

EASTERN CARIBBEAN SUPREME COURT

PRACTICE DIRECTION

No. 3 of 2020

COVID-19 EMERGENCY MEASURES

(2nd RE-ISSUE)

This Practice Direction is made pursuant to Rule 4.2(2) of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000,¹ and is applicable to all the Member States and Territories in the jurisdiction of the Eastern Caribbean Supreme Court.

Practice Direction No. 2 of 2020 is revoked and substituted by this Practice Direction.

1. Introduction

1.1 This Practice Direction supplements the Rules in that it regulates the practice and procedure of the Court which has been affected by the situation created with the impact of the COVID-19 (Coronavirus) on all of the Member States and Territories of the Court.

1.2 This Practice Direction –

(a) is intended to facilitate the continuation of court proceedings in the Member States and Territories through the filing, service and disposition, of matters which are not presently available on the E-Litigation Portal of the Court; and

(b) applies to all Civil (including Commercial), Criminal², and Family proceedings before the Supreme Court in the Member States and

¹ In Saint Lucia this Practice Direction is also made pursuant to Rule 2.1 (2) of the Criminal Procedure Rules in Saint Lucia.

² This Practice Direction is applicable to Criminal proceedings in Saint Lucia. Criminal proceedings in all other Member States and Territories to which this Practice Direction applies will be guided by the emergency measures protocols put in place in each Member State and Territory for dealing with criminal matters during the emergency period.

Territories.

1.3 This Practice Direction will remain in force until the Chief Justice so directs.

1.4 Insofar as the Civil Procedure Rules and any other Rules of Court are inconsistent with this Practice Direction, they are modified by it.

2. Context

In this Practice Direction:

- i. ECSC means Eastern Caribbean Supreme Court.
- ii. ELP means the ECSC E-Litigation Portal
- iii. Member States mean Antigua and Barbuda, Dominica, Grenada, St. Kitts & Nevis, Saint Lucia and St Vincent & the Grenadines
- iv. Territories mean Anguilla, Montserrat and the Virgin Islands

3. Filing in all Matters not yet Available on the E-Litigation Portal

3.1 Prescribed fees that are due on a document filed by e-mail shall be paid at the time and in the manner specified by this Practice Direction.

3.2 It is the responsibility of every Legal Practitioner (or their firm) to provide an undertaking, as set out in Form 1, to pay all filing fees which are due as a result of the documents which are filed in accordance with this Practice Direction as soon as practicable after the filing has been submitted.

3.3 Only filings in respect of which law firms have provided this undertaking under this Practice Direction shall be accepted and deemed to be filed for processing and determination by the Court.

3.4 Where the Registrar determines that it has become practicable for a legal practitioner or law firm to pay the filing fees pursuant to the undertaking and issues a request for payment, then unless payment is made within 72 hours of the request, the undertaking shall be deemed to

have been breached and no subsequent documents shall be accepted for filing from that legal practitioner or law firm. Further a Judge or Master may take the failure to make payment into account as a factor when making any costs order in respect of any application or hearing.

3.5 Every document which the Rules or the Commercial Court Practice Directions permit or require to be filed in the Registry of the High Court in the Territory of the Virgin Islands shall be filed only electronically:

- (a) by sending that document in PDF format to the appropriate e-mail address for the applicable Registry of the Supreme Court as listed in Schedule 1; and
- (b) by filing a completed E-Filing Application Header form.
- (c) Prior to any hearing, draft orders required to accompany all applications shall be filed electronically in Word format for the use of the Court.

3.6 Where a document is filed by e-mail, the party who has filed the document must also subsequently deposit one (1) hard copy of the document at the High Court Registry in their respective Member State or Territory, within seven (7) calendar days, or where the last calendar day falls on a Saturday, Sunday, public holiday or a day on which the Court Office is closed for business, the next business day, when the Court Office is open for Business.

3.7 When a document is filed the subject line of the e-mail must contain the following information –

- (a) the title of the case;
- (b) the case number (if available) using a four-digit file number after the year *e.g.* DOMHCV2017/0123;
- (c) the date and time of any hearing to which the e-mail relates; and
- (d) the type of matter/application being filed.

3.8 The e-mail message must contain the sender's–

- (a) identity;
- (b) telephone number; and
- (c) e-mail address,

and should be in plain text or rich text format rather than HTML.

3.9 Correspondence and documents to be filed must not be sent as text in the body of the e-mail, but rather as attachments to the e-mail in the format stipulated by the Court.

3.10 No single document filed under this paragraph should exceed 5 MB. Every such document should comply with the Rules and Practice Directions and must:

- (a) contain a header with the title of the court:

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

[Country]

- (b) contain the full title of the proceedings;
- (c) contain a header with the title of the document;
- (d) reflect the name, business address, e-mail address, reference (if any), telephone number and fax number (if any) of the filer;
- (e) be dated;
- (f) be signed by the person filing it (if not an affidavit) and should not be in the name of the firm;
- (g) be signed by the person who deposes (if an affidavit);
- (h) state the name of the party on whose behalf it is filed;

- (i) state the full name of the signatory legibly below the signature;
- (j) state the address of the court; and
- (k) be properly indexed and paginated (if it is a record or bundle of documents being filed).

4. Service of Documents

4.1 Notwithstanding the provisions of CPR 3.11(1), every document which is required by CPR 5.6 to be served upon a Legal Practitioner may be served upon that Legal Practitioner by e-mail.

4.2 A party who serves a document by e-mail shall copy the court on the e-mail effecting service, using the appropriate e-mail address for the court office as specified in Schedule 1.

4.3 The E-mail address at which service may be effected under paragraph 4.1 is the e-mail address:

- (a) notified in writing by that Legal Practitioner for this purpose; or
- (b) if an e-mail address has not been notified in writing by that Legal Practitioner, service may be validly effected upon that Legal Practitioner by sending that document to:
 - (i) the e-mail address used on the letterhead of that Legal Practitioner or previously used by that Legal Practitioner;
 - (ii) the e-mail address given on the website of that Legal Practitioner; or
 - (iii) the e-mail address of the general mailbox of the firm to which that Legal Practitioner belongs.

4.4 Notwithstanding the provisions of CPR 5.7 and CPR 6.2, a claim form or other document may be served on a limited company by sending it by e-mail to the registered office or Registered Agent of that limited company.

4.5 The e-mail address under paragraph 4.4 at which service may be effected is the e-mail address:

- (a) notified in writing by that limited company or its Registered Agent for the purposes of paragraph 4.4; or
- (b) if an e-mail address has not been notified in writing by that limited company or its Registered Agent, service may be validly effected upon that limited company by sending the claim form or other document to:
 - (i) the e-mail address used on the letterhead of that limited company or its Registered Agent or previously used by that limited company or its Registered Agent;
 - (ii) the e-mail address given on the website of that limited company or its Registered Agent; or
 - (iii) the e-mail address of the general mailbox of that limited company or its Registered Agent.

4.6 Proof of service of a filed document shall be by way of an affidavit of service, which shall exhibit the following:

- (a) copy of the e-mail under cover of which the document in question was served; and
- (b) a copy of any message tracking, relay or delivery confirmation, including the address to which the e-mail was sent, the date and time the e-mail was sent, and if applicable, a copy of any reply or bounce-back notice of non-delivery or delivery failure.

5. Remote Hearings

- 5.1 The objective is to undertake as many hearings as possible remotely so as to minimise the risk of transmission of Covid-19. This section provides basic guidance as to the conduct of remote hearings.
- 5.2 Hearings conducted in accordance with this Practice Direction should be treated as a hearing in accordance with the Rules of Court. Nothing in this Practice Direction derogates from the judge's duty to determine all issues that arise in the case judicially and in accordance with normal principles.
- 5.3 All in-person appearances are discouraged. Hearings will be conducted on the date and in the manner specified by the judge and will utilize video or teleconference where the judge deems it appropriate.
- 5.4 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 Practice Directions. However, in determining whether a hearing should be conducted in person, the judge(s) must have regard to the interest of public health and the ability to maintain appropriate social distancing while in attendance in courtrooms.
- 5.5 Where a judge deems it fit for a hearing to be conducted in person, attendance should be limited to attorneys, parties, and necessary witnesses only when it is deemed to be absolutely necessary.
- 5.6 It is good practice for the judges and court office, to consider as far ahead as possible how future hearings should best be undertaken.
- 5.7 Where a hearing proceeds by video conference:
- (a) the court may, if deemed necessary, fix a remote case management conference in advance of the fixed hearing date 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;
 - (b) where Legal Practitioners advise that they may experience technical constraints they may attend the hearing from different locations;

- (c) the court, and the parties, will need to log in or call in to the dedicated facility in good time for the stated start time of the remote hearing. Parties are to ensure that they are online in time for the prompt commencement of the hearing. If the parties are having any connectivity or other difficulties this should be promptly communicated to the court office;
- (d) it is the responsibility of a Legal Practitioner who is not physically present in the Member State or Territory at the time of the hearing to identify an appropriate video conferencing facility which they will utilize and to connect to the facility of the Court;
- (e) at the commencement of that hearing, a Legal Practitioner representing each party shall identify every person present with him or her;
- (f) no party or his/ her Legal Practitioner is entitled to be physically present before the Court unless the Court gives permission;
- (g) the hearing will be recorded by the court office in accordance with the measures put in place for the recording of court matters;
- (h) the parties and their legal representatives are not permitted to record the hearing;
- (i) requests for copies of the audio recordings are to be done in accordance with this Practice Direction.

5.8 The first hearing of a Fixed Date Claim Form shall not be treated as a hearing at which the evidence of any witness is to be given unless the Court has given a direction to that effect.

6. Bundles for Hearings

6.1 The parties must prepare an electronic bundle of documents and an electronic bundle of authorities for each remote hearing. Each electronic bundle should be indexed and paginated in accordance with the guidelines

in Schedule 2 of this Practice Direction and should be provided to the court office and to all other parties via email or via the Electronic Litigation Portal should the matter be available there. The electronic bundles must be available well in advance of the hearing.

6.2 Electronic bundles should contain only documents and authorities that are essential to the remote hearing. Single large electronic files should be avoided as these can be slow to transmit and unwieldy to use.

6.3 Electronic bundles can be prepared in .pdf and must be filed in accordance with the measure put in place for filing by the court office.

6.4 The party responsible for preparing the bundles for any hearing under the Rules shall, within the periods prescribed:

(a) deliver one (1) hard copy of the bundle to the Registrar of the High Court within seven days or as soon as the Court Office is open to receive documents whichever occurs later; and

(b) deliver a bookmarked electronic copy of that bundle by e-mail to every other party.

6.5 The Court reserves the right to request additional hard copies of any bundles from the party who has filed by e-mail.

6.6 The bundle should be clearly labelled as a hearing bundle and must bear the date of the hearing.

6.7 Bundles provided in hard copy must be a replica of the electronically filed bundles paginated in similar form accompanied by an Index cover describing the documents contained in the bundle and referencing the page number within the bundle of the document.

7. Applications for admission as a Legal Practitioner (For Member States without the ELP)

7.1 An application for admission as a Legal Practitioner in a matter shall be filed by e-mail in accordance with this Practice Direction.

7.2 The hearing of an application for the admission as a Legal Practitioner shall be by personal appearance using video conference facilities, except where the Court otherwise directs.

7.3 Where the Court is satisfied that it is appropriate to admit such a person as a Legal Practitioner:

- (a) the Registrar shall enter the name of that person onto the Court Roll;
- (b) the Court may accept such undertakings as appears to it appropriate:
 - (i) as to the production of the originals, or certified copies of the originals of the documents produced at that hearing;
 - (ii) as to the signing of the Roll (or a facsimile of it); and
 - (iii) as to the receipt of payments;
- (c) payment of any fees prescribed shall be paid at the relevant High Court Registry, at least 2 clear days prior to the application for admission once the Court Office is open to receive such payments.

8. STATUS HEARING UPDATE FORMS

8.1 All parties are to complete the status hearing update form (FORM 2) attached to this Practice Direction.

8.2 The status hearing update form must be returned to the Registrar via e-mail to the address specified in Schedule 1 no less than 7 days prior to the date of hearing.

8.3 Parties are asked to submit joint or agreed forms as much as possible.

8.4 Where there is no agreement, parties are asked to submit separate forms and state that there is no agreement.

9. COURT FEES

- 9.1 The Eastern Caribbean Supreme Court (Court Proceedings Fees) Rules and the Commercial Claims Fees Order 2011 shall continue to apply.
- 9.2 An administrative fee may be applied for the following services in accordance with any such Notice published by the Registrar:
- (a) e-filing
 - (b) printing and copies
 - (c) transcripts/audio file retrieval
 - (d) video-link
 - (e) teleconference
- 9.3 The administrative fee in paragraph 9.2 shall be due to be paid by the party filing or requesting as part of the undertaking provided in Section 3.2.

10. Recording of Court Proceedings

- 10.1 At any hearing of the Court, the proceedings will be recorded by the court by such recording equipment as approved by the Chief Justice.
- 10.2 No party or member of the public may use unofficial recording equipment at any hearing or in any court or judge's chambers without the prior authorization of the presiding judge.
- 10.3 The court recording, whether in written, audio or other digital form, shall be the official transcript of the proceedings.

11. Preparation of Transcripts

- 11.1 A party may request from the Registrar by using Form 3 provided in this Practice Direction, a transcript or transcripts of the recording of any hearing in which they are involved.

11.2 Further to a party's request, a transcript will be provided upon payment of the charges authorized by any scheme in force in any Member State or Territory for the making of the recording or the transcript.

11.3 If a person who is not a party to the proceedings requires a transcript, or if the hearing or any part of it was held in private under CPR rule 2.7, a transcript may only be provided if the Court so orders.

12. Provision of Transcripts

12.1 A party or a person approved under paragraph 11.3 may request a copy of the transcript of proceedings to be provided either by electronic means or hard copy.

12.2 The fee payable will be in accordance with the scheme in force as aforesaid for the making of transcripts and will be based on the type of transcript requested.

12.3 Where a transcript is requested in the form of an audio file where this is available, the fee payable shall be \$100.00 per day or part thereof of the recorded proceedings.

13. Special Directions

13.1 In the event that the court office in any particular Member State or Territory gives Notice of closure of the Court Office or where the Government of any particular Member State or Territory issues a Notice of Closure or lock down of all services within the Member State or Territory:

(a) time under the provisions of the Civil Procedure Rules 2000 and the Criminal Procedure Rules (where applicable) for the filing of any documents shall cease to run for the period stipulated in such Notice;

(b) time for compliance with any Rule, Practice Direction or procedural court order shall cease to run. This would include the time for service of filed documents for matters where service other than by electronic means is required or available;

PROVIDED THAT where the Registrar or Chief Registrar in respect of appeals gives Notice that the period of suspension of time hereunder has ended, time shall begin or continue to run as from the effective date of the termination of the suspension as contained in the Notice.

13.2 Where, in support of any application under these Rules it is not practicable to produce sworn evidence on affidavit, then the application may be supported by evidence given by witness statement and, as soon as practicable thereafter to produce the evidence by affidavit.

13.3 The Registrar may, on the direction of the Chief Justice, give special instructions by way of Notices, for the filing of documents by electronic means to meet the requirements of particular cases or by way of experiment.

13.4 Section 13.4 would include any instructions which are given by the Registrar, on the direction of the Chief Justice, for the transfer of matters from the manual filing environment to the Electronic Litigation Portal, where the system is available.

14. Effective Date

This Practice Direction shall come into effect in a Member State or Territory on the 30th day of March, 2020

Dated the 30th day of March, 2020

Dame Janice M. Pereira, DBE
Chief Justice

Schedule 1

1. BVI High Court
2. Anguilla High Court
3. St. Kitts and Nevis High Court
4. Antigua and Barbuda High Court
5. Montserrat High Court
6. Commonwealth of Dominica High Court
7. Saint Lucia High Court
8. St. Vincent and the Grenadines High Court
9. Grenada High Court

Where a document is being filed for a matter before the Court of Appeal, the e-mail with the .pdf document should also be copied to the e-mail address:

registry@eccourts.org

SCHEDULE 2

Guidelines on Preparation of Electronic Hearing Bundles / Trial Bundles

The following instructions have been developed to ensure that Hearing Bundles / Trial Bundles are prepared in a standard format to facilitate quick access to the relevant information by judges of the High Court and the Court of Appeal during the conduct of the hearing or trial.

1. A suitably labelled cover page should be prepared and printed which provides the case number, country, and other general information associated with a filing being uploaded to the portal. This cover page is necessary to ensure that the stamp can be placed on the filing which is being submitted.
2. The documents to be placed in the bundle should all be printed and placed in the order in which they are to be submitted to the Court. A volume size should not exceed the 100 MB file size limit of the portal for uploading as a pdf document. Therefore, only in cases where the volume size exceeds the allowed size on the portal should additional volumes be filed.
3. Where the bundle is being submitted in multiple volumes, each volume should have a suitable worded cover page clearly indicating Volume 1, Volume 2, etc. in order to comply with Step 1.
4. The cover page together with the documents which are part of the volume should then be scanned and saved as a “.pdf”. This should be repeated for each volume to be uploaded to the portal. At the end of this step there should be an individual “.pdf” file for each volume which is to be submitted and filed on to the portal.
5. A document index (or table of contents) must then be created prior to submission of the bundle on the portal. In order to create the index the legal practitioner should open the respective “.pdf” volume and identify the submissions with the “.pdf” **page numbers as it appears within the “.pdf” document volume**. Once this information is obtained please include it in the MS Word version of the index which is being prepared. For example, the

Notice of Appeal which is in Volume 1 starts on page 4 so the index should state this. If the Transcript in Volume 1 starts on page 18 in the “.pdf” document, then this should be so stated in the index document.

6. Once the index is completed in MS Word where it clearly specifies the volume, name of the submission, and the page number where each submission starts in the “.pdf” volume, it should then be printed and scanned as a separate “.pdf” document. Please note that the index should be prepared chronologically starting with Volume 1, page 1 to 100 for a 100-page “.pdf” document volume. Then it would provide Volume 2, if a 2nd volume exists, commencing from page 1 to 300 for a 300-page document, and so on. Also, please note that the first page of a “.pdf” Hearing Bundle or Trial Bundle volume will always be the cover page which was referred to in Steps 1 and 3 above.
7. During the conduct of the trial, the judge/judges will then be able to open the index and the volume being referred to by counsel during the hearing directly from the portal. Once referred to the volume and page number on the index this will allow the judge/judges to quickly navigate to the correct document in the volume.
8. Legal practitioners should always refer to their index and the actual “.pdf” page numbers in the “.pdf” document during the course of their presentation to the Court. It would therefore be useful to have a laptop or other smart device with the “.pdf” file open so that the legal practitioner can direct the court to specific pages in the document to which they wish to refer.

Additional Guidance For Matters on the Portal

9. Once the index is accurately created and you have completed step 6 you are now ready to file the Hearing Bundle or Trial Bundle on the portal. There will be one “.pdf” file for the index and a separate individual “.pdf” file for each volume which is being submitted.
10. The first volume of the Hearing Bundle or Trial Bundle can be submitted as the first filing which will attract the full filing fee and the \$2 Administration Fee. Each subsequent volume should be filed as “Additional Volume” so that only the \$2 Administration Fee has to be paid.

11. The last document to be filed should be the index which should also be filed as an “Additional Volume” so that only the \$2 Administration Fee is paid.
12. Where necessary legal practitioners may use the “pack and go” feature to download all the documents from the portal so that they can access it during the actual hearing or trial if there is no internet or slow connection for directly accessing the portal.

Form 1

[On Letterhead of Law Firm or Chambers]

The Registrar

High Court of Justice

[Member State / Territory]

Dear

In order to facilitate the filing of documents as provided for in Practice Direction, PD ?? of 2020 - COVID-19 EMERGENCY MEASURES, I _____ representing the law firm of _____ in the Member State [or Territory] of _____ hereby undertake to pay to the Government of _____ any filing fees which are due to be paid by way of stamps due for the filings which are made while this Practice Direction remains in effect.

[Print Name of Legal Practitioner]

Signature of Legal Practitioner

[Print Name of Witness]

Signature of Witness

FORM 2

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

CLAIM NO:

BETWEEN:

[X]

and

[Y]

STATUS UPDATE [ON BEHALF OF [PARTY]]

1. Current listing date:
2. Nature of application (or listed as a trial):
3. Time estimate:
4. Any reasons why a video or telephone hearing would not be appropriate, and if not, what form of hearing is required:
5. Is it essential that this hearing date is maintained:
6. If not, what are the requested dates for an alternative listing?
7. Reasons for prioritising this hearing in a re-constituted Court list:
8. Which, if any, of the above responses are agreed between the parties:
9. Any other comments:

Dated

[Name of Legal Practitioner]

[Name of Firm]

Legal Practitioners for the [Claimant/Defendant/ Applicant/Respondent]

Dated

[Name of Legal Practitioner]

[Name of Firm]

Legal Practitioners for the [Claimant/Defendant/ Applicant/Respondent]

FORM 3



REQUEST FOR TRANSCRIPT OF PROCEEDINGS

Date:

Name of Requesting Party:

Name of Transcriptionist:

Proceeding (trial, appeal etc.)

Names of Legal Practitioners

Case Name (in full):

Location where matter was heard
(including court room):

Judge (s):

Appearances (if different to Legal Practitioners):

Date of Trial/Hearing:

Turnaround time for transcript:

Comments