide immediate access to the full text of the ruling.
- 77.** To take an example of alerting the public to decisions and judgments, all published Supreme Court decisions and judgments in Singapore are uploaded on the Supreme Court website, and on Singapore Law Watch, a publicly accessible daily legal news site managed by the Singapore Academy of Law. The decisions and judgments uploaded on the Supreme Court website are ‘mobile responsive’, which means that the text will re-wrap according to the screen or font size to help those accessing the document on mobile devices.
- 78.** SPC has established China Judgments Online (www://wenshu.court.gov.cn), covering all four levels of courts in China. The volume of judgments on this website exceeds 100 million. Visitors can precisely find judgments through a variety of keywords set by the website.
- 79.** As to orders, the Dubai International Financial Centre Courts canvassed authentication on blockchain at the New York full meeting of SIFoCC. The Singapore Courts launched an authentic court order system earlier this year. Under the system, any party who receives a copy of an eligible court order – whether by email, fax or even screenshot – may use the QR code or reference number on it to verify the authenticity of the order using a secured database, free of charge.⁹

⁹ Sundaresh Menon, ‘Judging and the Judiciary: Challenges and Lessons in the Age of Technology’, Korea-Singapore Legal Technology Seminar (19 October 2020) at para 36. https://www.supremecourt.gov.sg/docs/default-source/default-document-library/chief-justice-sundaresh-menon_korea-singapore-legal-technology-seminar.pdf

Online alternative dispute resolution (ADR) as an adjunct to court process

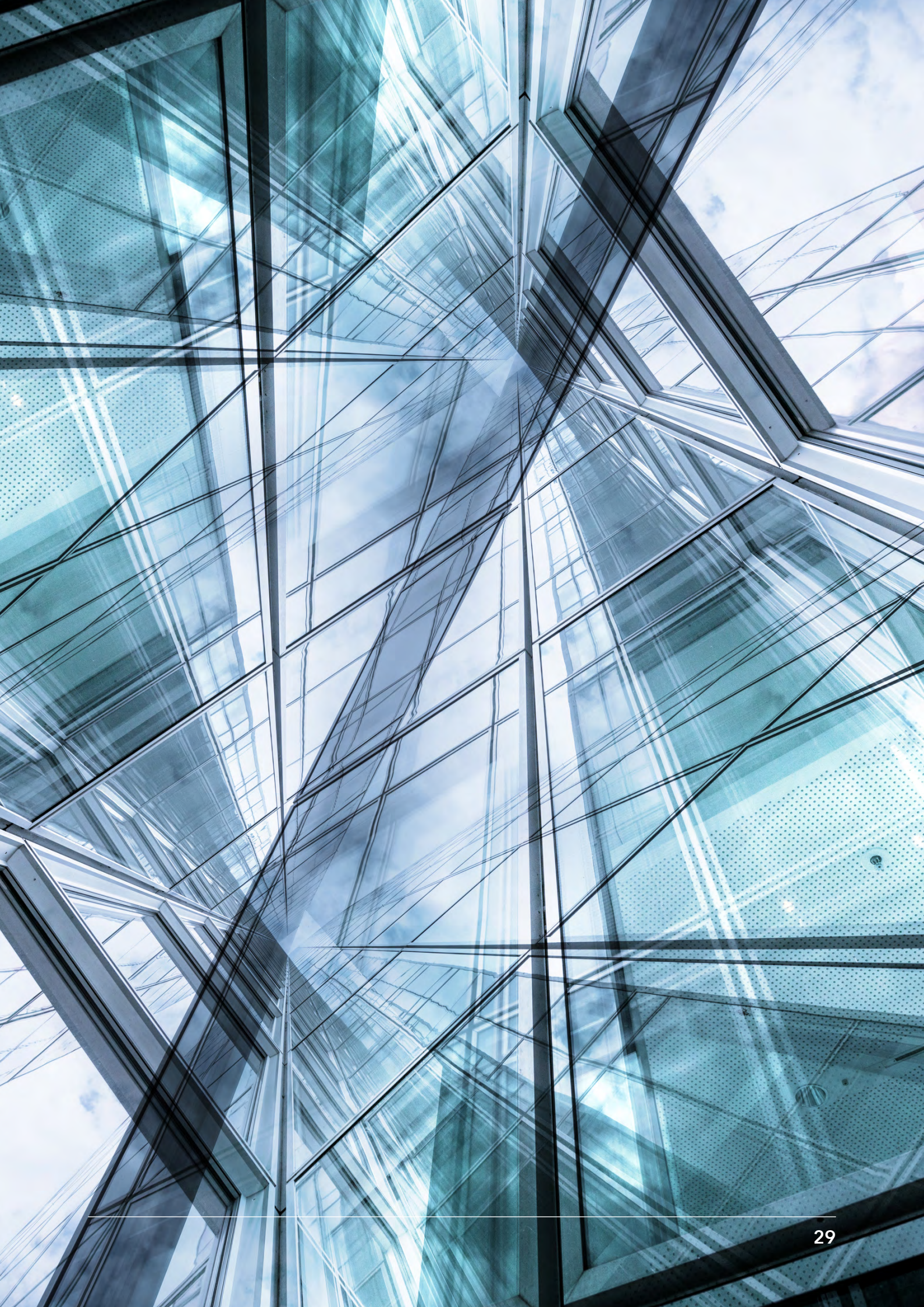
80. Court-annexed mediation, consultation and facilitation has been a feature of many courts for many years. Mediations need not be room- or place-specific. They have always involved meetings, telephone calls and the use of all available technology.
81. ADR benefits from the use of technology. The increased technical facilities of meeting technology will amplify and make more flexibly effective ADR processes. Mediations may be held with the mediator in one location and the parties and their lawyers in other locations. Some video platforms have features that create 'virtual rooms' where a mediator could meet privately with each side.
82. In July 2017, Singapore's Community Justice and Tribunals System (CJTS), which is an online filing and case management system in the State Courts, was first launched in the Small Claims Tribunal. By the end of February 2019, more than 1,700 claims filed in the Small Claims Tribunal had undergone e-Negotiation, a module in the CJTS which allows parties to negotiate a settlement online between themselves, with about 35% reaching amicable settlement.¹⁰ The CJTS also has an e-Mediation module, which allows parties to book a mediator to mediate their case online without needing to come to court.¹¹
83. In addition, in the SCCDR, asynchronous hearings (under the aCDR protocol) extend to the early neutral evaluation of liability and quantum, and the recording of settlement agreements. For the early neutral evaluation, the court considers both documentary evidence and legal arguments. If parties are unable to resolve the matter after the early neutral evaluation, the court may direct the plaintiff to set down the matter for trial, and the aCDR process concludes.
84. In 2020, the Qatar International Court launched its mediation service. Mediations are conducted in accordance with the QICDRC Mediation Rules. The appointed mediator¹² has complete flexibility to conduct the mediation in the manner he or she considers appropriate and most likely to be successful having regard to the nature and circumstances of the dispute. This includes the use of technology.

¹⁰ Sundaresh Menon, 'Deep Thinking: The Future of the Legal Profession in an Age of Technology', Gala Dinner Address at the 29th Inter-Pacific Bar Association Annual Meeting and Conference (25 April 2019). [https://www.supremecourt.gov.sg/docs/default-source/default-document-library/deep-thinking---the-future-of-the-legal-profession-in-an-age-of-technology-\(250419---final\).pdf](https://www.supremecourt.gov.sg/docs/default-source/default-document-library/deep-thinking---the-future-of-the-legal-profession-in-an-age-of-technology-(250419---final).pdf)

¹¹ <https://www.statecourts.gov.sg/cws/ECT/Pages/Using-the-Community-Justice-and-Tribunals-System.aspx>

¹² Where parties seek to refer a dispute to mediation, the registrar will suggest a list of mediators from the specially created QICDRC Panel, from which the parties can make a selection. If the parties are unable to agree on a particular mediator, the registrar will make the appointment.

- 85.** In China, SPC launched Chinese Court Mediation Platform ([www://tiaojie.court.gov.cn](http://www.tiaojie.court.gov.cn)) in 2018. The platform has many functions, such as online mediation, online selection of mediators, generation of mediation agreements and judicial confirmation on mediation agreements. The China International Commercial Court has established a one-stop diversified dispute resolution mechanism integrating mediation, arbitration and litigation to resolve international commercial disputes.
- 86.** Aside from mediations and early neutral evaluation, arbitrations may also be conducted online with the consent of the parties or a rule of the arbitration forum.



The legal profession

87. It is critical to engage with the legal profession for the effective uptake and integration of these technical developments.
88. The technologies involve capital and recurrent expenditures not only for the courts, but also for the profession. Courts have a leading role to play in the choice of technologies and should consult with and assist in the educative development of the profession. It is essential for courts to guide the legal profession in adjusting and adapting to the digital transformation efforts of the courts.
89. Private lawyers are routinely using technology for client conferences, team and partnership meetings and interviews with witnesses, as well as for document management and document disclosure, discovery and analysis. Bar associations and lawyer groups now routinely conduct meetings and programmes online. The legal profession likely has much to share with the judiciary in terms of creative uses of technology.
90. In early 2021, the People's Court Lawyer Service Platform (<https://lspt.court.gov.cn>), jointly developed by the SPC and the Ministry of Justice of China, was put into operation in China. This platform has functions of online court hearings and includes hearing scheduling, intelligent assistance tools and lawyers' easy pass code, etc.

Access to justice

91. Used well, technology is capable of enhancing engagement with or access to the administration of justice.¹³ At the same time, courts have a responsibility in ensuring as far as possible that technology does not diminish that engagement or access.

Information

92. A number of courts have used websites to explain requirements and procedures. The Qatar International Court has held a number of webinars to assist the profession and the public with understanding legal issues that have arisen during the pandemic. In Singapore, when the decision was taken in early March 2020 to use Zoom for a significant number of hearings in the Supreme Court, the Supreme Court Registry published a 'Guide on the Use of Video Conferencing and Telephone Conferencing' on the Supreme Court website to educate counsel and litigants on the use of Zoom.¹⁴ There were also dedicated microsites on each court's website containing information for court users, advisories, links to electronic filing systems, and responses to frequently asked questions. The correspondence from the court's registry to parties/counsel in respect of each Zoom hearing included instructions on administrative matters such as naming conventions, and on the use of online communication technology.

Access to technology

93. Just as e-filing and e-files must be supplemented by ways of ensuring that anyone can participate in the court process, so must courts support and assist litigants without technology or technological skills. Court architecture and facilities for public users will have to be reconsidered and perhaps reconfigured.
94. Litigants in person/self-represented litigants are often not legally trained, and are often unfamiliar with the legal systems and processes. Many also lack the equipment or know-how to use the courts' electronic services. E-bundle requirements may be unrealistic for them. Effective participation in video hearings may involve a whole range of practical challenges.
95. This means that while the courts pursue digital transformation, it is critical for them to also support those who are not professionally represented to maintain effective access to justice.¹⁵

¹³ See, for example, the discussion with Sir Geoffrey Vos and others at <https://today.law.harvard.edu/online-courts-reimagining-the-future-of-justice/>

¹⁴ <https://www.supremecourt.gov.sg/docs/default-source/module-document/2020-08-03---guide-to-video-conferencing.pdf>

¹⁵ Sundaresh Menon, 'Justice in times of Covid-19', Remarks delivered at the Judicial Integrity Network in Asean Webinar (28 May 2020) ('Justice in times of Covid-19') at para 15: <https://www.supremecourt.gov.sg/docs/default-source/default-document-library/undp-webinar703e7e87220c43348baced546e2c70a.pdf>

96. Courts ought to have staff available to help access electronic case filings for self-represented persons. Some libraries, courthouses and other public facilities provide free internet-connected computers for public use. These public facilities should consider adding private space with audio and video links for individuals who do not have the resources available to them in their homes.
97. In Singapore, 'Zoom rooms' have been created in the premises of the State Courts and Family Justice Courts, so that litigants in person / self represented litigants or those unfamiliar with technology are able to participate in online hearings with the benefit of on-site equipment and technical assistance. To enhance access to information, the Singapore Courts are developing a single website amalgamating the existing individual websites of the Supreme Court, State Courts and Family Justice Courts. The new website will be a one-stop centre for all matters pertaining to the courts, and information on court proceedings will be written in 'non-legalese'. The website also aims to direct court users to appropriate organisations or agencies that can render further assistance, for example, the Legal Aid Bureau or the Law Society Pro Bono Services Office. A cross-agency platform that members of the public can access as a starting point to find out more about legal matters is also on the horizon.
98. Court systems must be particularly sensitive to parties, including self-represented parties, who are incarcerated. They need to work with prisons to ensure that these incarcerated parties have access to secure rooms for video or telephone conferences with judges.

Access to legal advice

99. Access to legal advice for those who cannot afford it remains an issue that transcends technology. Theoretically, the availability of lawyers to render legal advice entirely over the phone or by video link ought to drive down the cost of legal services, but so far there is no persuasive evidence of that. And here too consideration must be given to digital exclusion, including the inability of some users to afford or access the technology involved in accessing advice.
100. In response to the COVID-19 pandemic, the Qatar International Court launched its pro bono service. The reaction of the legal profession in Qatar to this has been extremely positive, with an impressive number of local and international firms having signed up to provide free advice, assistance and representation. In England and Wales, in the context of commercial litigation, existing pro bono arrangements through Advocate (the Bar Pro Bono Unit) have been supplemented by tailored schemes in the Commercial Court and Circuit Commercial Court. ADGM Courts launched a pro bono scheme in April 2020 receiving the full support of the UAE legal profession. The scheme is accessed via the eCourts Platform. Pro bono clients lodge requests, are given access to information and guidance and receive notifications, all via the Platform. All pro bono consultations take place via a video conference or a conference call.

Disability

- 101.** Technology offers the hope of easier access to courts for persons with disabilities or vulnerabilities. Court administrators should be prepared to assist the judge with the particular technology that best adapts to the disability.

