HONG KONG BAR ASSOCIATION

Secretariat: LG2 Floor, High Court, 38 Queensway, Hong Kong
DX-180053 Queensway 1 E-mail: info@hkba.org Website: www.hkba.org
Telephone: 2869 0210 Fax: 2869 0189

29 June 2020

Miss Winnie Wong
Assistant Judiciary Administrator (Development) 1
Room LG303, High Court Building,
38 Queensway, Hong Kong

Dear Ms Wong,

Re: Consultation Paper on Remote Hearings: Location of Advocates

We refer to your letter dated 21 May 2020 relating to the consultation concerning whether an advocate may appear at a remote hearing from a location outside Hong Kong.

Having considered the matter, the Bar Council would like to express the following views on the matter for the Judiciary's consideration:-

(1) We take the view that it is permissible under our existing legal framework for an advocate to attend remote hearing at a location outside Hong Kong. We are not aware of any statutory provision prohibiting an advocate attending remote hearing by alternative means outside Hong Kong.

(2) As a matter of general policy, we consider that there not be any absolute prohibition against advocates attending remote hearings at location outside Hong Kong. Indeed, a more flexible approach towards the use of remote hearings may assist in maintaining Hong Kong as an internationally recognized disputes resolution centre.

(3) It is for the Court to decide whether to direct a remote hearing in light of all the circumstances, bearing in mind the "underlying objectives" of the CJR.

(4) If the Court sees fit to direct a remote hearing, we take the view that an advocate who wishes to attend the remote hearing at a foreign location has to show cause and obtain permission from the Court beforehand. This is because when an advocate is instructed to attend a hearing, he assumes a professional obligation to make himself available in Hong Kong to physically attend the hearing; if he wishes to attend a remote hearing outside Hong Kong, our

current view is that he has to satisfy the Court that *he has practical difficulties of attending the hearing in Hong Kong due to exceptional events beyond his control.*

(5) As far as professional conduct is concerned, we consider that attendance of remote hearing by our members at locations outside Hong Kong is not incompatible with the provisions of our Code of Conduct. However, we are considering supplementing our Code of Conduct with a view to addressing certain practical issues arising from the use of remote hearing. For instance:-

(a) We are considering adding provisions to ensure that the location at which a member attend a remote hearing is suitable for such purpose, and would not adversely prejudice his duties to client and to the Court, as well as the reputation of the Bar;

(b) We are also considering adding provisions to stipulate that when a member and his instructing solicitor attend a remote hearing at different locations, he needs to maintain an effective and confidential means of communication with his instructing solicitors for the purpose of taking instructions.

(6) We also want to relate to the Judiciary our concern about court dress. We understand that at the moment, the Court would direct that counsel attending "open court" hearing via video-conferencing facilities must be fully robed. As pointed out in paragraph (4) above, counsel would only be allowed to attend remote hearing at a location outside Hong Kong if he can satisfy the Court that he has practical difficulties of coming back to Hong Kong due to exceptional events beyond his control. In such a situation, it would also be likely that he may not have any wig and gown at the location at which he seeks to attend the remote hearing. Accordingly, we would humbly ask the Judiciary to consider relaxing certain requirements on dress code in the event that it is satisfied that one or more of the counsel is/are unable to return to Hong Kong to attend the remote hearing.

Thank you for your attention in this matter. The Bar is happy to share its views on matters concerning remote hearing with the Judiciary in the event that the Judiciary would like to hear more from us.

Yours sincerely,

P. J. Dykes

Philip J Dykes, SC
Chairman