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Digitalization of arbitration and courts proceedings in South East Asia and Japan

In response to the disruptions caused by COVID-19 outbreak last year, many arbitration institutions have moved quickly to promote the use of technology in order to allow arbitration proceedings to continue amidst lockdowns and varying degrees of movement restrictions in various parts of the world. Such efforts have paid off as we have witnessed that arbitration cases were able to progress in a timely manner especially when parties started to adopt and embrace technology as part of the process.

Given such significant development in arbitration proceedings, we have reached out to our colleagues in Japan, Singapore¹, Thailand, and Vietnam to understand whether there has been any progress on the digitalization of courts proceeding in their jurisdictions, particularly in relation to civil and commercial litigation proceedings. The table below compares the use of technology in arbitration proceeding (taking an example of SIAC arbitration)² versus court proceedings in Singapore, Japan, Thailand and Vietnam.

1. Can you file and exchange court documents electronically?

SIAC	[Yes] Unless parties agree otherwise, generally all documents can be filed and exchanged electronically via email, which is the most common mode of communication. It has become quite rare for parties to file and exchange documents by hand, post or facsimile even though these are permissible under the rules.
Singapore	[Yes] All documents must be filed, served and delivered electronically using eLitigation platform, subject to certain exceptions. In the event that the documents cannot be filed through eLitigation, or in the case of litigants in person, it can be filed through the service bureau.
Japan	[No] All documents must be lodged in court physically, by postal service or by facsimile (facsimile cannot be used for filing of a new suit). After

¹ A note of thanks to Mr Loong Tse Chuan and his team from Allen & Gledhill LLP who kindly provided their views relating to Singapore courts in this article.

² For ease of understanding, we have made reference to the rules of the Singapore International Arbitration Centre ("SIAC")(6th Edition, 1 August 2016).

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filing a case, parties can exchange their briefs using facsimile, postal service or in person.

Thailand [Yes] Electronic filing is not compulsory but is an alternative to filing in person. Despite of the availability of electronic filing, filling of documents in person is still more commonly used due to instability of the electronic filling system.

Vietnam [Yes] Electronic filing is one of the three methods for filing of court documents, in addition to filing in person and postal services. However, in practice, litigants normally submit documents via postal service instead of e-filing, and e-filing is not widely applied due to several reasons, including:

- (i) hard copies of the petitions and relevant documents are still required to be submitted even though it has been e-filed.
- (ii) e-filing in local courts' is limited at the present due to lack of skills and IT facilities.
- (iii) litigants rarely have certified electronic signatures.

2. Can parties use telephone or video conferencing in court proceedings?

SIAC [Yes] The tribunal has the flexibility to hold hearings and meetings "by any means it considers expedient or appropriate". Before the Covid-19 outbreak, telephone and video conferencing were commonly used but only for procedural matters. The use of video conferencing became widely accepted even for evidential hearing after Covid-19 outbreak and has become the new norm.

Singapore [Yes] Hearings in which video conferencing technology was used tended to be procedural or administrative in nature before the Covid-19 outbreak. Since then, substantive hearings, case management conferences, pre-trial conferences and chambers matters are also conducted using video conferencing. Some procedural or administrative hearings used to be conducted by telephone before the Covid-19 outbreak, but such hearings are now quite rare, given the easy availability of video conferencing technology.

Japan [Limited] Courts can use telephone conferencing for proceedings to arrange issues and evidence if (i) a party's location is far away from the

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court or the court finds it to be appropriate for any other reason, and (ii) the other party attends the court physically. The use of video conferencing for proceedings to arrange issues and evidence started in February 2020 in several courts and the number of the available courts is gradually expanding. There is a plan to expand the types of proceedings that can be conducted by video conference.

Thailand [Yes] Any party who wishes to conduct examination of documentary evidence or witness remotely via video conferencing must make an application to the court on or before the date of pre-trial conference entailing the reason why the intended evidence or witness could not be presented at the court room. From 30 September 2020, other court proceedings such as pronouncement of judgment, mediation session, pre-trial or case management conference, probate hearing, etc. may be carried out via videoconferencing. However, it is noteworthy that some courts outside Bangkok do not have appropriate resources to conduct video conferencing.

Vietnam [No] Currently, there is no court proceeding that can be conducted by way of telephone or video conferencing.

3. Is there any rule which requires court hearings to be held with physical attendance of parties and their legal representative?

SIAC [No] SIAC rules do not specify the mode of hearing.

Singapore [No] There are specific rules relating to witnesses giving evidence in trials, which is governed by the Evidence Act. However, apart from this, the law specially allows the hearing of any matter or proceeding to be conducted through live video link, a live television link or any other electronic means of communication.

Japan [Yes] The Code of Civil Procedure requires the relevant parties or their legal representatives to be present in person for court hearings and examinations of witnesses unless there is a court order to use telephone conference or video conference or examine evidence or witnesses out of court.

Thailand [Yes] The Civil Procedural Code that is in force since 20 June 1935

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requires all court hearings to be held physically. However, a directive from the President of the Supreme Court states that with effect from 20 September 2020, courts are allowed to conduct proceedings electronically if the court sees fit or when so requested by a party, taking into consideration convenience and cost saving.

Vietnam [Yes] The Civil Procedures Code requires the relevant parties or their legal representatives to be present at the court hearing.

4. What is the norm for examination of witnesses - in person or virtual?

SIAC [Hybrid] A mixed of in person and virtual hearings are quite common, depending on the tribunal's determination based on relevant factors.

Singapore [Hybrid] The examination of witnesses is generally conducted in person so that the court can directly assess the demeanor of the witness. However, the court may allow the witness to give evidence virtually if the witness is outside Singapore. In deciding whether to allow the witness located overseas to give evidence virtually, the court will consider:

- (i) the reasons for the witness being unable to give evidence in Singapore;
- (ii) the administrative and technical facilities and arrangements made at the place where the witness will give evidence; and
- (iii) whether any party to the proceedings would be unfairly prejudiced.

A formal application must be made to seek the court's permission for the witness located overseas to give evidence virtually.

Japan [In person] Currently the examination of witnesses is generally being done in person. In case where a witness lives far away from the court, the witness can attend the nearest court and parties can examine him/her at the court in charge by connecting via video conferencing system.

Thailand [In person] In most cases, examination of witnesses is still carried out in person.

Vietnam [In person] In person only.

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5. Please describe the most recent technology introduced or used in court proceedings

SIAC	SIAC is currently revising its 2016 edition rules. The upcoming 7 th edition is expected to introduce state of the art revisions and it has established a Rules Revision Executive Committee and Subcommittee on new technology and new procedures.
Singapore	Currently in use: <ul style="list-style-type: none">• Supreme Court Digital Transcription System provides digital recording of court hearings which facilitates remote transcription so that transcribers need not be physically present in the courtroom.• SG Court Mobile App allows subscribers to access case files, court calendars, upcoming hearing list and venue information from their mobile phones.• 6 Technology Courts house advanced technologies such as plasma screens and video cameras for video conferencing. Visualisers are also available to allow images of 3D objects or hardcopy documents to be captured and magnified.
Japan	The following services are to be implemented gradually: <ul style="list-style-type: none">• e-Court refers to expanding the use of web conferencing systems by parties throughout the civil procedure process to reduce time and costs.• e-Filing will allow online submission 24 hours a day, 365 days a year.• e-Case Management is a system that enables parties to have electronic access to information such as complaints and responses which have been filed online, and information about their case such as due dates.
Thailand	Under the “D-Court 2020” policy, the following services are to be implemented gradually. <ul style="list-style-type: none">(i) e-Filing for filing complaints, pleadings and other documents.(ii) Case Information Online Service (CIOS) originally for tracking court case information, monitoring service of summons, schedules of hearings, court decisions or orders; finding and obtaining copies of certificate of case finality; and

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additional function has been introduced in 2020 for filing documents those are not subject to official fees.

(iii) **Tracking System** for the public to check court cases' status without any advance registration required.

(iv) **e-Notice** for delivering documents or disseminating announcement of the Court's hearing schedules (as required for certain types of cases, e.g. motion for probate) electronically as a substitute for printed newspapers.

(v) **VDO conference** for online meeting, mediation session, witness examination, and other court's proceedings.

Vietnam

The use of technology is still very limited in court proceedings. The most recent technology is the e-filing discussed above (which is rarely used in practice) and the publication of judgements on court's website.

The comparison above quite clearly shows that the with the exception of Singapore courts, the courts in Japan, Thailand and Vietnam are still slow to adopt technology in various aspects of the court proceedings. Our experience over the past 1 year has been that there have been more delays in court proceedings (than in arbitration) due to the absence of technology to facilitate court proceedings. This reason alone would not cause an avalanche in arbitration cases but certainly provides food for thought when drafting midnight clauses.

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Editorial Team

Kana Manabe
Partner
Tel: +65-6593-9762 (Singapore)
kana.manabe@mhm-global.com

Chong Chia Chi
Counsel
Tel: +65-6593-9759 (Singapore)
chiachi.chong@mhm-global.com

Midori Yamaguchi
Associate
Tel: +81-3-6213-8170 (Japan)
midori.yamaguchi@mhm-global.com

Contributors:

Mori Hamada & Matsumoto HCMC Branch
Thi Vinh Nguyen
Associate
Tel: +84-28-3622-2605
vinh.nguyen@mhm-global.com

Nguyen Vu Quynh Trang
Associate
Tel: +84-28-3622-2608
quynhtrang.nguyen@mhm-global.com

Chandler MHM Limited
Waree Shinsirikul
Partner
Tel: +662 009 5000
waree.s@mhm-global.com

Rawi Meckvichai
Senior Associate
Tel: +662 009 5000
rawi.m@mhm-global.com

(Contacts)

Public Relations
mhm_info@mhm-global.com
+81-3-6212-8330
www.mhmjapan.com