SCHEDULE B TO PART 23

SCHEDULE B TO PART 23

Video Conferencing generally

1. The protocol covers the use of VCF equipment both (a) in a courtroom, whether via equipment which is permanently placed there or via a mobile unit, and (b) in a separate studio or conference room. In either case, the location at which the Judge sits is referred to as the "local site". The other site or sites to and from which transmission is made are referred to as "the remote site" and in any particular case any such site may be another courtroom. The protocol applies to cases where VCF is used for the taking of evidence and also to its use for other parts of any legal proceeding (for example, interim applications, case management conferences, pre-trial reviews).

2. VCF may be a convenient way of dealing with any part of proceedings: it can involve considerable savings in time and cost. Its use for the taking of evidence from overseas witnesses will, in particular, be likely to achieve a material saving of costs, and such savings may also be achieved by its use for taking domestic evidence. It is, however, inevitably not as ideal as having the witness physically present in court. Its convenience should not therefore be allowed to dictate its use. A judgment must be made in every case in which the use of VCF is being considered not only as to whether it will achieve an overall cost saving but as to whether its use will be likely to be beneficial to the efficient, fair and economic disposal of the litigation. In particular, it needs to be recognised that the degree of control a court can exercise over a witness at the remote site is or may be more limited than it can exercise over a witness physically before it.

3. When used for the taking of evidence, the objective should be to make the VCF setting as close as possible to the usual practice in a trial court where evidence is taken in open court. To gain the maximum benefit, several differences have to be taken into account. Some matters, which are taken for granted when evidence is taken in the conventional way, take on a different dimension when it is taken by VCF: for example, the administration of the oath, ensuring that the witness understands who is at the local site and what their various roles are, the raising of any objections to the evidence and the use of documents.

4. It should not be presumed that all foreign governments are willing to allow their nationals or others within their jurisdiction to be examined before a court in the DIFC by means of VCF. If there is any doubt about this, enquiries should be directed to the Registry with a view to ensuring that the country from which the evidence is to be taken raises no objection to it at diplomatic level. The party who is directed to be responsible for arranging the VCF (see paragraph 8 below) will be required to make all necessary inquiries about this well in advance of the VCF and must be able to inform the Court what those inquiries were and of their outcome.

5. Time zone differences need to be considered when a witness abroad is to be examined in the DIFC by VCF. The convenience of the witness, the parties, their representatives and the Court must all be taken into account. The cost of the use of a commercial studio is usually greater outside normal business hours.

6. Those involved with VCF need to be aware that, even with the most advanced systems currently

available, there are the briefest of delays between the receipt of the picture and that of the accompanying sound. If due allowance is not made for this, there will be a tendency to “speak over” the witness, whose voice will continue to be heard for a millisecond or so after he or she appears on the screen to have finished speaking.

7. With current technology, picture quality is good, but not as good as a television picture. The quality of the picture is enhanced if those appearing on VCF monitors keep their movements to a minimum.

Preliminary arrangements

8. The Court’s permission is required for any part of any proceedings to be dealt with by means of VCF. Before seeking a direction, the applicant should notify the Registrar or other appropriate Court Officer of the intention to seek it, and should enquire as to the availability of Court VCF equipment for the day or days of the proposed VCF. The application for a direction should be made to the Registrar or Judge , as may be appropriate. If all parties consent, permission can be sought by letter or e-mail, although the Court may still require an oral hearing. All parties are entitled to make submissions on whether or not such a direction should be given and as to its terms. If a witness at a remote site is to give evidence by an interpreter, consideration should be given at this stage as to whether the interpreter should be at the local site or the remote site. If a VCF direction is given, arrangements for the transmission will then need to be made. The Court will ordinarily direct that the party seeking permission to use VCF is to be responsible for this. That party is hereafter referred to as “the VCF arranging party”.

9. Subject to any order to the contrary, all costs of the transmission, including the costs of hiring equipment and technical personnel to operate it, will initially be the responsibility of, and must be met by, the VCF arranging party. All reasonable efforts should be made to keep the transmission to a minimum and so keep the costs down. All such costs will be considered to be part of the costs of the proceedings and the Court will determine at such subsequent time as is convenient or appropriate who, as between the parties, should be responsible for them and (if appropriate) in what proportions.

10. The local site will, if practicable, be a courtroom but it may instead be an appropriate studio or conference room. The VCF arranging party must contact the Registry and make arrangements for the VCF transmission. Details of the remote site, and of the equipment to be used both at the local site (if not being supplied by the Court) and the remote site (including the number of ISDN lines and connection speed), together with all necessary contact names and telephone numbers, will have to be provided to the Registry . The Court will need to be satisfied that any equipment provided by the parties for use at the local site and also that at the remote site is of sufficient quality for a satisfactory transmission. The VCF arranging party must ensure that a technical assistant will be present at the local site to supervise the operation of the VCF throughout the transmission in order to deal with any technical problems. That party must also arrange for a technical assistant to be similarly present at the remote site for like purposes.

11. It is recommended that the Judge , legal representatives and witness should arrive at their respective VCF sites about 20 minutes prior to the scheduled commencement of the transmission.

12. If the local site is not a courtroom, but a conference room or studio, the Judge will need to determine who is to sit where. The VCF arranging party must take care to ensure that the number of

microphones is adequate for the speakers and that the panning of the camera for the practitioners' table encompasses all legal representatives so that the viewer can see everyone seated there.

13. The proceedings, wherever they may take place, form part of a trial to which the public is entitled to have access (unless only the Court has determined that they should be heard in private). If the local site is to be a studio or conference room, the VCF arranging party must ensure that it provides sufficient accommodation to enable a reasonable number of members of the public to attend.

14. In cases where the local site is a studio or conference room, the VCF arranging party should make arrangements, if practicable, for the insignia of the DIFC Courts to be placed above the Judge's seat.

15. In cases in which the VCF is to be used for the taking of evidence, the VCF arranging party must arrange for recording equipment to be provided by the Court which made the VCF direction so that the evidence can be recorded. A Court Officer will normally be present to operate the recording equipment when the local site is a courtroom. The VCF arranging party should take steps to ensure that a Court Officer is present to do likewise when it is a studio or conference room. The equipment should be set up and tested before the VCF transmission. It will often be a valuable safeguard for the arranging party also to arrange for the provision of recording equipment at the remote site. This will provide a useful back-up if there is any reduction in sound quality during the transmission. A direction from the Court for the making of such a back-up recording must, however, be obtained first. This is because the proceedings are court proceedings and, save as directed by the Court , no other recording of them must be made.

16. Some countries may require that any oath or affirmation to be taken by a witness accord with local custom. The VCF arranging party must make all appropriate prior inquiries and put in place all arrangements necessary to enable the oath or affirmation to be taken in accordance with any local custom. That party must be in a position to inform the Court what those inquiries were, what their outcome was and what arrangements have been made. If the oath or affirmation can be administered in the manner normal in the DIFC , the VCF arranging party must arrange in advance to have the appropriate holy book at the remote site. The Court Officer will normally administer the oath.

17. Consideration will need to be given in advance to the documents to which the witness is likely to be referred. The parties should endeavour to agree on this. It will usually be most convenient for a bundle of the copy documents to be prepared in advance, which the VCF arranging party should then send to the remote site.

18. Additional documents are sometimes quite properly introduced during the course of a witness's evidence. To cater for this, the VCF arranging party should ensure that equipment is available to enable documents to be transmitted between sites during the course of the VCF transmission. Consideration should be given to whether to use a document camera. If it is decided to use one, arrangements for its use will need to be established in advance. The panel operator will need to know the number and size of documents or objects if their images are to be sent by document camera. In many cases, a simpler and sufficient alternative will be to ensure that there are reception facilities at the participating sites.

The hearing

19. The procedure for conducting the transmission will be determined by the Judge . He will determine who is to control the cameras. In cases where the VCF is being used for an application in the course of the proceedings, the Judge will ordinarily not enter the local site until both sites are on line. Similarly, at the conclusion of the hearing, he will ordinarily leave the local site while both sites are still on line. The following paragraphs apply primarily to cases where the VCF is being used for the taking of the evidence of a witness at a remote site. In all cases, the Judge will need to decide whether court dress is appropriate when using VCF facilities. It might be appropriate when transmitting from courtroom to courtroom. It might not be when a commercial facility is being used.

20. At the beginning of the transmission, the Judge will probably wish to introduce himself and the legal representatives to the witness. He will probably want to know who is at the remote site and will invite the witness to introduce himself and anyone else who is with him. He may wish to give directions as to the seating arrangements at the remote site so that those present are visible at the local site during the taking of the evidence. He will probably wish to explain to the witness the method of taking the oath or of affirming, the manner in which the evidence will be taken, and who will be conducting the examination and cross-examination . He will probably also wish to inform the witness of the matters referred to in paragraphs 6 and 7 above (coordination of picture with sound, and picture quality).

21. The examination of the witness at the remote site should follow as closely as possible the practice adopted when a witness is in the courtroom. During examination, cross-examination and re-examination, the witness must be able to see the legal representative asking the question and also any other person (whether another legal representative or the Judge) making any statements in regard to the witness’s evidence. It will in practice be most convenient if everyone remains seated throughout the transmission.