

Family Justice Courts Practice Directions (Amendment No. 4 of 2017)

7. Guidance on Direct Judicial Communications in International Family Proceedings Affecting Children

Explanatory Note

Singapore society has become increasingly international. In cases involving children, a further complication arises where parents and children reside in more than one jurisdiction. In such cases, direct judicial communications may be beneficial. This Practice Direction is issued to facilitate such communications..

Direct judicial communications refer to communications that take place between sitting judges of different jurisdictions when there are concurrent related proceedings involving the same parties.

It has now been recognised and firmly established in some foreign jurisdictions such as England & Wales, Australia, New Zealand, Canada and United States of America that direct judicial communications are key mechanisms to assist practitioners and judges in resolving cases with an international element in the best interests of children and of justice in general. These communications will often result in considerable time savings and better use of available resources, and are done with the overriding objective of securing the best interests of the child. Direct judicial communication does not aim to inhibit parties' right to adduce expert evidence on the foreign law, but should be seen as another tool to be made available for parties involved in multiple proceedings in different jurisdictions.

Introduction

- (1) This Practice Direction is issued to assist judges and practitioners dealing with family proceedings affecting children in which direct judicial communications may be beneficial. It is not intended to change the current rules or procedure or to affect the substantive rights of the parties, but is simply intended to facilitate cooperation in international cases, where appropriate.
- (2) The Liaison Judges of Singapore are appointed by the Chief Justice, and it is part of their role to receive and, when necessary, channel incoming judicial communications and initiate or facilitate outgoing communications. The ~~names of the~~ current appointees are set out in the Annex to this Paragraph (please see below).
- (3) Matters which may be the subject of direct judicial communications include, for example:

- (a) scheduling the case in the foreign jurisdiction:
 - (i) to make interim orders, eg, support, measure of protection;
 - (ii) to ensure the availability of expedited hearings;
 - (b) establishing whether protective measures are available for the child or other parent in the jurisdiction to which the child would be returned in the case of a child abduction case and, in an appropriate case, ensuring the available protective measures are in place in that jurisdiction before a return is ordered;
 - (c) ascertaining whether the foreign court can accept and enforce undertakings offered by the parties in the initiating jurisdiction;
 - (d) ascertaining whether the foreign court can issue a mirror order (ie, same order in both jurisdictions);
 - (e) confirming whether orders were made by the foreign court;
 - (f) verifying whether findings about domestic violence were made by the foreign court;
 - (g) verifying whether a transfer of jurisdiction is appropriate.
- (4) “Central Authority” in this Practice Direction is the Authority appointed under section 5 of the International Child Abduction Act (Cap 143C).
- (5) For the avoidance of doubt, all references to “parties” or their “representatives” shall, where a child is to be separately represented, include the Child Representative as appointed by the Court under the Family Justice Rules.

Overarching Principles

- (6) Every judge engaging in direct judicial communications must respect the law of his or her jurisdiction.
- (7) When communicating, each judge seised of the matter should maintain his or her independence in reaching his or her own decision on the matter at issue.
- (8) Communications must not compromise the independence of the judge seised in reaching his or her own decision on the matter at issue. Any discussion about the merits of the case should be avoided.

- (9) For the avoidance of doubt, parties remain entitled under the *Rules of Court* to call upon expert witnesses to prove or disprove the foreign law. The Court will take into account all the available evidence before arriving at a decision.

Procedure and Safeguards

- (10) Either party to the proceeding may raise with the judge the desirability and need for direct judicial communications.
- (11) A judge seised of the matter may, if he or she determines it desirable, initiate direct judicial communication through the Liaison Judges.
- (12) Before deciding whether to engage in direct judicial communications, the judge should consider:
- (a) whether there is a question of foreign law or procedure to clarify with a judge in the foreign jurisdiction,
 - (b) whether the question can be answered or dealt with by the Central Authority in Singapore or the Central Authority in the foreign jurisdiction, and if so, the judge may consider having the Central Authority address the issue or obtain the information, and
 - (c) whether the question can be answered or dealt with by any judge in the foreign jurisdiction (other than the judge hearing the proceeding).
- (13) The following are commonly accepted procedural safeguards.
- (a) Except in special circumstances, parties are to be notified of the nature of the proposed communication;
 - (b) A record is to be kept of communications and it is to be made available to the parties;
 - (c) Any conclusions reached between the judges should be in writing and made available to parties;
 - (d) Parties or their representatives should have the opportunity to be present in certain cases, for example via conference call facilities.
- (14) The above commonly accepted procedural safeguards should be adopted subject to Singapore's legislation and rules.

- (15) In special or urgent circumstances where parties were not notified in advance of the nature of the proposed communications, the judge should provide written reasons to the parties as to why there was no notification as soon as practicable.
- (16) If any party objects to the proposed communications, the judge should direct submissions be lodged from all parties, and if necessary, should direct an oral hearing, before ruling on the matter, giving short reasons for such ruling.

Initiating the Communication

- (17) In considering whether the use of direct judicial communications is appropriate, the judge should have regard to speed, efficiency and cost-effectiveness.
- (18) Judges should consider the benefit of direct judicial communications and at what stage of the proceeding it should occur. The timing of the communication is for the judge who initiates it to consider.
- (19) The initial communication should ordinarily take place between our Liaison Judge and the Liaison Judge of the other jurisdiction, if any, in order to ascertain the identity of the judge seised in that jurisdiction. If no Liaison Judge has been appointed in the other jurisdiction, the Central Authority of Singapore or the party within jurisdiction is to assist in providing the identity of the judge in the other jurisdiction.
- (20) When making contact with a judge in another jurisdiction, the initial communication should normally be in writing sent to the email address in the Annex below, subject to provisions set out in this Practice Direction in relation to written communications, and should in particular identify:
 - (a) the name and contact details of the initiating judge;
 - (b) the nature of the case (with due regard to confidentiality concerns);
 - (c) the issue(s) on which communication is sought;
 - (d) whether the parties before the judge initiating the communication have consented to judicial communication;
 - (e) when the communication may occur (with due regard to time differences);
 - (f) any specific questions which the judge initiating the communication would like answered;
 - (g) any other pertinent matters.

- (21) The time and place for communications between the courts should be to the satisfaction of both courts.
- (22) Personnel other than judges in each court may communicate fully with each other to establish appropriate arrangements for the communication without the necessity for participation of counsel unless otherwise directed by either of the courts.

The Form of Communications and Language Difficulties

- (23) Judges should use the most appropriate technological facilities in order to communicate as efficiently and as swiftly as possible.
- (24) The initial method and language of communication should, as far as possible, respect the preferences, if any, indicated by the intended recipient in the list of members of the Liaison Judges. Further communications should be carried out using the initial method and language of communication unless otherwise agreed by the judges concerned.
- (25) Where two judges do not understand a common language, and translation or interpretation services are required, such services could be provided by the court or the Central Authority in the country from which the communication is initiated.

Written Communications

- (26) Written communications, particularly in initiating the contact, are valuable as they provide for a record of the communication and help alleviate language and time zone barriers.
- (27) Where the written communication is provided through translation, it is good practice also to provide the message in its original language.
- (28) Communications should always include the name, title and contact details of the sender.
- (29) Communications should be written in simple terms, taking into account the language skills of the recipient.
- (30) As far as possible, appropriate measures should be taken for the personal information of the parties to be kept confidential.
- (31) Written communications should be transmitted using the most rapid and efficient means of communication and, in those cases where it is necessary for confidential data to be transmitted, secured means of communication should be employed.
- (32) Written communications should always be acknowledged as soon as possible with an indication as to when a response will be provided.

- (33) All communications should be typewritten.
- (34) Ordinarily, communications should be in writing, save where the paragraph (35) applies.

Oral Communications

- (35) Oral communications are encouraged where judges involved come from jurisdictions which share the same language.
- (36) Where the judges do not speak the same language, one or both of them, subject to an agreement between the two judges concerned, should have at their disposal a competent and neutral interpreter who can interpret to and from their language.
- (37) Where necessary, personal information concerning the parties should be anonymised for the purpose of oral communication.
- (38) Oral communications can take place by either telephone or video conference and in those cases where it is necessary that they deal with confidential information, such communications should be carried out using secured means of communication.
- (39) If both judges involved in the communication agree, the parties or their representative may be permitted to be present during the oral communication. If one party or representative is to be present, then the other party or representative should be permitted to be present.
- (40) Subject to the agreement of both judges involved in the oral communications-
- (a) such oral communications may be conducted in the presence of the parties or their representatives by way of video conference or by conference telephone call;
 - (b) the parties or their representatives may be permitted to speak during the communication, but if one party or representative wishes to speak, then the other party or representative should be permitted a chance to answer.

Post Communications

- (41) A written record of the communications should be sent to the parties as soon as practicable.
- (42) Any correspondence or email or written communications between the judges should be preserved for the record.

Keeping Central Authority informed of judicial communications

- (43) Where appropriate, the judge engaged in direct judicial communications may consider informing his or her Central Authority that a judicial communication will take place.

Annex

Liaison Judge(s)

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