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Re-Opening of the Courts after COVID-19

A Case for Virtual Hearings as a Zero Risk Alternative

CHAMBER OF ADVOCATES
MALTA

"The current pandemic has highlighted the necessity of being prepared for the use of remote hearings whenever possible. This paper makes the case for virtual or remote hearings as the preferred choice and as the zero-risk alternative for functioning courts at a time of a pandemic, and possibly as the future for court services."

"Of course, this entails change. This entails significant change to working practices that have been in place for years, most of which, if one were simply to focus on them, really need to change anyway because in a 21st century society they are simply out-dated and no longer fit for purpose. Change brings with it fresh challenges; and it is only natural that the instinctive reaction will be to resist change. Change disturbs our status quo, our comfort zone. But that is exactly what COVID-19 has done – it has challenged the way that we have conducted ourselves so far. This is where we now need to learn from the experience and rise to the occasion in meeting the challenge by being bold enough to take the next steps and evolve."

"The legal profession is prepared to face the challenge and to co-operate and collaborate with all other stakeholders with a view to enable the remote functioning of our courts. As a chamber, we have already held discussions with the judiciary, and we are comforted by the reaction that a significant number of members of the judiciary are indeed willing to embrace the idea of remote hearings."

Contents

1. INTRODUCTION

1.1 The Chamber of Advocates in a paper dated 1 April 2020 made high level proposals with respect to the remote working of our courts in a scenario severely affected by the closure of the courts of justice due to the COVID-19 pandemic. The Chamber acknowledges that the situation is evolving daily and since the publication of that report, there have already been developments, not least of which the re-opening of the court registry.

1.2 There are significant challenges that need to be addressed before the courts can re-open for physical hearings as we have hitherto known them. We do not envisage that this is a possibility in the very short term without significant risks that would need to be mitigated and any residual risk managed to provide assurance to the users and stakeholders in the court services that their health is safeguarded.

1.3 There are a number of factors that are critical in devising a return of the workings of the courts of justice to normality, not least the health hazard to all stakeholders involved in the judicial process; and the possible ramifications that such risk could have on the whole of Malta, given the number of people attending the court building on a typical day and the risk that it poses for spreading the virus. They are indeed the same reason that led the Superintendent of Public health to order the closure of the courts last March.

1.4 The objective therefore should be that of embracing technology and the platforms that it has made available in a manner that can, over the short to medium term allow the courts to function even if not in full swing, whilst avoiding anyone being subjected to any risk or health hazard.

1.5 The answer remains virtual court rooms and hearings, supported by an e-filing system for the registry.

1.6 This paper highlights the challenges of the court re-opening for physical hearings in the short term and evaluates the alternative offered by modern technology in those instances that do not require physical presence in court for the proper functioning of the system, in some cases by adapting our working practices to deal with a different situation.

2. THE RISKS OF PHYSICAL SITTINGS

2.1 The issue that lawyers have been grappling with, which, in principle, is really not different to that of many others, is an answer to the question: **When will it be safe again to go back to court, as we know it ?.**

2.2 With medical experts suggesting that a second wave of the COVID-19 virus being likely once we start re-opening for normal business, notwithstanding the preventive measures that one may take, lawyers like all other stakeholders involved in the judicial process, will need assurances that the environment in which they will be working in court will

not expose them, and consequently their families, to unwarranted risk.

2.3 For anyone who has ever been to court, on a good day, it is easy to envisage the presence in courtrooms of several people at the same time, lawyers, parties to suits, court employees, witnesses, experts, police officers and others. It is inconceivable, at least at this stage, that we can go back to that same system – which can hardly be described as an exercise in social distancing.

2.4 This has to some extent already been confirmed by the superintendent of public health in her statement in court on 11 May 2020[1] who, confirmed that given the aggregation within the court building of a large number of people, it was considered a high risk of contagion, which actually underlies the decision of the superintendent of public health to close the courts in the first place.

2.5 The proper functioning of the courts requires at least four components for the system to work properly:

- Judges and magistrates
- Lawyers;
- Court administration staff; and
- The parties to cases.

2.6 The health of each of them is to be protected and safeguarded from possible transmission of the virus. Given the physical layout of our court rooms, it is easy to understand how judges and magistrates as well as the court administrative staff can be protected, but it is certainly much more difficult to visualise how lawyers and the public will be protected, whether within courtrooms or generally within the building of the courts.

2.7 The Chamber considers a detailed physical risk assessment to be conducted by the public health authorities as a *sine qua non* for the courts to be re-opened. That assessment will need to establish, amongst others, the fundamental physical precautions that will need to be taken as well as the protocols for the flow of people within the court building and in court rooms, and would need to consult with members of the judiciary, lawyers and court staff to obtain a full understanding and appreciation of how the system works.

2.8 Without prejudging what that risk assessment may find and recommend in terms of measures to be put in place, it is clear, even simply following a cursory analysis, that security in the court building will need to be strengthened to control public access; and court rooms will have to be less populated than they normally are; we shall probably need to resort to a system based fully on sittings by appointment for specific cases across the board.

2.9 What the COVID-19 pandemic has taught us is that we need to accept considerable change to what we have been used

[1] Case no: 67/2020 in the names Yorgen Fenech vs State Advocate and Superintendent of Public Health

to and the judiciary and the legal profession alike need to be open to understand and embrace these changes.

2.10 Most of these changes will probably also allow long-term benefits to be enjoyed. They should result in less time-consuming procedures, digital communication and remote filing that will replace what, in a 21st century society, are obsolete processes and procedures.

2.11 In any event courts cannot simply re-open from one day to the next without prior notice. Opening court for hearings is strikingly different to re-opening the registry whilst keeping legal and judicial times suspended. The re-opening of court will indeed obviate the need for judicial and legal times to remain suspended, and this highlights even further the need to give due notice to enable all concerned to prepare. This can be further compounded by the fact that certain lawyers may well be themselves medically vulnerable persons or living with vulnerable persons who will not be able to attend to court physically, not to highlight other practical issues such as that with schools closed all lawyers who would have been able to attend to morning court sittings whilst their children are at school, will also have this challenge to surmount.

2.12 The physical re-opening of court requires much more planning. It requires tri-partite talks between the judiciary, the legal profession and the court agency, with the intervention, where required, of the public health authorities. This should establish certain ground rules for the initial period that would be aimed at limiting physical presence in court where this is not essential.

2.13 There must be co-ordination between all parties concerned. For instance, we cannot have individual judges establishing their own individual practical rules within their respective court rooms with lawyers and the public having to conform to different rules for each and every court room. Those rules would need to be agreed and need to be common to each court room. The following are simply some of the considerations:

2.14 There can be little doubt, based on the reasons why the court was closed in the first place, that there is a limit on the flow of people that can be allowed in the court building and in each court room, if proper preventive and social distancing protocols are to be observed.

2.15 This also means that the number of court cases to be held each day need to be restricted. It is here that therefore certain working practices need to be reviewed and changed:

(a) **Resort to written procedures more frequently.** There can be hardly any doubt that certain working practices have been developed because a number of court lawyers are typically physically present in court and rather than relying on written formalities sometimes try to get things done in oral hearings. Some of them cannot even quite be described as hearings, but are more in the nature of case management hearings. If one were to restrict oral physical hearings to those instances when

there is no other workable alternative, then certain changes would need to be undertaken. For instance, where a court hearing is simply to provide further information to the court or to receive an expert report or affidavits from the other party, each of these can be avoided as a note filed in the registry can easily achieve the same purpose without having to convene a hearing. This will automatically reduce the number of lawyers required to be physically present in court. If an a priori agreement can be reached with the judiciary and the court agency, lawyers can certainly have a fundamental role to play in limiting the number of people that would be required to attend court, which is a vital element in safeguarding the health of all concerned.

(b) **Postpone all cases where *viva voce* testimony is to be heard to October/November.** If one can identify the cases where lawyers wish to have *viva voce* witnesses heard, whether in examination in chief or in cross-examination, these sittings can be postponed to a time when there is more visibility of the COVID-19 situation and the precautions that would need to be taken are possibly less than what they are today.

(c) **Restrict the number of sittings and work on a time-based schedule.** This will require the judiciary to accept that all halls will need to work to the same system of giving lawyers and the litigants appointments when to hold sittings. Situations which have hitherto applied of having 10 cases all appointed to be heard at 09:00 hours, and therefore with at least twenty lawyers and the respective litigants (at least another twenty (20)) aggregating in a court room and/or in the corridors outside cannot be allowed in an environment where social distancing is either imposed or encouraged by the public health authorities. This would mean for instance that if a court sitting is available between 09:00 and 13:00 on a typical day, the judge/magistrate will appoint **hearings in 15 minute slots, which should give the court 16 slots of 15 minutes each.** A case may take one or two slots to deal with:

- **Final oral submissions by lawyers;**
- **First appointments of new cases;**
- **Oral submissions requiring an interlocutory decree *pendente lite*;**
- **Other matters that would not require additional persons, to be present in court such as a list of witnesses.**

This means that at best a hall would be able to handle 16 cases dedicating 15 minutes to each case in a typical day or if required, 8 cases dedicating 30 minutes for each case. Within this framework one could even consider hearing witnesses if this does not entail the presence of an excessive number of people in say a 30 minute session.

It will also be essential to plan time properly and to be disciplined with time, so that hearings should

not be allowed to overstep the time dedicated to them.

(d) **Certain cases to be postponed**: those cases that would normally involve a huge number of people to attend court at the same time, and where adopting a time based system as explained above is not viable, such as district hearings in the court of magistrates should be completely avoided.

(e) **Strengthen Security upon entry to the court building**: It will be fundamental to ensure that only parties to cases being heard on a particular day that would be allowed in the court building during a particular day, and indeed that they would only be allowed access at a pint which is not more than 10 minutes before their case is due for hearing. This will require some logistical work by the court agency but should not be too difficult to achieve.

2.16 It is evident that there are limits to people attending court if we are to continue to observe social distancing rules. The superintendent of public health herself made the comment when giving evidence in a court case recently, that it would be difficult in our court halls to observe these rules. The same applies to arbitration hearings that make use of the much smaller rooms and corridors of the court building.

2.17 Of course, all members of the judiciary need to agree to a common policy/procedure of how sittings will be held. The different systems adopted by different members of the judiciary, in their cases has, even in times of normality, been a cause of significant complications for lawyers, this would simply exacerbate the issue further in times where we need to be singing from the same hymn book.

2.18 The real and most efficient answer to all of the above is to seize the opportunity, to embrace the advantages that are presented to us by modern technology and adopt working practices that allow us to have sittings remotely. Clearly, this is much easier in some cases than it is in others, and indeed in some type of hearings than in others. The most crucial aspect however is to overcome the first obstacle, namely that just because we have never conducted sittings like this before than we should not adopt new processes.

3. ZERO RISK ALTERNATIVE

3.1 The main objective should be to balance the importance of allowing the courts to function, whilst continuing to mitigate the potential risk to the health of all those involved in the process. The adoption of virtual technology for the hearing of cases that do not require physical presence, thus ensuring that social distancing policies can be observed with no risk, is not a Utopia, but a real alternative.

3.2 There will of course be challenges, any change will bring about new challenges, we simply need to apply ourselves to meet those challenges and surmount them. The main challenge is probably more of a cultural and psychological challenge than one of technology or process. It is also a development that will enable the court to continue

functioning if similar situations were to arise in the future. Above all it is a system like many others that once we commit to it and make it work, we will probably look back and surprise ourselves how we did not adopt it before.

3.3 The technology is available. We now need to take the first bold steps to embrace that technology with an open mind and see how we can make it work better for all of us.

3.4 In the long term we shall need to enact legislation which ensures that proceedings can take place entirely remotely, and to:

i) permit the use of full video or video-enable hearings in various civil and criminal proceedings; and

ii) provide for public attendance in these full video hearings to ensure that the principle of publicity and open justice is safeguarded.

3.5 Ideally, the Courts should provide for a cloud video platform which can start being used in hearings, but in the meantime, there are sufficiently sophisticated applications that can be used, and which will serve the purpose adequately. This paper sets out a framework for a protocol that can be used to regulate these remote hearings.

3.6 In the meantime, however even without the enactment of legislation we can start to implement, as pilot projects sittings where all parties involved would agree to holding virtual hearings.

3.7 A system of remote hearings has been adopted for Planning Authority hearings and by the Appeals Board. The Chamber has been in touch with officials who have used that system over the past few weeks as well as practioners who have been involved in appearing for hearings remotely and have received very positive feedback in terms of the efficiency with which that system is working. We can learn from that experience including the teething problems that it has entailed with a view to applying a similar system to our courts.

4. THE CASES WHERE THIS CAN BE APPLIED.

4.1 As already stated, there are types of proceedings which can be indicated as best suited for holding virtual hearings.

4.2 The type of proceedings which would be best suited for this purpose relate to the civil and commercial courts, as set out hereunder:

- 4.2.1 Civil Appeal hearings whether inferior or superior appeals;
- 4.2.2 First Appointments of civil cases;
- 4.2.3 Oral submissions by lawyers – whether these are in connection with interlocutory issues or final submissions before the case goes for judgement;
- 4.2.4 Reading out of judgements;
- 4.2.5 Hearings of applications for the issuance of warrants of prohibitory injunctions or for the revocation of other precautionary warrants where no oral testimony or witnesses is required.

4.3 We have not included criminal proceedings in this list as we believe that these may require further detailed discussion before adequate protocols ca be put in place.

4.4 All of the cases mentioned in paragraph 4.2 would be ideal for virtual hearings and with the goodwill of lawyers, judges and the court administration can be held even without legislative intervention.

4.5 Although we have purposely avoided those cases where oral testimony is required whether this is in examination in chief or in cross examination, as this seems to pose further challenges that the system may well need to cater for at a later stage, in reality, the Code of Organization and Civil Procedure actually allows for the audio-recording or for the video-recording of any evidence required from a witness as aforesaid, in accordance with such codes of practice as the Minister responsible for justice may, by regulations, prescribe.[2] Although this is seen as the major stumbling block in practice there is already the legal basis for testimony be conducted by video-conferencing. We have to acknowledge however that the provisions of our COCP in this respect contemplate the hearing of a witness remotely, but presupposes that the rest of the court is in session in the court house itself.

4.6 The only other issue that may need to be surmounted refers to the requirements of article 39(3) of our Constitution that requires hearings to be held in public[3]. Article 39(4) already provides for instances when a public hearing may be dispensed with, and there is a compelling argument to be made that during a COVID-19 scenario there are issues of "pubic safety" that would allow this requirement to be dispensed with. In the longer-term, however this would not be the answer, and that answer is in available in technology that would allow streaming of court hearings (similar to how parliament is streamed on-line and other systems) and the one-way participation by the general public to follow what is happening in a particular virtual sitting. In our view even this hurdle can be surmounted without impacting the fairness of the judicial system or its publicity.

5. PROTOCOL REGARDING REMOTE HEARINGS

General Principles

5.1 The objective is to make the videoconferencing sessions as close as possible to the usual practice in any court and to render them as realistic as possible to proceedings in open court. Clearly this will need protocols to be adopted to ensure that all stakeholders involved would know exactly what their role is and how they are expected to conduct

[2] Article 622B of Chapter 12

[3] Except with the agreement of all the parties thereto, all proceedings of every court and proceedings relating to the determination of the existence or the extent of a person's civil rights or obligations before any other adjudicating authority, including the announcement of the decision of the court or other authority, shall be held in public.

themselves in what is a new experience for everyone. We have tried here to develop such a protocol.

5.2 This Protocol may be applied to hearings of all kinds, including trials, applications and those in which litigants in person are involved. It needs to be applied flexibly by the courts if we are to attain the desired outcome. The protocols here are not intended to deal with criminal proceedings, but principally with the proceedings mentioned in paragraph 4.2 above.

5.3 The method by which all hearings, including remote hearings, are conducted is always a matter for the judge(s), operating in accordance with applicable law, rules and court practice. Accordingly, nothing in this Protocol should be construed as derogating from the judge's duty to determine all issues that arise in the case judicially and in accordance with normal principles.

5.4 It is inevitable that undertaking numerous hearings remotely will cause teething troubles, not least because not all parties concerned and involved in the process may have the same level of knowledge or familiarity with the applications and technology involved, nor how the normal court process may be simulated in the remote situations being contemplated. All parties are therefore urged to be sympathetic to the technological and other difficulties experienced by others.

Overcoming the legal issues

5.5 It would be ideal if rather than banking on the agreement of all parties to a suit to accept holding remote court sessions, the law is amended to provide for such instances. This need not be a complete overhaul of the COCP, but rather can take the form of a new blanket provision introduced in our COCP on the lines that would allow video conferencing to be the medium for court sessions where the courts consider it expedient so to do and so direct. That provision would ideally be supported by an enabling provision that would allow the Minister to promulgate regulations for detailed provisions on the matter.

5.6 Without the enactment of the appropriate legal provisions a court may, with the consent of all the parties concerned, still hold sittings remotely.

5.7 There are, in any event the following legal issues to be addressed before any remote hearing can begin:

5.7.1 whether the hearing is to be in public or in private; if in private, on what grounds, and

5.7.2 how is the hearing to be recorded, or can an order properly be made to dispense with recording?

5.8 As to the first, remote hearings should, so far as possible, still be public hearings. This can be achieved in a number of ways: (a) one person (whether judge, clerk or official) relaying the audio and (if available) video of the hearing to an open court room; (b) allowing a media representative to log in to the remote hearing; (c) live streaming of the hearing

over the internet, where broadcasting hearings is authorised in legislation; and/or providing links to hearings in different court rooms where any interested member of the public may be able to follow the proceedings remotely.

5.9 As to the second, the recording of hearings can also be achieved in a number of ways: (a) recording the audio relayed in an open court room by the use of the court's normal recording system, (b) recording the hearing on the remote communication application being used (e.g. Microsoft Teams, Skype for Business, or Zoom), or (c) by the court using a mobile telephone to record the hearing. It is not, however, permitted for the parties to record the hearing without the judge's permission; or for the public participating in the hearing.

What should happen when a hearing is fixed?

5.10 In the present circumstances, the court and the parties and their representatives will need to be more proactive in relation to all forthcoming hearings.

5.11 It is good practice for the courts and judges, to consider as far ahead as possible how future hearings should best be undertaken.

5.12 It will normally be possible for all short, interlocutory, or non-witness, applications to be heard remotely. Some witness cases will also be suitable for remote hearings.

5.13 Available methods for remote hearings include (non-exhaustively), Skype for Business, court video link, Microsoft Teams, Zoom, Cisco Webex and others. Ordinary telephone conferences where people cannot be visually identified would be discouraged. But any video communication method available to the participants can be considered if appropriate.

Preparing for a remote hearing

5.14 Before ordering a hearing by video link, the judge must check with the court administration that suitable facilities are available.

5.15 The court administration will seek to ensure that the judge(s) and the parties are informed, as long in advance as possible, of the date of the hearing appointed for the case.

5.16 The court administration and Judges, will, in each case, wherever possible, propose to the parties one of three solutions:-

(i) a stated appropriate remote communication method (Microsoft Teams, Skype for Business, Cisco Webex, Zoom, or another method) for the hearing. It is ideal if the various applications are limited to not more than two (2) to avoid having people to get familiarised with a large number of different applications;

(ii) that the case will proceed in open court with appropriate precautions to prevent the transmission of Covid-19; or

(iii) that the case will need to be adjourned, because a remote hearing is not possible **and** the length of the hearing combined with the number of parties, representatives and/or witnesses make it undesirable to go ahead with a hearing in court at the current time.

5.17 If the parties disagree with the court's proposal, they may make submissions in writing by email, copied to the other parties, as to what other proposals would be more appropriate. On receipt of submissions from all parties, the judge(s) will make a direction as to the way in which the hearing will take place and give all other necessary directions.

5.18 If it is agreed that the hearing is to proceed remotely, it will also be open to the court to fix a short remote case management conference in advance of the fixed hearing to allow for directions to be made in relation to the conduct of the hearing, the technology to be used, and/or any other relevant matters. Initially holding such case management conferences is encouraged to allow lawyers, judges and court officials to further familiarise themselves with the applications involved, to refine further these protocols, and to have a better understanding of the expectations they will each have from the other parties.

5.19 The fact that a hearing is to be a remote hearing and, where possible, the technological method to be employed, are to be shown in the cause list which is to be uploaded on the website of the courts of justice.

5.20 Following the case management hearing, or if no case management hearing is held, at least, say 10 days in advance of a hearing, the relevant court official shall circulate to the lawyers involved in a case; the judge(s); and the parties on record a notice via email, of the date and time for the hearing and the time allocated for the hearing. The invite shall also contain a link that will enable such party to join the video link for the hearing at the opportune time.

5.21 Where a hearing involves reference to documents, the parties should, if necessary, prepare an electronic bundle of documents for each remote hearing. Each electronic bundle should be indexed and paginated to ensure ease of reference and should be provided to the judge's clerk, court official or to the judge (if no official is available), and to all other representatives and parties well in advance of the hearing.

5.22 Electronic bundles should contain only documents that are essential to the remote hearing.

5.23 Electronic bundles can be prepared in .pdf and sent to the court by link to an online data room or email.

5.24 Use of the court file. Where access to the court file or record of the hearing is required for proceedings to take place remotely, the party who considers such access an important

requirement shall request that the court file is made available electronically to all parties in advance of the hearing. Such request shall be made at least 15 days before the date when the case is set for hearing.

The remote hearing itself

5.25 On the date set for the hearing lawyers will all need to log in or call in to the dedicated facility in good time for the stated start time of the remote hearing. In a Skype, Zoom or Microsoft Teams call, the judge(s) will then be invited in by the clerk or court official.

5.26 The hearing will be conducted by the judge, who will either personally or through the judge's clerk have control of the application as the medium of the hearing. The hearing will be recorded by the judge's clerk, a court official or by the judge, if technically possible. The parties and their legal representatives are not permitted to record the hearing. It is only the recording of the judge's clerk that shall constitute the official record of the hearing.

5.27 The hearing can be made open to the public, if technically possible, either by the judge(s) or the clerk logging in to the hearing in a public court room and making the hearing audible in that court room, or by other methods (see above).

5.28 But in the exceptional circumstances presented by the current pandemic, the impossibility of public access should not normally prevent a remote hearing taking place. If any party submits that it should do so in the circumstances of the specific case, they should make submissions to that effect to the judge.

6. PUTTING THE SYSTEM IN PLACE

Pending Cases

6.1 To try and achieve an efficient implementation of a remote hearing system it is advisable that the system is not overloaded with hearings that can be avoided, and that hearings are really allowed in those instances when they are required.

6.2 In the context of the above it would be a useful exercise if judges and their clerks were to review the status of the cases being handled by that court and to determine the next steps for each of those cases. The objective here is to ensure that where reliance can be made on written pleadings or the filing of notes or applications, hearings should be avoided, and judges would give directions accordingly.

6.3 Given the transition from a system which has been heavily dependant on oral hearings even for purely case management issues, there may be the need for short remote case management hearings over the course of the first few weeks.

6.4 However, where these can be avoided, they should. For instance, where a case is adjourned for:

6.4.1 The provision of information by the parties or either of the parties, that party or parties are to provide such information by way of a note filed in the registry, under an email copy to the lawyer of the counterparty. Once the court is in receipt of such note it ought to either decree on the next steps in the process or to appoint a case management hearing for the purpose;

6.4.2 The submission and filing of affidavits by a party, the court ought to direct that party to file those affidavits by a note filed in the registry, and to send a copy via email to the counterparty for it to file a note in the registry confirming receipt of the affidavits and an indication of the cross examinations that such counterparty intends to conduct on the affidavits so received;

6.4.3 The report of an expert to be filed, the court ought to direct that the expert files the report in the registry; and informs the parties that the report has been filed, indicating the fees that each party must pay for the report to be released;

6.5 Short case management hearings may also be or become necessary in each case depending on its status and to determine next steps.

New Cases

6.6 Once a new case is filed and the registry assigns that case to a judge/magistrate, the judge or magistrate through the court official, will seek to communicate through email with the lawyers in line with paragraphs 5.13 et seq above. This will lead to the first case management hearing (*primo appuntamento)* to determine how the case should proceed.

6.7 From here on the protocol would be the same as described in this paper.

7. CONCLUSIONS

7.1 For anyone who wishes to be realistic, and on the basis of the medical evidence available the re-opening of the courts of justice to be able to function in the same manner as we have known them pre-COVID-19, is a daunting prospect.

7.2 As stated in this paper lawyers need the right level of assurance that their health will be fully safeguarded if the courts were to re-open soon. The Chamber will have to insist on a detailed risk assessment of the court building and the individual halls and court rooms before lawyers will go back to their normal duties in court, and to be consulted in process of drawing up that risk assessment.

7.3 However, in the current scenario, the Chamber believes that there is an alternative which can pose zero risk to the health of all stakeholders on the one hand and which will allow the courts to function, admittedly, initially not at full capacity. This is the option of virtual hearings, which if developed further could also bring about longer term benefits to the efficiency of the system.

7.4 The Chamber is of the view that COVID-19 has posed significant challenges across the board in a number of areas of Malta's social and economic life. It is up to us however, not to simply focus on the threats that COVID-19 poses, but to be able to identify the opportunities that it has created – not least in the world of our courts – the opportunity of changing long obsolete working practices; to embrace technology as a means of developing new systems which will not only assure us that there will be no need to close the courts in the event of pandemic, but also of rendering more efficient the systems in a time of normality.

7.5 Of course, this entails change. This entails significant change to working practices that have been in place for years, most of which, if one were simply to focus on them, really need to change anyway because in a 21st century society they are simply out-dated and no longer fit for purpose. Change brings with it fresh challenges; and it is only natural that the instinctive reaction will be to resist change. Change disturbs our *status quo*, our comfort zone. But that is exactly what COVID-19 has done – it has challenged the way that we have conducted ourselves so far. This where we now need to learn from the experience and rise to the occasion in meeting the challenge by being bold enough to take the next steps and evolve.

7.6 The legal profession is prepared to face the challenge and to co-operate and collaborate with all other stakeholders with a view to enable the remote functioning of our courts. As a chamber, we have already held discussions with the judiciary, and we are comforted by the reaction that a significant number of members of the judiciary are indeed willing to embrace the idea of remote hearings.

7.7 What is fundamental is that all stakeholders are involved in a consultative process that will allow the development of new working practices to stand a chance, the willingness to accept the horizons that technology has opened up in a system as conservative as the one we belong to.

CHAMBER OF ADVOCATES
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