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ADGM COURTS

# PROTOCOL FOR REMOTE HEARINGS



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## INTRODUCTORY COMMENTS

The purpose of this Protocol is to provide basic guidance as to the conduct of hearings to be conducted remotely (whether fully or in part), with no or only limited in-person participation (**Remote Hearings**).

The method by which all hearings, including Remote Hearings, are conducted is always a matter for the presiding Judge, having regard to the applicable law, Rules and Practice Directions. Nothing in this Protocol derogates from the duty of the Judge(s) to determine all issues that arise in the case judicially and in accordance with normal principles. Hearings conducted in accordance with this Protocol should, however, be treated for all other purposes as a hearing in accordance with the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 (**Regulations**) and Court Procedure Rules 2016 (**Rules**).

This Protocol applies to hearings of all kinds, including case management conferences, applications, trials and appeals.

## A. INTRODUCTION AND GUIDING PRINCIPLES

1. This Protocol sets out (a) the logistical arrangements that the Court has put in place for Remote Hearings, and (b) rules according to which Remote Hearings will be conducted.
2. The Protocol is designed to ensure that Remote Hearings are organised and conducted in a manner that is accessible, fair and efficient.
3. The reference to “days” in this Protocol is a reference to calendar days.
4. The Court may at any time vary any of the provisions of this Protocol.

## B. PUBLIC NATURE OF REMOTE HEARINGS

5. In accordance with section 98 of the Regulations, Remote Hearings shall be held in public. This will ordinarily be achieved by the Registry posting a video-conferencing link for the Remote Hearing on the Court’s website through which members of the public will be able to access the Remote Hearing (see paragraph 12.a below). The principle of open justice remains paramount.

## C. PARTICIPANTS, SPEAKERS AND ATTENDEES

6. Each person who attends the Remote Hearing, including the Judge(s), the Registrar and/or Court staff, any hearing technicians, transcribers or interpreters, each Party’s legal counsel, and each Party’s representatives, witnesses, and experts, and any members of the public, is a **Participant**.
7. In this Protocol, a distinction is made between **Speakers**, who are Participants who can be both seen and heard by all other Participants on any given day; and **Attendees**, who are Participants who are only able to see and hear the Speakers, but cannot themselves be seen or heard.

8. The Speakers for any given day of the Remote Hearing will be:
  - a. the Judge(s);
  - b. the Registrar;
  - c. members of the Parties' legal counsel (if legally represented);
  - d. the Parties, including any authorised representative (if not legally represented);
  - e. any fact witness or expert witness who is giving evidence on that day; and/ or
  - f. any interpreter who is needed on that day.
9. All other individuals who do not have a speaking role will join as Attendees.
10. The Parties shall provide to the Registry their respective list of Participants by 4.00 pm, 5 days before the commencement of the Remote Hearing. The lists shall set out the Participants' names and email addresses and will indicate in each case whether they are a Speaker or an Attendee.
11. All Party Participants shall be informed of the content of the Remote Hearing Protocol in advance of the Hearing.

## **D. USE OF VIDEO-CONFERCING PLATFORM FOR REMOTE HEARING**

12. Remote Hearings will be conducted by way of a video-conferencing system arranged by the Registry (**Video-Conferencing Platform**). For each Remote Hearing, the link to the Video-Conferencing Platform will be:
  - a. made available to members of the public on the ADGM Courts website <https://www.adgm.com/adgm-courts/hearings>; and
  - b. sent to the Parties in advance of the hearing in accordance with this Protocol.
13. To join a Remote Hearing, a Participant will need to be able to connect with the following requirements:
  - a. browser: Google Chrome, Microsoft Edge (recommended but others may work);

- b.** connectivity: a strong and stable internet connection (preferably broadband or Wi-Fi, otherwise any stable high-speed data connection); and
  - c.** device and hardware: a computer or laptop with a microphone and camera; headphones with an in-built microphone (recommended for Speakers); Attendees can also use Smart Phones, iPads and similar devices to connect to the Video-Conferencing Platform.
14. The Registry will coordinate a test run with the Parties prior to the hearing to ensure all necessary technical requirements are met. This will involve circulating the video-conferencing link to the Party Participants, and performing a test run prior to the Remote Hearing, on a date convenient to the Parties, their legal representatives and any witnesses and experts who may be required to attend to ensure that they will have a stable connection to the Video-Conferencing Platform.
15. In appropriate cases, a pre-hearing conference may be scheduled in advance of the Remote Hearing, with the sole purpose of testing the remote hearing arrangements, in order to ensure the hearing can be conducted smoothly. In this respect (and whether the test run is to occur in the context of a pre-hearing conference under this paragraph or otherwise in accordance with paragraph 14):
- a.** the Registry will serve as the ‘host’ of the meeting;
  - b.** each Participant will be able to test the various technical features of the Video-Conferencing Platform;
  - c.** the compatibility and connectivity of each Party Participant’s equipment (software, hardware) shall be tested during the pre-hearing conference, and the Participants shall check that they have sufficient audio and video presence in the remote hearing room; and
  - d.** if the Parties intend to use translation services, such service provider shall if necessary be present to ensure that they understand the Protocol and are able to connect to the Video-Conferencing Platform.

16. All Party Participants shall connect 15 minutes prior to the scheduled start time of the Remote Hearing (including at the start of each day if the hearing is to be held over multiple days). This will provide time to address any set-up, connectivity and other technical issues before the start time. When connecting, Party Participants should identify themselves with use of their full name in their user profile. Participants will usually join the virtual hearing room directly.
17. Before the hearing commences, the Registrar will confirm that the video and audio connection is working adequately for each Speaker. The Judge(s) will enter the Remote Hearing once the Registrar confirms that all Speakers are connected, with no audio-visual issues. The Registrar will then call the case on.
18. To facilitate the effective functioning of the Remote Hearing, the following arrangements shall be put in place:
  - a.** only the Speakers shall activate (i.e. turn on) the camera on their devices; all Attendees (i.e. non-Speakers) shall ensure that the camera on their device is turned off; and
  - b.** only the Speaker(s) who is/ are addressing the Court at a given time shall have his or her microphone turned on; all other Participants shall ensure that their microphone is on mute.
19. All Party Participants shall connect not less than 5 minutes prior to the time on which the hearing is scheduled to resume after each break (see paragraph 26 below).
20. A Speaker who has temporarily lost an adequate connection to the Video-Conferencing Platform must promptly notify the Court of that event (either through alternate means on the Video-Conferencing Platform, or by intervention of another Participant), so that the Court can take adequate measures to resolve the issue and resume the Remote Hearing.
21. If required, virtual breakout rooms will be made available to the Parties throughout the duration of the hearing; however, any requirement for virtual breakout rooms are to be notified to the Registry by 4.00 pm, 5 days before the commencement of the Remote Hearing so that appropriate arrangements can be put in place.

22. At the end of the hearing, the Judge(s) will first disconnect following which the Registrar will end the session.

## **E. RECORDING AND TRANSCRIPT OF THE REMOTE HEARING**

23. The Remote Hearing will be recorded and may be transcribed by the Registry who will engage a third-party service provider for this purpose. Any written transcript of the hearing will be made available to the Parties. The Parties shall endeavour to agree upon any correction to the transcript within 7 days of receipt.
24. No Participant attending the Remote Hearing is permitted to make their own audio- or visual- recording of the Remote Hearing without the prior permission of the Court. With the Court's permission, arrangements can be made with the Parties for privately paid-for transcribers.<sup>1</sup>

## **F. SITTING DAYS AND HOURS**

25. Hearing days and times shall reflect the circumstances of the case, including (if applicable) the different time zones of the Speakers.
26. There shall generally be a lunch break of one hour each day, as well as at least one break of 15 minutes in the morning and at least one break of 15 minutes in the afternoon. An allowance of 15 minutes shall be made each day for any logistical issues that may arise as part of the Remote Hearing.
27. Before each break in the Remote Hearing, the Court will confirm the time for all Parties to reconvene in the hearing. The Parties will make every effort to be punctual and not delay the recommencement of the Remote Hearing following breaks.

<sup>1</sup> See section 93 of the Regulations.

## **G. SEMI-REMOTE HEARING ARRANGEMENTS**

28. A semi-remote configuration is a situation in which several Participants attend the Remote Hearing from the same physical room.
29. The Parties may agree upon a semi-remote configuration. If the Parties agree upon such a configuration, they shall do so in advance of the Hearing and this shall be reflected in the list of Participants (see paragraph 10 above).
30. The Court shall ensure that the Parties are treated equally, inter alia, with respect to the appearance of the Parties and their lawyers before the Court.
31. Unless otherwise agreed by the Parties, the following arrangements should be avoided where possible:
  - a. The Court and the legal team of only one of the Parties appearing in person, while the legal team of the other Party appears remotely; and/ or
  - b. The legal team of one of the Parties examining an opposing Party's witness or expert in person, without the opposing Party and/ or its legal team also present in person.
32. In the context of a semi-Remote Hearing, expert and fact witnesses shall remain sequestered for the duration of their evidence.

## **H. ELECTRONIC BUNDLES OF DOCUMENTS**

33. In appropriate cases, an electronic bundle shall be used for the Remote Hearing (Remote Hearing Bundle). The Remote Hearing Bundle shall be:
  - a. prepared by the Claimant based upon the index agreed with the other Parties;
  - b. allocated into the following categories: (i) pleadings (including application notices); (ii) orders; (iii) witness statements of fact (including exhibits); (iv) other relevant documents; (v) skeleton arguments and authorities; and
  - c. paginated.

## **I. EXAMINATION OF FACT WITNESSES**

34. Fact witnesses shall be sworn in or give an affirmation before giving their evidence.
35. If a fact witness is to swear an oath on a holy book, arrangements should be made in advance by the Party calling the witness for a copy of the holy book to be made available to the witness on the day he or she gives evidence.
36. A fact witnesses may provide their evidence:
  - a.** from any location; and
  - b.** in the physical presence of other persons only if, approved by the Court.
37. The location from which it is proposed that each witness will give evidence, and any other persons who it is proposed will be physically present with the witness at the time he or she gives evidence, are to be disclosed by the Party calling that witness to the Court and the other Parties at least 5 days before the witness is due to give evidence.
38. Each fact witness will confirm the following to the Court at the commencement of his or her evidence:
  - a.** he or she can see and hear the other Speakers clearly;
  - b.** no other person other than those persons approved by the Court, is in, or will enter, the room in which the witness is providing evidence;
  - c.** the witness has access to no hard copy documentation other than his or her witness statement(s); and
  - d.** the witness will not communicate with any person in any way while the witness's examination is in progress, other than through the Video-Conferencing Platform.

39. Fact witnesses shall not:
- a.** be present for the examination of other fact witnesses or discuss such examination with anyone else; or
  - b.** have access to or review any transcript of the examination of other fact witnesses, until after that fact witness has given evidence and been discharged by the Court.
40. Fact witnesses will be asked to make themselves available to join the Video-Conferencing Platform at least 10 minutes before they are scheduled to give their evidence (which may include being placed in a virtual breakout room); however they will not join the virtual hearing room (whether from a virtual breakout room, or by logging onto the Video-Conferencing Platform), until they are called by the Court to give evidence.

## **J. WITNESSES IN GENERAL**

41. If a Party's Speaker wishes to interject during the course of questioning of an expert or witness by the opposing Party, they shall first raise their hand (both physically so they can be seen on their video feed, and virtually if the Video-Conferencing Platform features a 'raise hand' function) and wait for the Court to call on them. A Party Speaker should not simply unmute his or her audio feed to make an interjection without being invited to do so by the Court.
42. The Parties shall arrange, where possible, for a hearing observer to attend at the same premises as the fact or expert witness, to ensure the integrity of the examination (i.e. that there is no person or recording-device present that was not approved by the Court). The observer may:
- a.** inspect the room from which the witness is expected to give evidence just prior to the giving of evidence to ensure that only the authorised persons (if any), materials and equipment are present;
  - b.** remain inside the room during the witness's evidence to ensure that no one enters the room; and
  - c.** monitor that sequestration of the witness is maintained.

43. Alternatively, if the attendance of an observer is not possible, witnesses shall (unless the Court directs otherwise) provide their evidence while alone in a room containing a camera which provides a clear and reasonably complete view of the witness and the room he or she is in.
44. Fact and expert witnesses are not permitted to use a virtual background.
45. Each Party will be responsible for ensuring that its witnesses and expert have sufficient internet connectivity and hardware available to them to participate in the hearing.
46. Each Party will be responsible for ensuring that its witnesses and experts have been familiarised with the hearing technology and this Hearing Protocol in advance of the hearing. Fact and expert witnesses are to be made available (as applicable) for the purpose of the test run referred to in paragraphs 14 and 15 above.
47. The Parties shall arrange for clean hard copies of witness statements or expert reports to be provided, if needed, to their respective fact and expert witnesses. The fact and expert witnesses are not to mark up the clean copy of their evidence in advance of giving their evidence.
48. The Parties are to confirm at least one week prior to the Remote Hearing (or by such time as may be directed by the Court) whether interpreters are required for examination. If interpretation services are needed for examination then:
  - a. the Party calling the witness or expert who requires interpretation shall arrange for any interpreter the witness or expert needs in aid of his or her examination;
  - b. in case simultaneous interpretation in multiple languages is required, arrangements shall be made for several audio feeds with Party Participants selecting which audio channel they wish to hear;
  - c. if only one audio feed can be arranged, Parties shall opt for sequential interpretation in order to avoid situations where the witness, interpreter, and examining lawyer speak over each other; and

- d. to the extent possible, each audio feed shall be recorded (see section E above).

## **K. SPEAKERS IN GENERAL**

49. Speakers should:

- a. speak directly into the microphone and look directly into the camera lens when addressing the Court;
- b. address the Judge(s) as “Judge” or “Your Honour” or “Your Lordship”;
- c. be familiar with how to mute/ unmute their microphone and operate their camera and speakers;
- d. mute their microphone when not speaking (and remember to unmute their microphone when they want to address the Court);
- e. mute notifications on their devices;
- f. when positioning the camera on their device, be mindful of camera angles, glare from windows and the background;
- g. dress in appropriate business attire as if attending before the Court in person;
- h. remain seated for the hearing;
- i. to the extent possible, reduce the number of other devices using their internet connection during the hearing; and
- j. close any applications that they are not using during the hearing.

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