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## Supreme Court of Bermuda Expands Use of Remote Hearings

28 October 2020

For commercial litigation and cross-border insolvency matters, it is very much ‘business as usual’ in the Supreme Court of Bermuda (the “Court”). Since the issuance of Circular No. 15 of 2020 (*Updated Transitional Re-opening of the Courts due to Covid-19*)<sup>1</sup> on 30 June 2020, the Commercial Court has been conducting both interlocutory hearings and substantive trials on an in-person basis. At the same time, the Court has embraced the use of videoconferencing to facilitate the hearing of matters where witnesses, counsel and clients may be unable to travel or otherwise unable to attend Court.

### Fully Remote Hearings

Certain hearings, and in particular those which concern the insolvency and restructuring of listed companies, are urgent by their very nature and are well-suited to being conducted by way of video conference should circumstances require. Such was the case with the Court’s recent hearings concerning Agritrade Resources Limited and FDG Electric Vehicles Limited, both companies being listed on the Hong Kong stock exchange (“HKEx”) and suffering from severe liquidity constraints that impacted upon their ability to continue as a going concern. The hearings in both matters were conducted entirely via remote means, by two separate judges of Bermuda’s Commercial Court, with fully reasoned written judgments delivered shortly thereafter.<sup>2</sup> Walkers acted for the Petitioner in the *Agritrade* matter, and for the joint provisional liquidators in the *FDG Electric Vehicles* matter. The cross-jurisdictional team, which acted on both matters, was led by Partner Kevin Taylor and Senior Counsel Benjamin McCosker in Bermuda, together with Partner Joanne Collett and Senior Associate Shannon Dyer in Hong Kong.

### In Person Hearings

Although the Court heard the *Agritrade* and *FDG Electric Vehicles* matters remotely, most applications for the appointment of ‘light touch’ provisional liquidators for restructuring purposes are now being heard in person, on an expedited basis given the intrinsic urgency of such

<sup>1</sup> [https://www.gov.bm/sites/default/files/Circular-No-15-of-2020--Updated-Transitional-Reopening-of-the-Courts\\_0.pdf](https://www.gov.bm/sites/default/files/Circular-No-15-of-2020--Updated-Transitional-Reopening-of-the-Courts_0.pdf)

<sup>2</sup> In the matter of Agritrade Resources Limited [2020] SC (Bda) 28 Com (17 June 2020); In the matter of FDG Electric Vehicles Limited [2020] SC (Bda) 32 Com (20 July 2020).



applications. This was the case for the Court's recent appointment of 'light touch' provisional liquidators over Samson Paper Holdings Limited (HKEx Stock Code 731, hearing on 24 July 2020) and Ping An Securities Group Holdings Limited (HKEx Stock Code 231, hearing on 28 September 2020). As we have [previously written](#), a 'light touch' restructuring appointment provides an automatic moratorium on adverse creditor action, giving Bermuda companies an opportunity to continue trading while a restructuring is developed and implemented. The Court will hear such applications on an urgent basis (typically within 24-72 hours of filing) to protect creditors' interests and maximise the prospects of a successful restructuring.

## The 'Hybrid' Approach to Remote Hearings

Certain hearings, and substantive trials in particular, present logistical challenges when conducted by way of videoconference. Bermuda's courts have been quick to adapt to the difficulties posed by ongoing border closures and travel restrictions to ensure that commercial disputes can be resolved as efficiently as possible. Two recent trials held during October 2020 demonstrate the Court's flexibility in this regard.

On 12 October 2020, the three day trial in the matter of *Panacorp Casa de Valores, S.A. v Castle Harbour Securities Limited* commenced. The matter concerned the alleged mis-selling by the Defendant of US\$100 million of bonds in *Petróleos de Venezuela, S.A.*, the Venezuelan state-owned oil and natural gas company. In order to preserve the trial fixture, the Court arranged for the witnesses and experts (who were located in Panama City, New York and London) to be cross-examined by way of video-link, with counsel appearing in person in Bermuda. This trial was the first of its kind in Bermuda, with the Plaintiff represented by Kevin Taylor and Benjamin McCosker. The trial has been adjourned part-heard.

On 20 and 21 October, Walkers acted for the Plaintiff in the trial of a significant civil action which had been ongoing for more than five years. The Court had determined to hear the matter by way of videoconference, given the recent travel histories of the attendees at trial.<sup>3</sup> In the lead-up to the trial, counsel for the Defendant sought an adjournment on various bases, including perceived difficulties in administering the oath and unfairness to witnesses arising out of cross-examination by videoconference.

Chief Justice Narinder Hargun refused the application for the adjournment, having considered the issues of safety, technological challenges and potential unfairness through the lens of the overriding objective to resolve matters as quickly and cost-effectively as possible. The Chief Justice ordered that the witnesses attend at Court in person, with counsel conducting cross-examination by videoconference. The opening and closing of the case were conducted entirely remotely. Members of the public were able to attend (and did in fact attend, in the socially-distanced gallery), ensuring that the public interest in the open administration of justice was preserved. The trial proceeded smoothly to its conclusion, and judgment has been reserved.

## Conclusion

The Court has made clear that it will be flexible in its accommodation of interlocutory hearings and trials by way of videoconference to ensure that the administration of justice is not hindered by the ongoing pandemic. The Court's pragmatic approach in this regard very much reflects the stance adopted by the courts of England & Wales in relation to remote hearings.<sup>4</sup> Parties involved in disputes before Bermuda's Commercial Court can be confident that hearing dates will generally be preserved and that matters will move swiftly forward, notwithstanding logistical difficulties which may arise from border closures and ever-changing airline schedules.

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<sup>3</sup> The Bermuda Government has mandated Covid-19 testing and quarantine restrictions, which in some cases can preclude entry to the Court immediately following the return to Bermuda from overseas travel.

<sup>4</sup> See, for example, Mr Justice Kimble QC's commentary on 6 April 2020 in *Hyde and Murphy v Nygate and Rayment* (2020) EWHC 845.



## Contacts

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