

Second Study Commission
Civil Law and Procedure
65th Annual Reunion of the IAJ – Tel Aviv, Israel
Questionnaire 2022

RESPONSE OF TAIWAN

VIRTUAL TRIALS IN CIVIL PROCEEDINGS

1. Did your jurisdiction offer complete or partial virtual civil trials or hearings before the Pandemic? If yes, please describe what was offered and how often the offer was exercised.

In principle, civil proceeding is conducted in person. Prior to the pandemic, only some exceptions exist. According to Article 305 of Taiwan Code of Civil Procedure, a witness could testify virtually if the court considers it appropriate to do so. The court may also examine the parties on its own initiative by using any available technological audio/visual device.

In Taiwan, virtual civil trials aren't often used. The Judge would like to see and hear the expressions, tones of the parties and witnesses, with his own facial features, so as to judge the authenticity of the facts. Prior to the pandemic, just one or two courts have built video equipment to facilitate remote interrogation. Lack of video and internet equipment for witnesses or the parties is also an issue. Virtual civil trials are usually used to take the evidence of a witness who is abroad or in prison.

2. Did your jurisdiction offer civil virtual trials or hearings during the Pandemic? If yes, was there a change in how, what and when it was offered? Were protocols published? Also, if yes, when were the virtual trials/hearings offered and what was the uptake?

Yes. At the beginning of outbreak of the COVID-19 in the world, each court has adopted diversion to work from home, and the parties have also been unable to come to court due to the pandemic. So many court sessions can only be cancelled or postponed. To solve this problem, Article 211-1 of Taiwan Code of Civil Procedure was revised on January 20 2021. It provides that where the parties, advocates, statutory agent, assistants or other parties involved in the litigation have technical equipment for mutual transmission of audio and video and the court can directly hear the case, the court may, upon request or on its own initiative, use the equipment when judge deems appropriate. According to Article 3 of Measures for Courts to Handle Virtual Trials and Document Transmission of Civil Procedure, the court should consider the following matters before conducting virtual civil trials: (1) communication status with the virtual trial equipment between the court and the declarant; (2) whether the location of the declarant can provide the court with the necessary assistance; (3) whether the declarant can state freely; (4) other matters to affect the true discovery or the fairness of the trials.

To use virtual trials, sufficient video and audio equipment in each court is very important. The Judicial Yuan have allocated funds to every court. All video equipment and software have been built now, so that virtual trials can be conducted fluently and easily.

Even though all civil procedures could be conducted virtually, virtual civil trials are still not used very often. In 2020 and 2021, the Covid-19 isn't very severe, and there is no lockdown in Taiwan. Diversion to work also didn't last for a while. Therefore, conducting trials in person is not a problem. Although Taiwan is facing outbreak of the Omicron now, coexisting with the virus is a consensus. There are no restrictions on

people to come to court unless they are quarantined because of Omicron. There is no big difference before and after the pandemic. In Taiwan, judges still don't prefer to conduct trials virtually.

3. Presuming that civil virtual trials were offered, was there any improvements made in the technology/software that the government provided? How were documents and exhibits managed?

Yes. All video equipment and software have been built in each court. Taiwanese courts used "U meeting" for virtual trials, and courts issued laptops to all judges in order to work from home and facilitate remote interrogation if necessary. Personal accounts and passwords were also provided to every judge for security and safety.

In June 2021, the Judicial Yuan promulgated Court Remote Hearing Operation Manual to the public. It provides instructions to use U meeting, so that judges, lawyers, witness and the parties can access to virtual trials easily and fluently.

Since 2015, the Judicial Yuan has devoted to develop e-court, and till August 2016, each court in Taiwan uses an electronic filing system and online exchange system. Plaintiff can use electronic filing system to file a lawsuit electronically. Online exchange system allows the parties and lawyers to transmit legal documents to court, or to each other. Therefore, judges can refer to the documents and exhibits during trials.

4. What does the future hold in your jurisdiction with respect to the continuation of virtual trials? What are the issues and or benefits that have arisen?

Since civil virtual trials have been stipulated into law, it will continue to be used in the future. Electronic filing system and online exchange system will also be retained.

With the use of virtual trials, there are two issues arise. One is about network security, including virus attack, hackers and hardware shutdown. The other is how to open court to public. For protecting hardware and software from attack and shutdown, there are some professional IT engineers working in each court. Moreover, all the digital recording files and legal documents are stored in security network. In principle, judge should conduct virtual trial in court, and the court is still open to public. As for live streaming of the court session, the Judicial Yuan believes that it may cause pressure on the parties and witnesses, so it is not appropriate to open the online live broadcast of all trials.

The biggest difference between virtual and physical trials is the camera angle of each person. If only part of it is presented, the judges will not be able to see the whole situation of the parties, including facial expressions, body movements and attitudes. At the same time, the judges can't confirm whether witness or the parties are disturbed or directed by others. The above issue may affect the judgment result. That's also the reason that judges don't like to use virtual trials.

There are some benefits on virtual trials. During the pandemic, using virtual trials can reduce the risk of cluster infection. It's possibly to secure the evidence of witness who may be outside the jurisdiction. Remote interrogation can make the parties and lawyers save travel time and associated expense.

5. Has or is research being done in your jurisdiction to help ameliorate some of the concerns that have arisen with virtual trials?

The Judicial Yuan will continue to gain feedback pertaining the running of virtual trials from judges and public. There are a few academic articles on the research of virtual trials, but no further official research is published by the Judicial Yuan.

6. How did the digitally excluded people in your jurisdictions have access to justice and specifically to virtual trials during the Pandemic?

People are exclude from participating in virtual trials, because they do not have technological equipment such as laptops or internet connection. It's not allow to conduct trials via telephone in Taiwan. However, the digitally excluded people would go to their local courts with video equipment and participate in virtual trials.