

## Guidance Note for Remote Hearings

### A. General

1. A remote hearing is an inquiry hearing held by the Disciplinary Committee of the Estate Agents Authority (“**EAA**”) using video conferencing facilities (“**VCF**”) (“**Remote Hearing**”). The purpose of this Guidance Note is to set out the practice for Remote Hearings and to provide guidelines to anyone who is considering, preparing for and/or participating in a Remote Hearing either with all other participants (including witness(es)) attending remotely or some participants attending remotely by VCF while other participants attending in person at a physical venue designated by the Disciplinary Committee or, as the case may be, the Inquiry Hearing Panel (“**Disciplinary Committee/IH Panel**”).
2. This Guidance Note is intended to apply to any Remote Hearings that are appropriate for a hearing to be held remotely. In general, cases suitable for a Remote Hearing are those which Disciplinary Committee/IH Panel considers that focused oral submissions can be concluded within two hours (to avoid Zoom fatigue). This Guidance Note does not address when and/or what is appropriate to have a Remote Hearing instead of an in-person hearing, as the mode of any inquiry hearings is in the discretion of the Disciplinary Committee/IH Panel.
3. A participant who intends to attend the inquiry hearing remotely shall observe the relevant requirements set out in this Guidance Note and follow the instructions herein strictly. Any non-compliance might render the application for a Remote Hearing being refused.
4. A Remote Hearing, though held by VCF with participants joining the hearing remotely, is conducted in public. Unless prior permission has been obtained from the Disciplinary Committee/IH Panel, participants must not make any recording (audio, video or otherwise) of the proceedings and shall not take photos or screen captures of the proceedings.
5. This Guidance Note shall be read in conjunction with the Proceedings Rules on Inquiry Hearings (“**Proceedings Rules**”) with regard to the procedures of an inquiry hearing. It is not a substitute of the Proceedings Rules and should not be read as such.
6. This Guidance Note may be amended or modified by the Disciplinary Committee from time to time.

## B. Application and Pre-Hearing Preparation

### 1. Application to the Disciplinary Committee/IH Panel

- (i) A participant who intends to attend the inquiry hearing remotely by VCF must make an application to the Disciplinary Committee/IH Panel in writing (“**Application**”) at least 10 working days before the scheduled hearing date.
- (ii) A participant’s own costs and expenses occasioned by and incidental to the participation in the Remote Hearing shall be borne by the participant who makes the Application.
- (iii) The following information shall be stated in the Application for Disciplinary Committee/IH Panel’s consideration:-
  - (a) reason(s) for participating in the mode of a Remote Hearing with supporting document(s), if any;
  - (b) the venue and address where the participant would stay for the purpose of attending the Remote Hearing (for the requirement of the venue, please refer to Part C paragraph 1);
  - (c) the applicant’s email address and mobile number to receive the Invitation; and
  - (d) the estimated length of the oral submission or testimony by the participant for the Remote Hearing.
- (iv) The Disciplinary Committee/IH Panel will take into account the following principles when considering an Application:
  - (a) The giving of evidence through VCF is an exception.
  - (b) The starting point is that inquiry hearings are conducted physically at a venue designated by the Disciplinary Committee/IH Panel.
  - (c) Sound reason is required to justify the departure from the starting point.
  - (d) The solemnity of an inquiry hearing and its atmosphere is highly important in the taking of evidence.
  - (e) The use of VCF will only be permitted if the Disciplinary

Committee/IH Panel considers it fair to all the relevant parties after taking into account all the material considerations<sup>1</sup> on a case by case basis.

- (f) The burden is on the Applicant to demonstrate that a Remote Hearing is required.

## 2. Hardware and Software Requirements

- (i) Participants of Remote Hearings shall comply with all of the following:-
  - (a) All Remote Hearings will be conducted using the Zoom video conferencing programme/app. The free programme or app is available in the Apple or Android app stores or at <https://zoom.us/download>.
  - (b) When a Remote Hearing is scheduled, participants will receive an invitation (“**Invitation**”) in their email<sup>2</sup> and a link to join the meeting. Participants must accept the Invitation.
  - (c) Failure to accept the Invitation may cause the Remote Hearing to be cancelled or continued in the absence of the participants, which means that the inquiry hearing will continue without their presence and/or testimony.
  - (d) In order to use Zoom for the Remote Hearing, participants will need a desktop/laptop computer with camera, speaker/headphone, and a microphone. System requirements can be found at <https://support.zoom.us/hc/en-us/articles/201362023-System-Requirements-for-PC-Mac-and-Linux>.
  - (e) Participants should download and test the Zoom programme/app and equipment prior to the actual hearing, and adjust security and firewall settings and/or allow permission/access to camera, microphone, and speaker. Technical support is available at Zoom support <https://support.zoom.us>. Participants should

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<sup>1</sup> Such considerations may include (i) whether the witness is a key witness to the proceedings; (ii) the nature of dispute and whether the witness’ credibility will be seriously contested; (iii) any health concerns raised; (iv) age of the witnesses; (v) timing of application being submitted; and (vi) whether there are sufficient measures in place to ensure fairness of the proceedings etc.

<sup>2</sup> The email address of participants should have been provided to the Disciplinary Committee/IH Panel in advance. See Part B, paragraph 1(iii)(c).

familiarize themselves with the Zoom programme/app before the Remote Hearing.

- (f) Participants should also test the speed<sup>3</sup> and stability of the internet connection ahead of time from the venue where the participants will participate in the Remote Hearing. Participants should avoid using public Wi-Fi while cyber-security is unknown.

### 3. Exhibits and Documents to be used during Remote Hearings

- (i) Exhibits and documents to be used at the Remote Hearing should be submitted in accordance with the Proceedings Rules.
- (ii) Failure to submit any exhibits and/or documents of the inquiry hearing (“**Hearing Bundle**”) in advance in the manner as required in sub-paragraph (i) above may not be accepted by the Disciplinary Committee/IH Panel at the inquiry hearing regardless of the inculpatory or exculpatory nature of the exhibits and/or documents. The acceptance of such is in the discretion of the Disciplinary Committee/IH Panel.
- (iii) Except with the prior permission of the Disciplinary Committee/IH Panel, a participant must not share or display any exhibits and/or documents and/or materials other than those already paginated in the Hearing Bundle onto everyone’s screen during the Remote Hearing.

## C. Venue and Attendance etc. on the Date of the Remote Hearing

### 1. Venue

- (i) Participants of the Remote Hearing may choose to attend the EAA’s office at 23/F, E-Trade Plaza, 24 Lee Chung Street, Chai Wan, Hong Kong or other EAA’s office (“**Other EAA Office**”) for participating in the Remote Hearing where support to the participants (including the required hardware and software, and hardcopy of the Hearing Bundle) is available.
- (ii) If participants elect not to attend the Other EAA Office for the Remote Hearing, they may only attend the hearing at a Hong Kong solicitors’ firm (or a solicitors’ firm in other jurisdictions if the participant is

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<sup>3</sup> For bandwidth requirements, please refer to Part B, paragraph 2(i)(d).

located outside Hong Kong) or an appropriate place<sup>4</sup> with the company of a Hong Kong practising lawyer (or a practising lawyer in other jurisdictions if the participant is located outside Hong Kong) (“**Remote Location**”).

- (iii) The Remote Location must be a place free from distractions and interruptions while the confidentiality of the inquiry hearing can be preserved, and prompt technical support would be available for unexpected technological problems.
- (iv) The name of the solicitor’s firm and the name of the solicitor accompanying the participants (“**Identified Lawyer**”) at the Remote Location shall be provided to the Disciplinary Committee/IH Panel not less than 3 working days prior to the start date of the Remote Hearing.

## 2. Attendance

- (i) Participants of the Remote Hearing should log in the Zoom meeting at least 15 minutes before the actual start time of the inquiry hearing through accepting the Invitation or using the Meeting ID and Password provided to them in advance.
- (ii) Participants in the Zoom meeting should be properly identified on screen by their full name.
- (iii) Participants should mute the microphones of their computers/devices after logging in the Zoom meeting until directed by the IH Panel.
- (iv) Participants should not move away from the screens or turn off their cameras during the Remote Hearing without permission of the IH Panel.
- (v) If a participant is a witness of the inquiry hearing, he/she should mute the microphone of his/her computer/device after logging in and wait at the designated Break Out Room as mentioned in Part C, paragraph 3 below until he/she is called to testify.
- (vi) The oath/affirmation will be administered by remote means<sup>5</sup> and a

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<sup>4</sup> All remote locations must be suitable and appropriate for the conduct of an inquiry hearing, and must be suitable and appropriate for the particular part or parts of the inquiry hearing in which that remote participant will be engaged.

<sup>5</sup> The participant should make available the appropriate Bible version at the Remote Location (if he/she is a Catholic or Christian) for himself/herself.

participant in the capacity of witness must be prepared to give an oath/affirmation as follows:

Witness Oath

*“I, (name if full), swear by Almighty God that the evidence I shall give shall be the truth, the whole truth, and nothing but the truth.”*

OR

Witness Affirmation

*“I, (name in full), solemnly, sincerely, and truly declare and affirm that the evidence I shall give shall be the truth, the whole truth, and nothing but the truth.”*

- (vii) When the participant is a witness of the inquiry hearing giving evidence, the participant should confirm to the IH Panel under oath that he/she is alone in the room, his/her testimony is free from any influence and collaboration; and be warned that it is a criminal offence to pervert the course of justice for engaging in witness tampering and retention of evidence in the course of and/or after testifying.
- (viii) Each person in the Remote Location and appears before the IH Panel should have his/her own computer/device/camera/microphone so that he/she appears in his/her own window on the screen that is seen by the IH Panel and all other participants, so that they are both seen and heard properly.
- (ix) The Identified Lawyer at the Remote Location should administer the oath/affirmation before the witness’s testimony. After which, the Identified Lawyer should leave the physical room afterwards so that no one shall be in the same physical room with the participant (as a witness) or in communication with the participant (witness) during the participant’s testimony.
- (x) The sequestration of witness is applied in all Remote Hearings to ensure that the witness is not allowed to discuss the case or his/her evidence with any other person at any waiting time of the Remote Hearing, is alone, and does not have access to documents, notes or messages that he/she is not entitled to have during his/her testimony.
- (xi) The participant who is a witness should not communicate with anyone

outside the Remote Location during his/her testimony, and should not use a digital background so that the IH Panel and other participants can see that he/she is alone and is not distracted.

- (xii) Witness should be advised that the IH Panel may ask at any time to see anything the witness sees or to adjust the camera to ensure compliance with all requirements and directives from the IH Panel.
- (xiii) Participants should log out from the Zoom meeting upon the IH Panel's direction when they finished their submissions/testimony and may leave the Remote Location.
- (xiv) No participants shall log out or leave the Zoom meeting without the IH Panel's direction or permission.
- (xv) If the Zoom meeting is disconnected and/or the participant is logged out unexpectedly due to technical problems, the participant should resume his/her Remote Hearing session and/or contact the Clerk to the IH Panel immediately by telephone as soon as possible.

### 3. Breakout Room Arrangement

- (i) Breakout rooms are available for private conversations between the Respondent and his/her legal representatives, for discussions, instructions taking, and for witness to wait until he/she is called to testify. If a break out is required by a participant, he/she should notify the IH Panel and obtain its approval.

### 4. Proceedings Decorum and Etiquette

- (i) A Remote Hearing is a formal hearing despite the virtual setting and the etiquette of a formal inquiry hearing should be maintained. All participants must behave as if they were physically present in the venue of the inquiry hearing, but it is not necessary to stand up when the IH Panel joins the hearing or when addressing the IH Panel. In lieu of bowing to the IH Panel, participants may nod or bow their heads when the IH Panel enters the hearing venue.
- (ii) Background noises should be reduced to a minimum and do not shuffle papers and files that create noise near the microphone.
- (iii) Dress appropriately as if attending the physical inquiry hearing.

- (iv) Participants should ensure that their faces could be seen clearly at all times.
- (v) Mute the microphone unless required to speak or answer questions.
- (vi) When speaking, speak to the microphone, look directly at the camera and not the screen.
- (vii) Position the camera at eye level or slightly above eye level.
- (viii) Make a visible sign such as waving or raising a hand or any other appropriate gesture to draw the IH Panel's attention if one wants to speak.
- (ix) Participants should address their remarks to the IH Panel patiently and avoid crosstalk with the IH Panel or other participants. It is important to remember that a remote hearing is not a virtual meeting.

**Estate Agents Authority**  
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